

Mrs. Ariana B. Klay, civilian, was called as a witness by the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q. If you would, please tell the court reporter your first and last name and spell your last?

A. Ariana Klay; K-L-A-Y.

Q. The city where you currently live?

A. Washington, D.C.

Q. I want to talk to you a little bit about your time in the Marine Corps. Can you tell us about your time at 8th & I? What you did there when you were there, those sorts of things?

A. So you want me to -- 8th & I or the whole Marine Corps?

Q. I guess a little bit of background as far as the whole Marine Corps and then some more specifics on 8th & I.

A. I was commissioned in 2006 from the Naval Academy and went to TBS. I went to Logistics Officer School. My first duty station was at Camp Pendleton, California. I was the Adjutant for Combat Logistics Battalion-5 and deployed with them in 2008 and 2009. I requested to PCS as soon as possible to Washington, D.C., where my husband was getting a job. I got orders for a hot fill billet to be a Protocol Officer at 8th & I.

Q. When was that?

A. I'm sorry?

Q. When was that?

A. That was in -- like, it was while I was deployed, so March of 2009. As soon as I got back, they PCS'd me out there.

Q. You said that you were PCS'd out there to be a Protocol Officer?

A. Uh-hum.

Q. What's involved being a Protocol Officer?

A. Protocol is just coordinating with the external agencies,

like, all of the three stars and above Generals, who do parades in the National Capital Region. Coordinating with their offices and just helping to coordinate any of the general officer events on base with the Generals or their spouses.

Q. Do you know the accused?

A. Yes.

Q. How do you know him?

A. He was Bravo Company Commander at 8th & I.

Q. Aside from just knowing him in that sort of contexts that he was Bravo Company Commander, did you have any other kind of interaction or other type of relationship with him?

A. I met him in January of 2010. So, I knew him as another Barracks officer and sought out advice from him.

Q. About what?

A. How he handled the environment there.

Q. What specifically about the environment?

A. Well, the environment was very unprofessional. It was -- I had a boss that -- you know, had many inappropriate relationships with a bunch of other seniors in my command. I had requested -- based on my hard work, who was a Navy Admiral had by name requested me to be his aide because I had spoken to him about being unchallenged, unfulfilled, and really disgusted to have to work with the person I had to work for. He -- Captain Rowe seemed to also be

unhappy at 8th & I, and didn't behave as a lot of the other officers did.

He didn't really come to the drinking events as often. Drinking was -- binge drinking was the norm for everyone. It was normal for officers to -- you know, stay on base over night because we had these weekly drinking events we had to go to, to kind of help -- I guess, the mission was to facilitate camaraderie and *esprit de corps* of the Barracks. I just thought it was taken to an extreme because -- you know, there in the office, drinking before

the parades, drinking after the parades, drinking mid-week at happy hours.

It just -- I felt like there was not a lot to do there -- you know, there Captains in charge of watching grass grow. There was a large surplus of officers and just very little challenge, a lot of gossip. It was just very uncomfortable there and I requested to leave several times.

Q. Okay. Well, you indicated that because of some of these things that you talked about, lack of being challenged and some of the -- I guess, the drinking culture and things that you actually sort of formed a relationship with the accused. Could you tell us what the nature of that was?

A. He was very respected at the Barracks. I would say that most people had seemed -- he wasn't around very often, so everyone seemed in awe of him. I would definitely say that he was kind of Colonel Smith's pet officer. When I did interact with him he -- you know, said that he hated female Marines, but he also seemed to understand my discontent with the place and -- I don't know, just the fact that he kind of didn't participate in some of the other psycho events the other officer were doing, made me think that he didn't buy into it the same way.

He also was a recovering alcoholic and -- or was an alcoholic, I'm not really sure which. I think that he struggled with the environment himself. He had told me that when he became Bravo Company Commander, Colonel Smith was like -- you know, I really need you to participate in the camaraderie here. I would like you to make at least a showing at these happy hours and what not. He told me how much he struggled to go do those events, and I would say I felt and I struggled to go to the events because I just was very unhappy with a lot of things that were going on there, and alcohol was gradually becoming a problem in my life as well.

Q. Was that something that the two of you discussed as well?

A. Yes. I would say that was the most frequent topic was alcoholism.

Q. You've talked somewhat about your perception of the environment at 8th & I. I would like for you to kind of describe it a little bit more. You talked about -- you mentioned rumor, you mentioned things like that. If you could, tell us a little bit more about that aspect of the climate there?

A. It just -- it didn't really feel like there was much of a rank hierarchy. In my immediate shop, the work was pretty easy, but drinking during the work day was normal. It was a tradition to do shots before we went and did a parade. My boss's disclosure to me of some of her sexual relationships -- I didn't really care initially because I didn't think it affected me, but I thought it was bizarre. It created a bizarre dynamic.

She seemed largely unqualified to do the job. In the first two weeks that I was there, the Marines openly made -- she talked about her implants openly to the office --

TC: I'm sorry. I would just mention that a few people stepped into the gallery.

MJ: It distracted the proceedings for a moment. No one was unruly. It's a small courtroom, so everyone knows when someone comes in. You may proceed.

Questions continued by the trial counsel:

Q. I apologize for interrupting you, please go ahead.

A. Just in the first two weeks that I was there, my boss that I was assigned to worked for --

Q. What was her name?

A. Suzanne Brick. -- she seemed very upset that I was there. She openly told me and Lieutenant Colonel Hiner [ph] that she wanted a Sergeant.

CC: Objection, hearsay.

MJ: Relevance into this?

CC: [inaudible]

MJ: Basis for?

TC: I will move on, sir.

MJ: Sustained.

Questions continued by the trial counsel:

Q. I guess aside from that, what was your perception I guess of -- you talked about some rumors and things like that. Could you give the court an indication on some of the rumors that you heard, some of the rumors that were going around?

A. Some of the rumors were that -- they were rumors of me doing the things that my boss was doing. One of them was that I was participating in gang bangs with all of the black officers. My boss had sexual relationships with several black officers. I thought that having junior Marines and having my junior Marines tell me that they felt sorry for me because of those rumors was inappropriate and upsetting.

Q. Now, you mentioned, I guess, this possibility of being an Admiral's aide. If you could, just tell us what was it you tried to do in response to the climate there?

A. By the summer of 2009, I spoken with Vice Admiral Howard about the conditions and working for my boss and he said that sounded like a terrible environment and that --

CC: Objection, hearsay. I actually ask that last comment not be considered.

TC: I can move on, sir.

MJ: Sustained.

Questions continued by the trial counsel:

Q. Again, not getting into what specifically he said to you or things like that, just what it was you tried to do?

A. I tried to deploy to Afghanistan to leave the command so I can be -- and the request done through Colonel Smith by Vice Admiral Howard was for me to be his aid in Afghanistan. That was on three different occasions, and I got counseled for requesting to leave.

Q. Now, you -- earlier, you mention a husband. Are you married?

A. Yes.

Q. What is your husband's name?

A. Ben Klay.

Q. What does he do?

A. He works for the White House Budget Office in the National Security Division as a Program Analyst for the [inaudible] Corporation and Weapons Acquisition for the Marine Corps.

Q. Does he have Marine Corps experience?

A. Yes. He was a Marine Officer that deployed with 3d Battalion, 8th Marines and 2d Marine Division twice between 2006 and 2007.

Q. Where you all married at the time?

A. We got married in 2009.

Q. Okay. I guess during the time period that you were at 8th & I, what was going on with him?

A. It was his first year and it is a very demanding position as a [inaudible] -- you know, [inaudible]. Part of his job is to find a [inaudible] in the government. His observations of my boss -- okay. He thought that I needed to leave the command. He thought it was inappropriate and he was really discussed by it -- the mandatory drinking events.

Q. Okay. I guess, my point was more about not what he thought about what was going on at 8th & I, but sort of what was going on with his work. How much was he working and how often you all saw each other, things like that?

A. I would say that I didn't see him that often. He just worked really long hours.

Q. What sort of things -- I mean, you talked about sort of you beginning to have struggles with alcohol and things like that. What kind of a toll did that take on your relationship?

A. It was very difficult because he just didn't like the

environment I was in, and he didn't approve of me drinking.

CC: Objection, this is based on hearsay.

MJ: Sustained.

Questions continued by the trial counsel:

Q. Again, not getting into what he said or what he thought or anything, just during the time that you were at 8th & I. What sort of thing was going on with your relationship with your husband?

A. It was not going well. We disagreed.

Q. Okay. Again --

A. Okay.

MJ: I'm going to allow some of this because the context of the relationship --

TC: Yes, sir.

MJ: -- but move on to the point you're trying to make in this area.

TC: Aye, sir. That was essentially the point that I was trying to make, sir.

Questions continued by the trial counsel:

Q. Now, you talked about this relationship that you had with the accused, sort of getting advice from him, talking about troubles with alcoholism. What sorts of things did you all do?

A. Well, he said that he hated female Marines and he didn't want to be seen in public ever talking to one. So, he said that he had advice for me on how I could leave 8th & I and handle the situation with my boss. He acknowledged to me that he knew what was going on and that my boss had been sleeping with Barracks officers before he got there. He gave me very good advice about how I could challenge myself there and kind of stay away from the party scene that was going on.

He told me not to hang out with her and that she had a very bad reputation and that I was going to get one to if I continued to. He seemed to kind of have the inside scoop on everything that was going on in the Barracks. He said that Lieutenant Colonel Philson kind of gave him weekly reports on what was going on. So, when he did speak to me, he would say -- it was not very often.

I would say it was once in a while over the course of several months he would say, "I will talk to you. I have advice to give that I think can help you because I think you need a lot of help, but I'm not going to talk to you in public because my Marines and everybody that knows me knows that I never speak to a female Marine."

Q. Well, if he was giving you this advice and things like that but he wasn't doing this in public, where was this taking place?

A. He would, like, pick me up and we would just drive.

Q. Pick you up where?

A. By my house, sir, or wherever, and he would drive outside the city because he said the city bothered him -- excuse me. It made him compelled to drink. So, if he was outside the city he felt more at peace. So he would -- when we would leave the city, he really was like a different person. He was nicer, and I thought his insight on the Barracks was very interesting. He had been there for several years and he was the first person that acknowledged a whole lot of things that I saw --

that I found to be a huge problem that no one else seemed to, at least to me, acknowledge.

Q. Now, you all would take these drives?

A. Uh-hum.

Q. Any of them -- I guess, where would you all go?

A. It would basically be wherever he wanted to go. One time it was to some place that served -- I don't know. I just remember there was a pig on it. So, it's some kind of, like, restaurant out in the country, like a very -- fast food restaurant. I would say it was about an hour away, and we had been drinking. Ironically, we were talking

about quitting drinking. As we were driving away, he got pulled over and was going to get a DUI.

Q. What happened?

A. Rob became very angry and told me that I needed to drive. I wasn't going to drive because I had been drinking so we were in walking distance at this really ghetto hotel. It was in the middle of the day, and we just went there for, like, two or three hours and slept it off and then he drove home.

Q. Anything happened out of the ordinary while you all were at the hotel?

A. Nothing. Except for him -- I would say we had an argument because he blamed it on me that he had -- I guess, he had -- he said that he got a DUI before when he was enlisted and he thought -- I don't know. He was just upset with me, but by the time he sobered up, he was calm again.

Q. So you all slept it off in the same hotel room?

A. Separate beds, same hotel room.

Q. Okay. Where there any other of these drives out?

A. Yeah. There was one other one that -- he also had an addiction to gambling and he would -- during the work day sometimes he would go gamble somewhere in Jersey or somewhere, I don't know where. He had come to pick me up, he drove us out to -- what started as an hour continued and he drove us out to West Virginia.

Q. Do you know where in West Virginia?

A. No.

Q. Okay. I understand that you did say no there, but because the court reporter is making a record of this --

A. No, I don't know the city.

Q. I'm just saying you have to vocalize your answers; you can't just shake your head or anything.

A. No, I don't know what city it was in.

Q. Go ahead, please.

A. So, we got there and it was -- the place that he had brought us to was some casino in West Virginia. This was

on a Saturday or something, and he started gambling and drinking, and he gambled way into the evening. I don't gamble, I don't even know how to play cards, so I just drank and watched the -- what's it called, the dog races. It just didn't look there were -- there was going to be any end to his drinking or gambling, so I just -- he had driven us out there, so I just got a hotel room and went up and went to sleep.

Q. I'm going to try to pull this out a little bit longer. Do you know about what time you all got to the casino?

A. It was in the middle -- it was early in the day, like, maybe noon or something.

Q. Okay. How long were you watching dog racing and him gambling?

A. Hours. I don't know. It was, like, one in the morning before I went up and just went to sleep, and --

Q. Okay.

A. -- when I woke up in the middle -- sometime over the course of the night, I woke up and looked over and he was watching --

Q. Do you know what time it was?

A. I have no idea. He was in the -- there were two beds in the room; he was in the other bed. I don't know how he got into the room or anything, I don't remember. I had communicated with him that I left. He was my ride home,

obviously. He was attempting to masturbate and watching porn.

Q. When you say attempting to masturbate, why "attempting?"

A. I don't know. I don't really -- I didn't really look at the area. I didn't know what was going on, but he was -- it looked like there was some motion going on and that's what he was doing. I just rolled back over and went to sleep.

Q. When you take these driving trips with him, where was your husband? What was going on with him?

A. He was -- I think one of the times he was in Russia, and he was --

Q. Was that work related?

A. Yeah.

Q. Go ahead, please. Did you have something to add there or were you done?

A. No. Just that it's weird because their over there talking out loud.

MJ: Let the record reflect that the witness gestured toward the defense table. The defense table is not making any inappropriately loud noises that I can ascertain from my distance.

Questions continued by the trial counsel:

Q. Now, I want to talk to you a little bit about the Article 32 Hearing in this case. You have written an appeal of one of the investigations that took place.

A. Um-hum.

Q. In that you sensed that you may have said some things that were inaccurate at the Article 32?

A. That's right on.

Q. Could you tell us what some of those things were?

A. Yes. When I read through the Article 32 that they attached to my discharge -- or pieces of it that were taken out of context, what I have said was not true.

Q. Okay. I guess, I will ask you about some specifics. I mean, at the Article 32 hearing, I believe you said that you and the accused had kissed or made out at some point previous to 28 August?

A. Yeah. He asked me the same questions for nine-and-a-half hours and threatened to keep me there until nine in the morning the next day.

Q. We'll get there. My threshold question is simply, is that true?

A. No, it's not true.

- Q. Okay. Again, I will get to why you may have testified to these things. At the Article 32 hearing, I think you also testified that you found the accused to be attractive?
- A. I did not think that he was as attractive.
- Q. Okay. I think you may have also said something along the lines of, "Wanting to look attractive for him"?
- A. Right. What I meant was I -- generally speaking, at least try to present myself in a good way whether I'm going to the grocery store or to anyone. I didn't mean -- it was taken out of context. I didn't dress nice specifically for him.
- Q. Okay. I guess in relationship to -- I don't know, saying this thing about having kissed or made out with the accused or finding him attractive, why would you have said those things at the Article 32?
- A. I stopped listening. He kept asking me the same questions over and over again.
- Q. Who was this?
- A. Mr. Faraj kept asking me the same questions over and over. I haven't slept at all the night before. Ben was out of town. The psychiatrist that I was seeing gave me all these meds that were supposed to kind of make me not feel upset that day, and I just was really tired. I didn't -- I don't know, I just zoned out in parts of the question. I don't even remember giving those answers. He asked me the same thing, like, 30 times in 30 different ways.
- Q. I guess the question then is, before 28 August was there any kind of romantic or sexual relationship evolving you and the accused?
- A. No, there was not.
- Q. Okay. Never any kind of intimate touching or anything like that?
- A. No.

Q. I want to jump ahead here, and I've used the dates kind of as a cut off, and to talk to you about 27 and 28 August, okay?

A. Um-hum.

Q. So, I guess it would be from starting that night of 27 August. Could you tell us what was going on that night?

A. It was the last parade of parade season. That summer was a very upsetting summer for many reasons because I of some stuff going on at the Barracks. I would say that I had drank -- drinking became a serious problem that summer. That final parade, I was just drinking a lot.

For parade season, I was not eating. I was exercising a lot during lunch, not eating, and then drinking. It was the final parade. Everybody traditionally kind of drank a lot, and stays to like six in the morning on the final parade. Anyways --

Q. Where was all of this taking place?

A. Center House, which is were --

Q. Okay. Can you describe what Center House is?

A. Center House is -- it use to be, like, an officer's quarters at 8th & I, but now it's used as kind of a bar for officer social functions and happy hours and the post parade activities that we are required to go to until midnight or so.

Q. Okay. You may go ahead, please.

A. I started drinking a lot. At midnight, you can change over out of uniform, so I changed out of uniform. There was a girl that was there chilling, that I didn't know well, but knew her as an acquaintance. We just went out to Eighth Street.

Q. Where did you go?

A. I don't remember anything after midnight, so I don't know.

TC: Okay. So, you don't know where you went?

The witness shook her head --

WIT: No.

TC: -- indicating a negative response.

Questions continued by the trial counsel:

Q. Do you remember seeing the accused that night?

A. Vaguely. I remember him yelling at me about something. I don't remember when.

Q. I know that you said the details are kind of hazy, but I'm going to press you on this a little bit. Do you remember where it was that he was yelling at you?

A. Out on -- I think it was, like, on Eighth Street.

Q. Do you remember what he was yelling about, what was his concern?

A. That day -- I think he kind of knew that I was -- I felt like he was helping me with some of the, like, problems that I had there. He knew that I was pretty much giving up on everything, and -- I don't know, maybe he -- I don't know if he was genially concerned or not, but he seemed like he was concerned that I was going to, like, harm myself. So, I think he knew, I guess, that I was being -- I don't know.

Q. Okay. Now, do you remember seeing him with anybody else that night?

A. Yeah. He had a friend of his -- his best friend from back home, Jeremy, who was from out of town -- from back in Indiana or somewhere.

Q. Have you ever had any conversation with Jeremy?

A. No, I don't -- I don't remember. If he was at Center House, I might have met him, but I don't remember. There is a lot of people -- there's like 100 people or so that go into Center House.

Q. Do you remember seeing Corporal Garrett Quinn that night?

A. I vaguely remember. I think I saw him and Rowe at the same time Rowe was yelling at me, but I don't remember.

Q. How did you get home?

A. I don't know. I live a block away from there, so walked probably.

Q. Do you remember getting home?
A. Um-um

Q. Who if anyone took you home or do you remember?
A. I have know -- I do not know at all.

Q. Okay. Where was your husband?
A. He was in California for a wedding of his friends. I put in a request to leave to go to the wedding with him, but because of my billet in Protocol they would not let me miss the parade.

Q. So, you don't remember how it was -- pardon me, that you got home, but what is the next thing that you remember?
A. Hearing Rowe's voice in my house in the morning.

Q. Where were you?
A. I was on the couch.

Q. Where is the couch?
A. In the downstairs of the -- it's like a townhouse.

Q. How many floors?
A. Two.

Q. Okay. And you said that you were in the downstairs?
A. Um-hum.

Q. Where is the bedroom?
A. Upstairs.

Q. So you woke up on the couch, and which room is this in?
A. The living room downstairs.

Q. What were you wearing?
A. Just, like, underwear.

Q. You said that you woke up and Rowe's voice was in your house. What did you notice about him?
A. He was screaming and very angry.

Q. What was he saying?
A. He was saying that I had -- I don't remember what he said. He said that I had embarrassed him in front of his Marines, and that I embarrassed him in front of his

wife, and that he had tried to help me. He was accusing me of having gone home with one of his Body Bearer Marines, and he was just screaming and --

Q. Okay. Do you know how he got in?

A. No.

TC: The witness shook her head indicating a negative response.

Questions continued by the trial counsel:

Q. I guess we're going to have to take this piece by piece. You said that he said that you had embarrassed him in front of his Marines and in front of his wife. Did he say anything about how you done that?

A. He said that I didn't listen to him and that's it. I don't remember what else he said.

Q. He didn't elaborate?

A. He may have elaborated in the kitchen.

Q. Okay. We'll take that piece by piece. At this point, he didn't elaborate on how else you embarrassed him?

A. No. He said a couple of names. He mentioned something about Gunny Duboy and Staff Sergeant Thomas, but it was very *[inaudible]* because I didn't remember anything that happened in the past coming days. He was just in my living room screaming at me, like, really early in the morning.

Q. About what time?

A. Like, seven in the morning.

Q. Now, you said aside from saying that you embarrassed him in front of his Marines and in front of his wife; he also said something about one of his body bearers?

A. He said that there was some Body Bearer that was not at formation and that he had, like, a reasonably -- that body bearer was walking me home and that I did that on purpose to him or something.

Q. At this point in time, did you know when he was talking about body bearers -- did you know what he was talking about?

A. I had no idea what he was talking about.

Q. After this initial encounter when he's yelling at you and you're in your living room, what happened from there?

A. He told me to go to the kitchen, and he said that his friend Jeremy was going to check up the scene. He was going to go upstairs and find the body bearer.

Q. Did you see Jeremy at this point?

A. No, because he had me go to the kitchen.

Q. Okay. Go ahead, please.

A. When I went to the kitchen I was really upset and very confused. I didn't know what was going on, and I put some PT clothes on because my laundry room is in the kitchen. He was just yelling and, like, threw, like, a pan or something.

Q. You said he was yelling, what was he saying?

A. He was just saying -- it seemed like he was still drunk, and he was just saying weird things. Like, he was saying that I was just like Suzanne and that -- he said some comment about, like -- you know, "You're nothing without your fake tan" was one of his comments.

He just said weird things that made me think he was drunk. Whenever he was drunk he didn't really make sense.

Q. So, you moved into the kitchen and he's continually to yell at you. You said he threw something?

A. Like, there were some pans. He just threw it on the ground; he didn't throw it at me or anything.

Q. About how long were you in the kitchen?

A. Maybe 60 seconds.

Q. That was 60, like, one minute?

A. Um-hum.

- Q. Okay. What happened -- he's yelling, he throws this pan, what happens then?
- A. He walked out of the kitchen, shut the -- or, like, these parch doors and he was talking to Jeremy. I couldn't hear what they were talking about.
- Q. Were you still in the kitchen at this point?
- A. Um-hum.
- Q. Okay. He went out to where?
- A. To talk to Jeremy in the living room area, I guess.
- Q. Okay. Go ahead.
- A. He opened the doors and he was still angry, and I don't know where Jeremy was. Jeremy was gone at this point. Rowe said that Jeremy had found a body bearer in the house.
- Q. Go ahead, please.
- A. He said that Jeremy had found a body bearer in the house and that he was going to tell everybody. He was going to tell my command, he was going to tell my husband and that all the rumors about me were true. He knew that my greatest difficulty at the time was dealing with all those rumors about me, and he said that -- he had acknowledged before than -- I know all of this stuff that bothers you and you can't take it, so you need to leave the command.
- He had agreed with that, and I agreed with him that I needed to. I felt like Rowe was my one source of support that I had at the Barracks and he was now going to try to do whatever he was going to do. He said that I was --
- Q. Was this -- I'm sorry, you were still in the kitchen at this point?
- A. No, this was out in the living room. He said that he was going to humiliate me just like I had humiliated him in front of his Marines, and he told me that he was going to show Jeremy what a slut I was. He said that -- he dropped his pants and he said, "Get on your knees" and I got on my knees and he said, "If you ever say anything about this, I'm going to take care of you just like we do in Indiana. I'm going to get my friend Marv to throw you in a ditch."

Q. Is this still in the living room at this point?
A. Yes.

Q. Do you know where Jeremy is at this point?
A. No. Then he forced his penis into my mouth for, like, two seconds then stopped and said, "Get upstairs." I went upstairs --

Q. I'm sorry. I just -- I'm going to -- you said that he said this thing to you about he would tell your husband, he would tell the command, all of these sorts of things. Did he say that once, or did he say it more?
A. He said it several of times.

Q. Do you know how many times?
A. No.

Q. In the kitchen, in the living room, or both?
A. Definitely in the living room. I don't remember if he said it in the kitchen.

Q. So he's made this statement to you and he says that he's going to humiliate you?
A. Uh-hum.

Q. Eventually, he tells you to go upstairs. What happened then?
A. I went upstairs and he followed me upstairs and he told me to take off my clothes.

Q. He told you to take off your clothes?
A. Um-hum.

Q. Did you?
A. Yes.

Q. Okay. Go ahead, please.
A. So, then he -- he just kept saying his rude things and he --

Q. You say he kept saying rude things?
A. Um-hum.

Q. If you could remember specifically, what was he saying?
A. He was just saying about how much influence he had on the

command, and how he had all of these connections in the Marine Corps, and just how he was going to discredit me. I had no credibility anyways because, you know, I had, like, slapped a Marine three weeks earlier that called me a slut. He said that I have no credibility and then -- Jeremy was yelling for him to leave. He was downstairs.

Q. Okay. I'm going to jump in here and ask you a few questions. You said that -- he indicated that you already had no credibility with the command and you kind of alluded to it. You said that you slapped a Corporal. If you could -- as far as you're concern, how did that contribute to your lack of credibility in the command?

A. He had to me --

CC: Objection, cause of speculation.

TC: I phrased the question in terms of her perspective, sir.

WIT: He was just saying --

TC: Hold on, ma'am. Hang on one second, please.

MJ: I want to hear the answer. Overruled at this point, you can renew your objection.

Questions continued by the trial counsel:

Q. Again, just from your perspective, how did this contribute to your lack of credibility with the command?

A. Based off of previous observed events that -- if there was anything that looked bad PR wise that the -- 8th & I would just crush it without looking into the context of it. There would never be any omission that there was any sexual hostility or anything because of the zero tolerance.

There was a Marine that had previously harassed and assaulted a female Lance Corporal against General Amos's quarters and it was the same Marine, and he got away with it. He came up to me and said that I was a slut and, you know, "WM" and that my female Lance Corporal was pregnant.

Q. Okay. You say, "WM," if you could, just a little bit?

A. He said that I wasn't a Marine, that I was a "WM," and --

Q. What does "WM" -- what does that mean?
A. It could mean many things. It could mean woman Marine. It could mean "Walking Mattress." It could mean --

Q. Okay. That was the one that I was getting at. Is that something that you have heard before?
A. Yes.

Q. Okay. Anyway, go ahead, please.
A. So, you know, for the past three months I heard these kinds of things being said to me, and when I had complained about them I was just told to deal with it.

CC: Objection, again, hearsay.

MJ: Regards to having to deal with it, I will accept that answer --

CC: Yes, sir.

MJ: -- the remainder is speculation.

TC: That's as far as I was going, sir.

WIT: I just felt like the command climate and the harassment was out of control, and I couldn't leave.

Questions continued by the trial counsel:

Q. I guess what I'm ultimately trying to get at here is, he made this threat to discredit you at the command, to tell your husband, and things like that. Why is that -- based on that, why is it that you went along with what it was that he told you to do?
A. I was afraid of Rowe because he was a very intimidating person.

Q. You said that he made this statement about Marv, how did that make you feel?
A. Fearful.

Q. Of what?
A. It still does make me fearful.

Q. I understand of what -- fearful of what?
A. That he's going to have his friend come kill me because I spoke about it.

Q. Did he give you any more indication of who Marv was or what he was involved in?
A. He said that Marv was his friend from back in Indiana that took care of things for him.

Q. You indicated that -- I jumped in and asked you a lot about sort of --
A. Um-hum.

Q. -- the threat and what not, but I want to get back to talking about what took place --
A. Um-hum.

Q. -- that morning. You indicated that you all were up in the bedroom, and he told you to remove your clothes. I think that's where I jumped in and interrupted you. So, if you could, please pick up from there.
A. He told me to get on the bed in a doggy-style position. At this point, Jeremy was yelling for Rowe to leave. Jeremy seemed like --

Q. Where was Jeremy at this point?
A. It sounded like he was downstairs.

Q. I guess what I am getting at is, was he in the room?
A. No. Rowe was responding to him verbally while he was inserting his -- he had dropped his pants, and he put his, like, penis in me. He was yelling down to Jeremy that
that
he --

Q. I'm not trying to get -- I'm not trying to embarrass you or anything, but you said he put his penis in you. Describe exactly what you mean.
A. He -- I don't know. I mean, he put his hands on my back and he forced his penis in me. I don't know what other description you want me to say.

Q. I guess, in where?
A. In my vagina.

- Q. So, you said that you hear Jeremy yelling, and he's, I guess, asking the accused to leave or saying that it's time to leave or something along those lines. You say that he responded verbally, what was his response?
- A. He was like -- he said, "No." He told him -- he's, like, "Come up here. I want to show you something." He kept saying come here to Jeremy.
- Q. How long was this going on at this point? How long were you all up in the bed?
- A. I would say that that there were three exchanges between them, and he was talking to Jeremy the whole time.
- Q. Okay. How long were you up in the bedroom before --
- A. Jeremy came up stairs?
- Q. Um-hum.
- A. Not very long, may be a minute.
- Q. Okay. Go ahead, please.
- A. Jeremy came upstairs and he was like, "Come on, let's go." He made some comment to Rowe, like, "I don't even know who you are anymore." Rowe was like, "Come on Jeremy, Arianna is going to show you what a slut she is." He told Jeremy to go over -- he directed Jeremy while he's still inside -- he directed Jeremy where to go.
- Q. When you say directed him, just where did he tell him go? What did he tell him to do?
- A. He told him to go -- he motioned for him to go -- I don't remember how, he just told him to go to where I was.
- Q. Okay. What did he tell him to do?
- A. He told him to put his dick in my mouth.
- Q. Did he tell you to do anything at that point?
- A. Yes. He told me to suck Jeremy's dick. That was his quote.
- Q. Okay. What did you do?
- A. Well, when Jeremy forced his penis in my mouth, I gagged and he came immediately. Rowe made fun of him for cumming, and then Jeremy went downstairs. Rowe told me that he was not finished with me, and he finished and then left.

Q. How long did that take?
A. Like, may be two minutes.

Q. How were you -- what was going through your mind during the time this was going on?
A. Pretty much just that I could not [inaudible] everything, and that I wanted to die.

Q. We talked about this a little bit. His initial threats when it was just Captain Rowe in the bedroom and also when Jeremy was up there, why did you get into what it was that he told you?
A. I didn't feel like I had any choice. I felt like I was either -- I felt like he could do anything. He had so much influence in the command. He had his connections. He had his friend Marv. I felt like he could do whatever he wanted to.

Q. After -- you said that he finished?
A. Um-hum.

Q. I'm assuming that he ejaculated?
A. Um-hum.

Q. After that what happened?
A. I just laid there and they left. I don't know where they went.

Q. After they left, what did you do the rest of the day?
A. I called my husband and told him that I needed help. I thought -- I was either going to go check myself into, like, a mental hospital or, like, Alcohol rehab or something because I couldn't spend another day at 8th & I. For the first time, I started formulating a plan of, like, I could -- I started researching on how to, like, kill myself.

Q. Did you have any other contact with the accused that day?
A. Yes. I did talk to him. When I talked to him --

Q. You talked to him how?
A. I think he, like, called to see how I was doing or something.

- Q. Okay. So, over the phone?
- A. Over the phone. When I talked to him, he sounded very remorseful. He sounded like a totally different person. He said that morning had to happen because I was an alcoholic, and I couldn't get -- that had to happen to me so I could get better.
- Q. What had to happen?
- A. Him and Jeremy's assault had to happen. He didn't say that, he just said that this morning had to happen. At the time, I guess, I didn't really know what to think, and he sounded really sorry and --
- Q. How could you tell that he sounded sorry?
- A. He said that it was the worst day of his life, and he said that him and Jeremy wanted to stop by and make sure that I wasn't going to kill myself. They stopped by that afternoon.
- Q. About what time?
- A. Like, three o'clock or so or something.
- Q. In the afternoon?
- A. Yeah.
- Q. Okay.
- A. He said that they were going to a White House tour and --
- Q. You said that they came by?
- A. Yeah, they came by. They were there for, like, five minutes if that. Jeremy was saying -- he was saying that-- he was kind of like -- "I don't know, I [inaudible] you, or I don't know you very well, but -- and I don't even know who Rowe is anymore, but this doesn't seem like -- you know, this is something that we would have to put it behind us. Blah, blah, blah." When they came over I was just like -- I don't know, I was like a zombie and I can't really remember.
- Q. Did you have any conversation with the accused when they came back that afternoon?
- A. Yeah. He was acting very, like, supportive. He was like, "I will help you get better. I am a recovering alcoholic. I've been through three rehab programs."

This [inaudible] kind of added to a double incident to my alcoholism that I need to get better and that was it.

Q. Now, did you have any further contact with the accused after this?

A. Well, after that he -- I didn't talk to Robert frequently before that may be, like, twice a month if that. After that incident he started calling to check up on me, and I kind of --

Q. Calling to check on you, why -- I mean, what kinds of things was he asking?

A. He was asking me -- he would, like, gage what he would hear in Bravo Company, like, he had heard that I had gone to NCIS, and he was asking what I was talking about to NCIS. He would talk to me about -- a lot of it was talking about the alcohol recovery. I would say at this point, he was the only person talking to me from the command because of the timing of events.

Q. You say at this point, what point was this?

A. After I --

Q. I guess, on a calendar.

A. Like the very beginning of September.

Q. Okay.

A. The first work day after I had -- I called Jim Bob over the weekend.

Q. Who's Jim Bob?

A. He's like the Alcohol Rehabilitation guy. I just said that I needed to come see him on Monday or whatever day it was that I came back, and that's where I went.

Q. I guess, you said at this point in time he's the only one who's still engaged with the command?

A. He's been very remorseful about it.

Q. How often did you speak to him?

A. Initially, I would say, like, every couple of days. That was --

Q. For how long of a period of time?
A. I would receive a miss call from him in the afternoon, and I would call him when I was coming back from the Alcohol Rehab Treatment over at Andrews Air Force Base. I would just talk about what I did in class. By the third week or so, we had to do this, like, thing where you shared your life story.

Q. You said we had to do this?
A. Everybody that was in the, like, -- it's like both. Some people are addicted to, like, pain killers and stuff. So anybody like with addictions in this group --

Q. Okay. So this isn't talking to -- okay.
A. So, I told the whole story of, like, alcohol and the story of my life and what happened with Rowe and everything. All of them were, like, -- told me to stop talking to Rowe because he was being manipulative, so I stopped returning calls. The only time I would speak to him is when -- I felt like if I had played along with him he would not seek revenge on me in anyway, so I would answer if he seemed, like, he really needed to talk about something.

Q. How long did that go on? You said that this was about the third week in September that you had stopped returning all of his phone calls?
A. I would say approximately may be two or three times after that, and that was, like, -- he was about to PCS to Oklahoma. So, I thought of it as kind of appeasing him until he left, and then maybe when he left I thought that it might be a good time to not have to talk to him again. While all of these were going on, he was trying to talk to everybody and fill out what everyone was saying.

CC: Objection, cause for speculation.
MJ: Sustained.
TC: I will move on, sir.

Questions continued by the trial counsel:

Q. What about his -- do you know he's married?
A. Yes.

Q. What is his wife's name?

A. Maigan.

Q. Okay. After 28 August, did you have any kind of contact with his wife?

A. Yes. Right after everything happened, Rowe told me that he was going to have his wife come visit me, and he said that it, like, needed to happen. So, I went along with whatever Rowe said. Maigan came over for, like, 15 minutes just to kind of talk to me about Rowe's alcoholism and how I could get better.

Q. Anything else that you spoke with her about or what was wrong?

CC: Objection, cause for hearsay.

WIT: She --

MJ: Can you ask the question again before I rule on the objection?

TC: Was there anything else that she spoke to Captain Rowe's wife about? Not the nature of anything that Captain Rowe's wife would have told her.

MJ: I'm going to allow the question. Overruled.

Questions continued by the trial counsel:

Q. Again, without getting into what Maigan Rowe may have told you, anything else that you worked with her on or spoke to her about?

A. Just the effects of alcohol on marriage was like the topic.

Q. I guess from your perspective, you kind of hinted at this. Why would you continue to stay in contact with him and his wife after this had taken place?

A. No one from 8th & I in the command after I preferred to alcohol treatment, not a single person contacted me except for Rowe unless it was, like, a proceeding, like, "Oh, we need you to come pick up this." He was the only person that asked me how I was doing.

He was the only person that seemed interested in my recovery and was very knowledgeable about recovery. Maigan -- I had no desire to. I felt bad for Maigan based on things he had said about their marriage. I don't think any of it was hurtful. I'm sure she, like, hates me of it. I still empathize with her.

Q. You mentioned the fact that you talked to, I guess, a group substance -- Substance Abuse Counseling.

A. Um-hum.

Q. You talked to the group about some of what had taken place, anyone else that you spoke to about having been --

A. Yeah. The day that I -- when I went to go refer myself to alcohol treatment, I knew that would be the best course of action. There wasn't anything wrong with me, I wanted to fix it.

On the sheet they asked why I thought I needed alcohol treatment, and I said because I think I have an alcohol problem, and part of the alcohol problem is related to Major Warren groping me at 8th & I, and the sexual harassment that was there and another sexual assault that I didn't want to talk about. I listed these things on a piece of paper.

They sent me to Anna Barden. I said I have no desire what so ever to --

Q. Who's Anna Barden?

A. She's the Victim Advocate. I said that I have no desire what so ever to report this in an unrestricted capacity. I just told her that I wanted to deal with it on my own. I told her that I -- my plan was to never report it. Well, I reported it in an unrestricted capacity, but my plan was never to report any of the details.

Q. You said unrestricted. I just want to make sure, did you mean restricted?

A. I made a restricted report --

Q. Right.

A. -- which means you give nothing and there's no investigation initiated. I told her that I never planned to make a unrestricted report because I was just planning on getting out of the Marine Corps in the next year and

didn't want to deal with anymore investigations or anything.

Q. You talked about -- I mean, that's some it. Are there any other reasons why you didn't want to make an unrestricted report or an official report to law enforcement?

A. Yeah. It was extremely embarrassing and Rowe had threatened to, like, destroy me if I had said anything.

Q. How is it that you finally sort of went from a restricted report to unrestricted?

A. I requested to transfer commands after I went to alcohol treatment and they let me transfer. So it was at Henderson Hall. I then thought everything would just get better. I would work on my transition out of the Marine Corps. I always wanted to get out of the Marine Corps anyways after my five years.

It was kind of -- I had to focus on that, but it just still continued to bother me. I was uncomfortable being around military. I was uncomfortable being around males. So I applied to do the [inaudible] social worker. I'm a catholic. It's like 90 percent female and it's a bunch of nice people. One of the values of social work is --

CC: Objection, relevance.

WIT: Okay.

TC: It's the impact on her as to why she would have decided to go with an unrestricted report on this, sir.

MJ: Which is leading to how it gets reported?

TC: Yes, sir.

MJ: For that limited purpose, I will consider it.

WIT: So every month NCIS would call -- even if you make a restricted report, every 30 days they call you and see if you feel like you want to talk about it, and every month I would say, "No. No, thank you. No." Over the course of the months, I still could not sleep well. I would

wake up with images of Jeremy's goatee and his, like, penis.

CC: Relevance.

WIT: Bottom line --

MJ: Hold on.

TC: I will move on, sir.

MJ: Okay.

TC: Okay.

WIT: Bottom line --

MJ: Sustained.

Questions continued by the trial counsel:

Q. You talk about NCIS was, I guess, calling you every 30 days. How did NCIS get involved?

A. When I written down that there was a sexual assault. Even if you make a restricted report, it's --

CC: Objection, cause for speculation.

TC: I will move on, sir.

MJ: Okay.

Questions continued by the trial counsel:

Q. When did you finally talk to NCIS about this?

A. In January of 2011.

Q. Okay. Aside from sitting down -- I guess, what did you do as far as NCIS was involved once you decided to talk about this?

A. I told them that I didn't -- I told her that -- the day she called me was the day I hadn't really been able to sleep. I felt like this continued to effect my life. After I got out of the Marine Corps, it would continue to

affect my life. When she called, I just was -- I just felt so unfair. For the rest of my life I have to have this disgusting memory.

CC: Objection, relevance.

TC: Again, this --

WIT: Bottom line, I told NCIS because it was still brothering long after the proceedings and everything had been going on.

Questions continued by the trial counsel:

Q. Okay. What did you do with NCIS?

A. I told her -- I said, you know, I think there's something I wish I could report so -- you know, he could be held accountable, but I don't believe in the system, and I don't believe there's any evidence at this point. So, she offered to -- she said, "When was the last time I talked to him," and I said, "In October." She said, "Would I be I willing to do this phone sting," and I said, "Yes, but I not going to make --"

She wanted me to make a statement before. I said that I'm not going to even make a statement unless there's some evidence from the phone sting because no one is going to believe me. As Rowe said, they think I have no credibility. So, I'm not going to make some statement so they can disregard it. So I agreed to the phone sting in -- I think it was in late January, and then I made a statement.

Q. Anything else that you cooperated with NCIS on after that?

A. Um-hum. I mean, they would just ask me, like, --

CC: Objection, hearsay.

MJ: Elements?

TC: Asking a question, sir. It's the effect on the listener.

CC: Actually, I will withdraw that objection.

TC: It goes to her actions as far as --

MJ: He's withdrawing the objection. You may answer the question.

Questions continued by the trial counsel:

Q. Anything else that you cooperated with NCIS after on after that?

A. No. They just asked me to come back in and make statements on following questions.

TC: That's all the questions I have right now, Your Honor.

MJ: Fifteen minute recess, counsel?

CC: Yes, Your Honor.

MJ: Mrs. Klay, I ask you not to discuss your testimony with anyone other than -- anyone at this point since you are going to be cross-examined here in about 15 minutes. So, please return to the waiting room or use the facilities.

The court's in recess.

The court-martial recessed at 0910, 13 December 2011.

The court-martial was called to order at 0927, 13 December 2011.

MJ: The court will come to order. All parties present when the court last recessed are again present.

We had a brief discussion at the bench. This is a lengthy cross-examination, which is expected to be. We will take recesses somewhere within that 60 to 75 minute window. If there are natural break points, I will enforce it at a certain point.

Mr. Faraj, you may be able to identify a spot where you will want to stop, but advance warning counsel.

Anything further from the government with this witness?

TC: No, Your Honor.

MJ: Cross-examination?

CC: Thank you, Your Honor.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. Good morning, Mrs. Klay.

A. Good morning.

Q. Mrs. Klay, you sought to move to Washington, D.C., to be with your husband; isn't that correct?

A. Yes.

Q. At the point that you were at in your career as a Marine, you were not eligible for a move at that time?

A. That's incorrect. I was a fiscal year of 2009 mover.

Q. How many years had you spent at your command before moving to 8th & I?

A. Because of the time that I reported to my duty station, that made me fiscal year 2009 mover. It was kind of an unusual circumstance. So, I was eligible for --

Q. How many years had you spent at your command when you moved to Washington, D.C.?

A. I believe it was just over two.

Q. When did you join the Marine Corps?

A. May of 2006.

Q. When did you complete TBS?

A. In January of 2007.

Q. When did you complete your MOS School?

A. Not until -- I went to my duty station TAD for three

months, and then I went to MOS School. So, that was not until August of 2007.

Q. What is the duty station you reported to after August 2007?

A. Camp Pendleton, California.

Q. What were your duties there?
A. I was initially a Motor T Platoon Commander before I went to MOS School, and then I -- when I went to MOS School -- CLB-5 was just doing a rework and starting up. I didn't really enjoy my time as a Motor T Platoon Commander, and I wanted to be the Adj [sic] for the Colonel because we didn't have one. I asked if I could before I left, and by the time I got back from MOS School he decided that could be my position.

Q. You were a Motor T Platoon Commander?
A. Yes, for a couple of months. That was before I went to Logistics School.

Q. Okay. As a Logistics Officer, I believe the Marine Corps combined Motor T and Logistics and Supply together into one MOS; right?
A. No. Supply and Logistics are separate.

Q. Okay. What were you -- what was your MOS?
A. I was 402, which is a Logistics Officer.

Q. Okay. And so you came back and you were eligible to take that platoon back over again?
A. It was already filled, so -- I had requested to be an Adj [sic] before I even left for MOS School --

Q. Got it. So --
A. -- so by the time I got back there was -- I don't remember what the exact word was, but they decided -- he decided that he would take the risk and put me as the Adj [sic] vice a school trained Adj [sic].

Q. My question is, you were the Motor T Platoon Commander?
A. Yes, I was for a couple of months.

Q. You had assets and Marines working for you?
A. It was a Remained Behind Platoon. So, yes, there was assets and Marines, but it was not Marines that were going to actually deploy.

Q. Okay. You did have assets of Marines working for you?
A. Yes.

Q. You didn't enjoy that job; correct?
A. It was okay.

Q. You just said that you didn't really like, and you wanted to be Adj [sic]?
A. Yes.

Q. Okay. You went to the Colonel and said that you wanted to be the Adj [sic]?
A. Um-hum.

Q. Okay. The Colonel of CLB-5?
A. Um-hum.

Q. The Commanding Officer?
A. Yes.

Q. Okay. I'm sorry you said, "Um-hum" a few times, so I just want to -- because we're recording, that means "Yes;" correct?
A. Yes.

Q. For every "Um-hum" that you said, that meant "Correct"?
A. Yes.

Q. All right. Now, as the Motor T Platoon Commander, did you have someone in your chain of command before the Colonel?
A. Yes, there was a Company Commander and that was before we actually had a Colonel, so, yes.

Q. You didn't like your job and you went to the Colonel and said that you wanted another job; correct?
A. No, that's not correct.

Q. You just said that you went to the Colonel and asked to be the Adjutant?
A. I knew that there was the opening. Before I left when I was Regiment, I said, "If the Colonel -- I'm happy to be the Motor T Platoon Commander again, but if the Colonel would like, I would love to be Adj [sic] -- the Adj [sic]."

Q. Okay. Well, that was my question. You didn't like your job; you wanted to be the Adj [sic]. You asked to get that job?

A. Okay. Yes.

Q. Is that fair to say?

A. Um-hum.

Q. Okay. That's kind of similar to what you did at 8th & I. You went to be the Protocol Officer; correct?

A. Yes.

Q. At 8th & I, the Protocol Officer is a fairly important job; correct?

A. Yes.

CC: That is manned or -- manned is sort of -- that is manned. I'm going to use that.

MJ: Staffed.

Questions continued by the civilian counsel:

Q. Staffed. Thank you, sir. By a civilian?

A. Yes. It's a very bizarre scenario. There have never been two Protocol Officers.

Q. I understand. That job is an important one, and it was staffed by a civilian; correct?

A. Yes, but they had put in a hot-fill request because she was not doing the job that they wanted.

Q. We'll get to that. The question that I would like for you to answer, is that it is staffed by a civilian; correct?

A. It was at the time that I showed up. Yes.

Q. So, you go there believing that you are going to be a Protocol Officer at this unit --

A. Um-hum.

Q. -- which is in the spot light all the time; correct?

A. A certain spot light. Yes.

Q. Okay. You were a Lieutenant at the time?
A. Um-hum

Q. Correct?
A. Yes.

Q. So, you arrived there and you're dissatisfied that you have to work for this civilian, who you believe is incompetent?
A. That's true.

Q. Then you decide that I'm going to contact Vice Admiral Howard and be on his staff because I don't like it here?
A. Well, initially, I actually requested to go to CMC Protocol.

Q. You eventually contacted a Vice Admiral to ask to be on his staff?
A. I contacted a Vice Admiral to ask for his career advice on how I should handle the situation. He was the one who came up with the idea for me to be his aide.

Q. Okay.
A. He actually initially recommended that I do that [inaudible] is what he initially recommended.

Q. The Marine Corps paid quite a bit of money to move you from Camp Pendleton to 8th & I; correct?
A. That's correct.

Q. All right. When you got there, you didn't go through -- you didn't fill out an administrative action form, which is what Marines do to be moved. You contacted a Admiral, a Flag Officer, to seek to be moved?
A. I initially had requested to go to CMC Protocol, which would have been the same duty station.

Q. I understand.
A. I felt that it was [inaudible] to have two people doing a one person task that was not that hard.

Q. Very well. Did an officer senior to you assign you to be in that billet at the Protocol office?
A. Yes.

Q. Okay. Do you believe that you are more capable at assessing the needs of that office than that senior officer who assigned you?

TC: Objection, argumentative.

MJ: The objection is argumentative and it is overruled.

Questions continued by the civilian counsel:

Q. Do you believe that you are more capable at assessing the needs of that office than the officer who assigned you to that billet?

A. I think that it is more complicated than that. I think that he was not aware of what was going on in the shop.

Q. My question is simple. Do you believe that you had more qualifications to assess the needs of that office than the person who assigned you to be there?

A. No, I do not have more qualifications, but I did have knowledge about her competence and activities that he did not have.

Q. Very well.

A. He said that he brought me in there because she had some -- he told my husband that there were a lot of mistakes --

TC: Objection, hearsay.

CC: It's not responsive anyway.

MJ: I'm going to go with not responsive. His answer, his question.

Questions continued by the civilian counsel:

A. Lieutenant Colonel Henger had told my husband and I --

Q. I haven't asked the question.

A. Okay.

Q. All right. You believe that you had some information that was not available to the command about that particular office?

A. I think that command did have that information. I just think they did not know how to handle it.

Q. Okay. When we speak of the command, we're talking about the Commander of Marine Barracks Washington? That's who you ultimately work for?

A. Yes. I was specifically talking about Lieutenant Colonel Henger, who is the XO at the time, but --

Q. Though the XO works for a Commander?

A. Yes.

Q. And the Commander at Marine Barracks Washington is the person you ultimately work for?

A. Yes.

Q. Correct?

A. Um-hum.

Q. I think I understand your testimony to be that they had the information; they just didn't know how to handle it. Is that what you just said?

A. That was my perception. Yes.

Q. Okay. So, the Colonel, O-6, and a Lieutenant Colonel, O-5, did not know how to handle the situation, but you believe that you had the answer for them?

A. No, I did not have the answer for them.

Q. What did you want to say when you said, "I had information, but they didn't know how to handle it"?

A. Suzanne was having an affair with my -- with her supervisor, who had recommended her hire. She was also having sexual relationships with five other senior officers in my command. She had nothing passed a high school degree, no management experience, and was unable to do Excel and other basic Microsoft Word functions.

She would drink a lot during the work hours, and I did not think that it was -- I had never seen anything like that. I don't think that they knew how to handle it. I

don't think that I would know how to handle it. I would never have made that hire.

Q. Okay.

A. They didn't know what to do because the Operations Officer had made a recommendation to hire her, but he was having a affair with her.

Q. The Operations Officer is a single man; right?

A. No, he's married. He was married.

Q. He was?

A. Yeah.

Q. We'll get to all that in a little bit. Suffice to say, that -- I think I understand your testimony to be that they had all of this information, but they just didn't know how to handle it?

A. They knew some of it. Lieutenant Commander Rice knew that there was at least one married officer that went to Lieutenant Commander Rice and said that he was having a n affair with Suzanne.

Q. Let's focus.

A. Okay.

Q. When I say they. I want to --

A. I don't think they had evidence.

Q. Let me ask the question.

A. Um-hum.

Q. Colonel Smith and Lieutenant Colonel Hangover [ph] are the CO and XO; correct?

A. Yes.

Q. When I say, "They the command" that's what I'm really referring to. So, you believe they had that information; correct?

A. The Lieutenant Colonel gave me the impression that he knew that something was going on.

Q. Okay. When was this?

A. The first month I checked , he told me that he knew that

there was some serious problems in the Protocol Shop and his manpower solution was to put me in the shop to compensate for the [inaudible] that was going on, to certain publications or going to hyper file, I guess.

Q. Okay. You're aware that throughout the 2010 parade season, the Protocol Shop got many accolades. You were cc'd on those e-mails?

A. While I was there?

Q. Yeah. In fact, you forwarded one to your husband and he told you what a good job you guys had done and complimented you on it. Do you recall those emails?

A. Yes, I do. People were always thanking the Protocol Shop because it was where you got your --

Q. My question is simple. As part of the Protocol Shop in 2010, throughout the parade season you received accolades for how good of a job you did; correct?

A. Are you talking about -- yes, Marines in the Protocol Shop received applause, and Suzanne received many thank yous and bottles of alcohol and --

Q. Let me focus you. I'm talking about a very specific email from the CO of Marine Barracks Washington, Colonel Smith, and when he said, "You all did such a fantastic job in a particular parade day in dealing with tickets, and assigning people with the right seating assignment because you had so many high level officials." That is what you actually forwarded to your husband?

A. I think there was a --

Q. Do you recall that e-mail?

A. Yes.

Q. Okay.

A. I think that there was a misunderstanding of what -- the other Marines that were [inaudible] seemed to understand exactly what the function of Protocol was. If things ran smoothly, then that was great. If things -- you know, if someone had [inaudible] seating, then that was -- actually, that would be a problem for the Protocol. It's difficult to know where to send the thank yous too because of the nature of the billet.

CC: So, Colonel Smith did not understand what was going on and miss-sent that e-mail to --

TC: Objection, speculation.

WIT: Things probably did go wrong --

MJ: One moment. Is there -- I'm going to allow the question, but get ready to move on. Overruled.

Questions continued by the civilian counsel:

Q. Is it your testimony that e-mail was miss-sent by Colonel Smith because he didn't know who was really responsible for the job well done?

TC: Objection, cause for speculation, sir.

MJ: She's been stationed there long enough to have an opinion as to what she believes the Colonel would know. I would allow this limited, and you may move on.

Questions continued by the civilian counsel:

A. I believe the parade went well, and he made assumptions as to why, they may have been valid, they may have been not.

Q. Based on your experience at that shop, you came to the conclusion that you don't like it there; correct?

A. I think that anyone that worked for that type of supervisor in a shop that can drink all day long and didn't really have a mission and had that kind unprofessional atmosphere will not be happy. It's actually very disappointing because I didn't think -- you know, I was told that was the tip of the spear, and here was just this foul environment.

Q. Okay. Did you hear my question?

A. No.

Q. Did you get to the point where you stopped liking that job?

A. I did not like working for Suzanne.

Q. Okay. You asked to be moved, and you went over the CO's head like you did at Camp Pendleton. There CO being the Company Commander at Camp Pendleton, and you went to a Vice Admiral to seek to me moved; correct?

A. Vice Admiral Howard proposed that -- he asked me -- he said, "Would you be interested in being an aide?"

Q. Who contacted whom, ma'am?

A. I'm sorry.

Q. Who contacted whom? Did you contact the Vice Admiral, or did he contact you to ask you to be an aide?

A. Any time the Vice Admiral was in town we did, like, 5 a.m. --

Q. Who contacted whom?

A. He contacted me to go for a run when he was in town, and when we went for a run, I talked to him about my new duty station.

Q. I see. He then offered you a position as the aide?

A. Initially, he said, "Have you ever heard of the [inaudible] Program?" Then --

Q. Please, answer my question because --

A. He eventually did. Yes.

Q. That's why we spent four hours at the Article 32 hearing.

A. Nine.

Q. All right. We might be here nine hours if you don't answer the questions. Did you eventually ask him to become his aide?

A. He asked me if I would like to become his aide. It was his idea.

Q. All right. You went through several different attempts to try and become his aide, and finally, it was warned by Colonel Smith to stop doing that?

A. That's incorrect. I -- he initially made a request for me to be his aide to Colonel Smith. His staff contacted Colonel Smith's, and I was counseled by Lieutenant Colonel Henger for not going through my chain of command --

Q. Okay.
A. -- and so the next time when I asked again, I went through my chain of command.

Q. Then you were finally warned by Colonel Smith?
A. Um-um.

Q. Was it just Lieutenant Colonel Henger --
A. Yes.

Q. -- that counseled you?
A. Um-hum.

Q. Okay.
A. When I went through my chain of command the next time it stopped at Major Jones. Suzanne said, "No." I went to Major Jones, who was in the relationship --

Q. Who's in your chain of command?
A. He was in my operational chain of command.

Q. Yeah. It's funny how things work in the Marine Corps. Were you a Marine?
A. Yes.

Q. Okay. Do you understand that there's a chain of command?
A. Yes, I do.

Q. Okay. The environment at 8th & I was intolerable based on your testimony? Did I understand that right?
A. That's correct.

Q. Okay. Now, 8th & I is also Marine Barracks Washington. It's the same name, so I will refer to -- I will go back and forth, okay?
A. Um-hum.

Q. Is that okay?
A. Yes.

Q. All right. Just understand what Marine Barracks Washington is, and let me put it on the record. Marine Barracks Washington is a post in the Marine Corps; right?
A. Yes.

Q. It's actually situated at 8th & I street in Southeast D.C?
A. Um-hum

Q. Correct?
A. Yes.

Q. On one end -- on the north end of the Barracks is the Commandant of the Marine Corps house; correct?
A. Correct.

Q. On the other end is the Marine Barracks Washington CO; correct?
A. Yes.

Q. Okay. It's a high visibility post; correct?
A. For the Marine Corps. Yes.

Q. Okay. It has some very unique billets that are staffed there, for example, like, the Protocol Office; correct?
A. Yes.

Q. At Marine Barracks Washington, are a couple of Infantry Companies; correct?
A. Marching Companies. Yes.

Q. Those are manned by Infantry men?
A. Um-hum.

Q. Correct?
A. The combat arms. Yes.

Q. Okay. On just about any day you walk around 8th & I, you see Marines in a type of a dress uniform, depending on the season, underarms; correct?
A. Yes.

Q. It is a bit of a tourist attraction; correct?
A. Yes.

Q. During the summers, that unit hosts a parade at that location; correct?
A. Yes.

Q. It also hosts a Colors Ceremony at the Iwo Jima Memorial; correct?

A. Yes.

Q. It has a team of Marines type -- called the Silent Drill Platoon that tours the country, and puts on shows to members of the American public and at military post; correct?

A. Yes.

Q. People at 8th & I are sort of hand selected; correct?

A. Not hand selected for what they would be hand selected for.

Q. Are they hand selected?

A. For height and weight.

Q. Okay. The people making the -- well, let me back up. People at 8th & I are under scrutiny all the time for their conduct and the way they behave?

A. I didn't feel -- I guess. Okay.

Q. Would you agree with that, given that the Commandant lives on one end and the CO lives right at the -- that small post?

A. It's more complicated than that because there is scrutiny, but there is a strong desire to not have any misconduct. So a lot of the times misconduct is just ignored.

Q. Okay. As I understand, there is a strong desire not to have misconduct; correct?

A. That's correct, but there --

Q. So they sweep things under the rug when misconduct happens?

A. Yes.

Q. Okay. Now, this is the same command that when you made some allegation of sexual harassment --

A. Um-hum.

Q. -- and you did make some allegations of sexual harassment during an NJP that was held for you; correct?

A. I made sexual harassment allegations long before the NJP.

Q. I understand, but did you make sexual harassment allegations at a General Officer's NJP that was held for you?

A. When General Flynn asked me why I did --

Q. Did you make allegations of sexual harassment at a NJP held in your honor by General Flynn?

A. I spoke of the command environment that compelled me to do the --

Q. Did you make sexual harassment allegations --

A. Yes.

Q. -- or not?

A. Yes.

Q. Great. Shortly after that, an investigation began; correct?

A. Yeah. It took a General to finally listen to my harassment complaints.

Q. Did an investigation begin?

A. Yes.

Q. Do you know the name of the Investigating Officer?

A. Lieutenant Colonel Shinkle [ph].

Q. When that investigation was completed, they discovered that your allegations were not substantiated?

A. That's untrue. The investigation has still not been finalized [inaudible]. Actually, Colonel Miner directed that investigation just be thrown out because he thought it was poorly done.

Q. We're going to talk about your conversation with Colonel Miner here shortly. That investigation found that your allegations were not substantiated, whether it was done correctly or not we're not at right now?

A. It had, like, seven findings of fact.

Q. Okay. You began to contact Lieutenant Colonel Shinkle to try to get him additional information?

A. Yeah. I felt like he -- if he didn't find that as the investigation showed that 33 Marines talking about what a slut they heard or -- you know, the thought that I was, that was a harassing environment then I wanted to provide him further information so he could get what he need to.

These investigators have a strong incentive not to find the harassment for obvious reasons. It's this high profile command who wants to have sexual harassment going on.

Q. How do you know that they have a strong desire not to find anything?

A. Who wants to admit that there sexual harassment in --

Q. How do you know? Do you have any personal knowledge?

A. I saw the conduct of these investigations or forward on conclusion that it didn't happen and then working backwards. It was not --

Q. You are aware that the Hudspeth Investigation found that the majority of the rumors were as a result of your conduct?

A. Did you read the investigation?

Q. I did. I've had time to read it since then.

A. Lieutenant Colonel Hudspeth misquoted the naval policy on sexual harassment in all caps. She ignored a massive amount of information in the statements. She interviewed

those who did the harassment, and took their statements as an accurate testimony as to my professional misconduct.

She basically said that because I didn't complain about -- even though there was harassment, even though I didn't complain about it, there was not. She in the same findings said that I asked for it by wearing makeup in running shorts in the summer. When I FOIA requested that investigation, they blocked out all of that. That's how uncomfortable --

- Q. That's not really what you said, but we'll get to her eventually. In any event -- so we got Shinkle Investigation. We've got Hudspeth Investigation. There was another investigation, Barkley [ph] Investigation; correct?
- A. Hudspeth and Barkley were the same investigation.
- Q. It's a simple question. Barkley Investigation occurred also?
- A. Major Barkley investigated Captain Gallagher and Lance Corporal Tinsley's sexual relation. They decided to merge Lieutenant Colonel Hudspeth and Major Barkley's investigation --
- Q. Mrs. Klay, was there a Barkley Investigation? I didn't ask you about. Was there a Barkley Investigation?
- A. Yes.
- Q. Okay. Major Barkley substantiated much of the allegations that you had about Suzanne Brick?
- A. That's true.
- Q. He also found that you were the source of your own hostile working environment because of what you had done?
- A. He did not find out. Lieutenant Colonel Hudspeth found out.
- Q. Okay. Hudspeth is a Marine Corps Judge Advocate; correct?
- A. Yes.
- Q. She is a formal prosecutor; correct?
- A. I do not know what Lieutenant Colonel Hudspeth background is.
- Q. That's fine, but you do know her to be a Judge Advocate in the Marine Corps, a trained lawyer?
- A. Yes.
- Q. She was brought in from outside the command; correct?
- A. She was married to --
- Q. She was brought in from outside of the command?
- A. Her husband works for Colonel Smith.

Q. Was she brought in from outside of the command or not?

A. Yes. Her husband works for Colonel Smith.

Q. Was she brought in from outside of the command?

A. Yes.

Q. Okay. Great. Now, you alleged the command was trying to cover up, so they brought somebody in from outside?

A. No. I think that it was beyond the command.

Q. Okay. So, someone outside the command initiated this investigation, do you know?

A. I think that Lieutenant Colonel Hudspeth truly does not believe that --

Q. It would go so much faster if you answer my questions. Otherwise, we will be here nine hours.

A. You're taking things out of context, and asking misleading questions.

MJ: The trial counsel, ma'am, will have an opportunity to do redirect as to any ambiguities or context issues. He will capture those in his, so please answer his questions.

WIT: Okay.

Questions continued by the civilian counsel:

Q. I will repeat the questions.

A. Thank you.

Q. Do you believe that someone outside of the command initiated the Hudspeth Investigation?

A. Yes.

Q. Who was that?

A. Colonel Miner.

Q. Okay. So Colonel Miner is the SJA to General Flynn, and he was the -- which means General Flynn initiated the investigation? It doesn't matter. I'm going to with draw that question, you may not know. You had conversations with Colonel Miner?

A. Very few. I probably talked to less than two minutes.

Q. About what? What did you say to him?
A. I just mentioned that I thought the investigation was incompetent. I just thought that they ignored a massive amount of evidence of Marines saying that they observed harassment. Including, she ignored Vice Admiral Howard's statement about my desire to -- my complaints about my boss. She just -- she produced of aluminous but not thorough investigation.

Q. Very well. What training do you have as a investigator to be able to pass judgment on that investigation?
A. I saw what happened at the command, and I don't think anyone ever deserves to have sexual harassment.

Q. My question is, what training do you have, if any, to pass judgment on the quality of an investigation?
A. I don't believe that anyone deserves to be harassed.

Q. What training, if any, do you have --
A. She misquoted the law. She misquoted statements. It just wasn't even a factual investigation.

Q. What training of any on the conduct -- I'm sorry, on the quality of investigations?
A. I was a Legal Officer at CLB-5.

Q. Very well. You had some training as a Legal Officer?
A. Yes.

Q. Would you tell a little bit about that? I don't need to know the details. Was it a course?
A. I did have a basic training course, and I also just --

Q. Let me follow-up. How long was that course?
A. It was, like, a two week course. We did every -- there were like 60 poor investigations that happened while I was an Adjutant at CLB-5.

Q. Very well. Okay. You conducted those investigations?
A. I reviewed them and assigned officers to conduct them.

Q. Okay. So, you were sort of the person that reviewed the investigations when they came in for the quality and nature of the investigation?

A. I did some of that. They submitted it to the legal review for the actual JAGs for final say, but I could kind of stream -- they didn't address certain issues, just like the Commander did, I could submit it back to the officer to find further information, or to clarify point, or to make sure that the facts, like the quotes, were correct and consistent and that -- you know, the law was quoted accurately, and basic things that a Marine officer can do.

Q. I understand that you were in that two week course. You had some training on the laws that are applicable in the military and so because the billet you were in at the time, you would review those investigations and comment on the quality of those investigations?

A. My husband and any other lawyer --

Q. I'm sorry. It's really simple. You could say, "No" and we'll move on or you could say, "Yes" and I may follow up. Did you understand the question?

A. No.

Q. Okay. This is not a trick. Based on your training during that two week course and the law training that you got, and based on the billet that you were in as the Adjutant, you would comment on the quality of the investigation and whether they quoted the law correctly or not, and then you would -- sometime you would return it to the investigator; is that correct? Did I understand that correctly?

TC: Sir --

MJ: I will allow the answer if it's a "Yes" or a "No".

TC: Sir, I was just going to say that I think it's a compound question --

MJ: I was listening for a compound, but it's in the context of, "Did you return investigations because they weren't administratively complete?"

WIT: Yes, I returned investigations that were not complete.

Questions continued by the civilian counsel:

Q. Because of the legal training you received at that two week course on the law?

A. Because of making sure that it was thorough before the CO laid eyes on it.

Q. I'm sorry. Okay. May be I misunderstood an earlier answer. You said something about the law. That you would check to make sure that they quoted the law correctly?

A. Yes, I did. Anyone could -- you know, look at the Manual for Courts-Martial and look at a investigation and make sure that the items that are to be put in -- recommendations that are being made have been quoted correctly.

Q. Okay. That's how -- essentially, it's the same process that you use to evaluate the Hudspeth Investigation?

A. No. I would say that other lawyers and my husband just couldn't believe -- were shocked on how incompetent it was.

Q. Do you thoroughly review it and decide that it was not competent?

A. I --

Q. We will get to your husband. I just want to know what your position was.

A. My position was that it was just disgusting.

Q. Okay.

A. It was unbelievable that it had -- you know, a Colonel would sign off at the kind of behavior that was going on and actions that were made towards me were acceptable, and that's what the signature meant.

Q. Got it. Okay. You felt the same way about the Shinkle Investigation, that it was inadequate?

A. The Shinkle Investigation was deemed inadequate by Colonel Montanez [ph].

Q. I'm asking you how you felt. You felt that it was inadequate also?

A. Yes.

Q. You communicated with Lieutenant Colonel Shinkle your disagreement?

A. Yes.

Q. Okay. The same skills or aptitude that you used to -- I'm talking about legal skill, but sort of the skills that you naturally have in evaluating the quality of the investigation are essentially the same skills and aptitude that you used to evaluate the capacity of the Protocol Shop to function correctly?

A. If you're talking about my individual ability, then, yes.

Q. Right. You were a four year Lieutenant at this point?

A. Three years.

Q. Three years. Now, you testified earlier that some of the statements you made at the Article 32 hearing were not true?

A. Yes.

Q. I want to talk to you about that, okay?

A. Okay.

Q. All right. Could you please remind me of those statements that you believe were not true?

A. There were something about -- you had asked me something along the line of, "Did you ever perform [inaudible] or blah, blah, blah, or anything with a sexual nature or kiss or anything." I think I responded, "Yes. There might have been some of that." I don't -- that's not true.

Q. Why did you tell me that it was true at the time?

A. I probably didn't hear your question.

Q. Really?

A. You asked me the same questions, like, 30 times for nine hours of questions. I hadn't slept the night before.

MJ: Is the Article 32, Mr. Faraj, marked or are you referring to any pages that's already attached? Is that accurate? I'm anticipating what's going to happen.

Captain Combe, have you attached --

CC: That's what we're [inaudible] so we're going to mark it shortly.

MJ: All right.

CC: I may not need to.

MJ: Okay. If you do, call out the page. The entire 32 would be attached or this portion of the testimony would be attached.

Questions continued by the civilian counsel:

Q. Are you saying that because of the inadequate sleep and whatever medication you were on that you didn't have the competency to answer questions correctly at the 32?

A. I stopped listening too after a while.

Q. Okay. We didn't start talking about the assault until much later in the 32? So, did you get that right?

A. I don't even remember talking about the assault at the Article 32.

Q. Okay. What documents have you reviewed before testifying here today?

A. I didn't review any documents since my discharge.

Q. Before testifying here today and after the Article 32 Hearing, what documents related to this case have you reviewed?

A. The only documents that I saw were the seven pages that Colonel Miner attached to my discharge that were just random pages taken out of context of the Article 32.

Q. Okay. So, Colonel Miner misquoted the 32?

A. He didn't misquote the 32, he just -- the page -- he asked me a question. The question was something along the lines of, "Did you ever send a sexual text message to Suzanne?" I said, "I'm not sure what you mean" and then it stopped. The answer to that is, no; I never sent any sexual text message to my 44 year old supervisor, who is having sex with everyone.

Q. So, it's your testimony today that when you told me that you made sexual advances at Captain Rowe that was not a true answer, you said, yes, you had?

A. No. I never made sexual advances towards Captain Rowe.

Q. You remember testifying to that at the Article 32 hearing?

A. No, I don't.

Q. Didn't you tell me that you reviewed -- or the judge that you reviewed the Article 32 transcript --

A. There were --

Q. -- before testifying?

A. No, I haven't. I have not reviewed the Article 32 transcript.

Q. Okay. How did you know about the misstatements if you don't recall what you said?

A. Because seven pages of the Article 32 were attached to my discharge, and in Colonel Miner's attempt to -- you know, make sure that he processed me out of the Marine Corps. In the seven pages it said that I had said that, "Yes, I might have kissed Rowe" or something like that. I read that and that was not true.

Q. So, you didn't get a chance to review the Article 32 transcript?

A. No.

Q. Okay. All right.

WIT: Can we probably take a restroom break, sir?

MJ: When, now?

WIT: Or when ever at the time that begin the next half hour.

MJ: We'll go for a -- that's what I said earlier when we came --

CC: That's might be okay because I need to mark some documents at this point.

MJ: All right. Fifteen minutes?

CC: Should be fine, Your Honor.

MJ: Fifteen minute recess. Twenty after, please. The court's in recess.

The court-martial recessed at 1007, 13 December 2011.

The court-martial was called to order at 1020, 13 December 2011.

The military judge called the court to order and stated that all parties present when the court last recessed were again present. The military judge further stated that Lieutenant Finnen had rejoined the trial counsel's table.

MJ: Mr. Faraj, your witness.

Questions continued by the civilian counsel:

Q. It is your testimony here today that you never had any sexual relationship with Captain Rowe?

A. That's correct.

Q. It is true; however, that you went to West Virginia with him twice?

A. No, I only remember going to West Virginia with him once.

Q. And isn't it true that you stayed in a hotel in D.C. with him twice?

A. No, that's not true.

Q. Do you recall testifying about that at the Article 32 hearing?

A. I remember you asking the same questions over and over about it, and being confused about what you were asking about. I don't remember -- it's not true that I ever did.

Q. My question is: Do you recall testifying at the Article 32?

A. No, I don't -- or I do recall testifying, I don't remember testifying to that.

Q. Did you ever tell your husband about being in a hotel room with Captain Rowe?

A. Yes, I have.

Q. What did you tell your husband?

A. I told him exactly what I told you.

Q. What did you tell your husband?

A. That there was never any plan to stay the night at the hotel. The only time that there was a hotel was when Rowe got pulled over, in the middle of the day, and was going to get a DUI, and the cop agreed to let him go if he slept it off. And the only other time was when Rowe came and picked me up -- because he wouldn't speak to me -- as I told you -- he would not speak to me in public because he didn't want to be seen ever talking to a woman Marine.

And I agreed -- as I had driven out with him outside of the city to so he could give me advice about how to handle what was going on in the command. And he wanted to go gambling, so he drove us to West Virginia to go gambling. I had no say in that; I do not gamble. I had no desire to go to West Virginia or to go gambling. I didn't at all; he just --

Q. When was this?

A. I don't know what month it was, maybe late spring.

Q. Of 2010?

A. Um -- I don't -- yeah -- yes, sometime in late spring or early summer.

Q. And at one time in a hotel room, you were naked with him.

A. I was not naked with him.

Q. Do you recall testifying to that at the Article 32 hearing?

A. I was not naked. I went to sleep --

Q. Do you recall testifying at the Article 32 that you were naked with him?

A. No, I don't.

Q. Okay.

CC: Captain Antoine, I'm going to need your assistance, please. Would you retrieve Defense Exhibit A and hand it to the witness.

The bailiff did as directed.

MJ: Ma'am, hold on. You'll go to the pages as directed. You can just leave it up there on the rail. Thank you.

Questions continued by the civilian counsel:

Q. Okay, ma'am. Take a look at the front cover of that exhibit that you were just handed. It states in there that: "The testimony of First Lieutenant Ariana B. Klay, U.S. Marine Corps, from the Article 32 hearing conducted at Marine Corps Base, Quantico, Virginia, at 1746 on 6 June 2011." Did you see that? Did I read that correctly?

A. Yes.

Q. Okay. And you recall testifying at an Article 32 hearing on June 6th of 2011; correct?

A. Yes.

Q. I think we did it in this courtroom; correct?

A. I don't remember.

Q. We did it on this base? In this building?

A. Yes.

Q. And up where the judge is sitting there was an officer, Lieutenant Colonel Bracknell, remember that?

A. Yes.

Q. He introduced himself to you?

A. Yes.

Q. And there was a court reporter -- or there was a recording being made?

A. Yes.

Q. Okay. You remember all of that?

A. Yes.

CC: All right. I'm going to ask you to turn page 26 of that exhibit.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Go to the third Q from the top. And the question there is: "I don't know. What do you define as a sexual relationship?"

MJ: Hold on. Is there one more copy? Otherwise, you're going to be on the ELMO.

CC: Otherwise what, Your Honor?

MJ: I want a copy.

CC: There is a copy with the court reporter -- I'm sorry. No, there isn't; I just took it.

I'm handing the military judge another copy of Defense Exhibit A.

CC: Ma'am, just -- just -- I would ask you to only refer to the pages I'm --

WIT: Did you say 27?

CC: Page 126.

WIT: One twenty-six?

MJ: One twenty-six or twenty-six?

CC: One twenty-six.

Questions continued by the civilian counsel:

Q. The third Q from the top, and the question is: "I don't know. What do you define as a sexual relationship?" Do you see that?

A. Yes.

Q. Now, there's an A there, indicating "answer," would you please read that to yourself. When you are done reading that paragraph, look up at me.

A. I've read this and it doesn't even make any sense.

Q. Well, would you please read the paragraph and look up at me when you are done.

A. I've read it.

Q. Are you done reading it?

A. Yes.

Q. Okay. Isn't it true that you testified that he's pretty much seen you naked, without me even asking you?

A. I said -- I mean, he's seen me in my underwear.

Q. Ma'am, isn't it true you testified --

CC: The witness has just looked at the military judge and laughed.

WIT: I wasn't looking at the --

CC: Or smiled.

WIT: -- judge laughing, sir. I was looking at you because I was trying to understand what he was doing. I was not laughing.

MJ: I was reading the sentence, so I didn't see her --

WIT: I was not laughing whatsoever.

CC: You smiled.

WIT: I was not smiling.

CC: Okay.

MJ: Move along.

Questions continued by the civilian counsel:

Q. Isn't it true that you testified at the Article 32 hearing, under oath, without me even asking -- and I didn't -- and it wasn't 30 questions. If you look before: "He's seen me pretty much naked. I've kissed him before." Isn't that true that you testified that way?

A. You know, this might be what this says. You kept me in the room for nine and a half hours, and you said that you would keep me there until 0900 the next morning until I gave you the truth, i.e. what you wanted to hear.

You would -- I had been in the room with you and with Captain Rowe for nine and a half hours. I've never kissed Rowe. And if I really wanted to fabricate, it would have been easier for me to just go along with this. I have never kissed Captain Rowe. Never --

Q. Well, let's take a look at the nine hours. Do you see the first page, "1746;" right? "At 1746 on 6 June 2011;" correct?

A. I was at the base at noon. I left and got home at midnight --

Q. Were you -- did I read that correctly -- "1746 on 6 June 2011." Did I read that correctly?

A. Yes.

Q. Okay. Let's look at the last page.

A. I know that I was here and in that room for nine hours.

CC: Your Honor, I'd ask that the court to direct the witness to do as directed.

MJ: Could you take a look at the last page, please.

CC: Page 146.

WIT: Uh-hum.

Questions continued by the civilian counsel:

Q. It says there that the transcription stopped at 2226, the last line.

A. Yes, I see it.

Q. Okay. So 1746 to 1846 to 1946 to 2046 to 2146 to 2246; that's five hours minus; isn't that right?

A. I came in -- I checked in to -- I came here at noon and I didn't get home until midnight.

Q. All right. Between 1746 and 2220-something is less than five hours; right?

A. You asked me the same questions over and over again --

Q. Isn't it true --

A. I thought if I told you something that you wanted to hear that I could go home.

Q. Isn't it true that from 1746 to 2220-something is less than five hours; right?

A. Yes.

CC: Now, let's go back to page 126.

The witness did as directed.

Questions continued by the civilian counsel:

Q. You just told the judge that I asked you the question nine or 30 times; I don't remember.

A. You did. You kept asking me the --

Q. Well, let's look at it because this doesn't lie -- page 126.

A. But it does lie because you do lie, and you lied during the Article 32 --

MJ: Ma'am, please. Wait for the question and answer the question.

Questions continued by the civilian counsel:

Q. Now, I asked you: "What do you define as a sexual relationship;" correct?

A. Yes.

Q. And you testified -- you said a bunch of stuff. And then, you on your own testified: "He's seen me pretty much naked. I've kissed him before. I've seen him whatever -- masturbate with himself, but still not able to get himself up."

A. Yes, I talked earlier about how he was masturbating to the porn in the hotel room --

Q. I understand. But did I read that correctly?

A. He --

MJ: Ma'am, the question was: Did he read your response back correctly?

WIT: He read it correctly.

CC: Okay.

Questions continued by the civilian counsel:

Q. Again, you were under oath at the Article 32; right?

A. Yes, I also had not slept at all the night prior --

MJ: Ma'am, please answer the next question from the counsel.

WIT: Yes.

Questions continued by the civilian counsel:

Q. And then when I follow up, I ask you again: "So you're naked, he's naked," and you basically say: "You don't understand how heavy a drinker Rowe is." So while you're telling me that you were very sleepy because you didn't sleep the night before and maybe you were on some medications, you were able to explain the follow up. That it was because you were both -- he was a heavy drinker and you were both drinking.

A. This says --

Q. Do you recall that testimony -- but without looking at the -- will get there.

A. I don't recall the testimony. But this -- it doesn't even make sense. There are incomplete sentences.

Q. Okay. Do you recall me asking you if --

MJ: Ma'am, put the transcript back up on the rail. If he wants to direct you, then he will do so.

Questions continued by the civilian counsel:

Q. Do you remember me asking follow up questions about you both being naked?

A. No, I don't.

CC: Let's -- were going to have to --

MJ: I know. Let's do it correctly.

CC: I'd ask the witness to refer back to Defense Exhibit A at page 26.

MJ: Page 126.

CC: One twenty-six. I apologize for that, Your Honor.

Questions continued by the civilian counsel:

Q. Four Q's from the bottom. The question is: "I still don't understand why you are both naked though." And then, your answer: "But that wasn't common, it was just like -- you said --

A. I'm sorry. I don't see where you are talking about.

Q. Page 126, four Q's from the bottom.

MJ: Count up from the bottom.

WIT: Okay.

Questions continued by the civilian counsel:

Q. The question states: "I still don't understand why you are both naked though." Did I read that correctly?

A. Yes.

Q. And the answer is: "But that wasn't common, it was just like, you said -- asked me if there were any instances, and I say I can recollect, but there are.

A. That's not even a complete sentence. That doesn't even make sense.

Q. Did I read that correctly?

A. You did. But that sentence says nothing, it's an incomplete sentence.

Q. Okay. The question is you're both naked though. And you said, "that wasn't common, it was just like, you said, asked me if there was any instances, and I say I can recollect, but there are.

A. That doesn't make any sense.

Q. Did I read that correctly?

A. You did.

Q. And that was your testimony from the Article 32, under oath?

A. Uh-hum.

MJ: Affirmative response from the witness.

WIT: Yes.

CC: You may put the exhibit back on the shelf there.

Questions continued by the civilian counsel:

Q. It is your testimony today that you've never been naked with Captain Rowe?

A. Yes.

Q. And if I understand your testimony, you have never stayed with Captain Rowe in Washington, D.C. at a hotel?

A. No, I have never stayed at a hotel with Captain Rowe.

Q. Do you recall me asking you about being at that Miss DC Pageant, and you deciding to stay in a hotel room with Captain Rowe in D.C.?

A. That's not true because I was -- went home that night.

Q. Do you recall me asking you that question or not?

A. I don't recall you asking me that question.

Q. And you stayed in the D.C. hotel room because, as you say, you were upset with your husband?

A. But I told you -- what I meant to tell you was anytime I ever did not come home when I was drinking was because it was unacceptable in my relationship, at the time, to come home if I had been drunk. After the Miss DC Pageant, I came home anyways.

Q. Okay.

CC: Captain Shinn, I didn't expect we were going to have this issue, can you find this --

The counsel for the defense conferred.

Questions continued by the civilian counsel:

Q. Before I get to the Miss DC Pageant in D.C., you testified on direct that he got the hotel room in West -- or you got the hotel room in West Virginia?

A. I don't even recall.

Q. On direct, today.

A. I don't --

Q. You testified that he got the -- that you got the hotel room in West Virginia?

A. I'm assuming that I did. All I know is that I went up to the room and went to sleep way before he did.

Q. On direct today, did you testify that you got the hotel room in West Virginia?

A. I don't know who got the hotel room.

Q. So as you sit here today, you have no recollection of who got the hotel room in West Virginia?

A. No, I don't.

Q. Okay. So if you had said that, we should strike that? The judge should not consider that as a factual statement, if you had said that on your direct?

A. I went up to --

Q. Ma'am, this is very important so please listen to my question. I have a recollection of you saying that you got the hotel room in West Virginia and you went up to sleep. You then remember Rowe -- this is your testimony -- you then remember Rowe coming in, and at some point, you heard or noticed a rustling that you believed he was masturbating, then you turned over and went to sleep. That's what I remember. If I had that wrong, please tell us so that the judge doesn't consider that as a factual statement by you.

- A. All I remember is that while he was still out gambling, I went up into a hotel room because he had driven us out there. There was no way I could have gotten home, and had been drinking. So I went upstairs and fell asleep. I don't remember one --
- Q. Okay. So I just want to make sure that we have this on the record. If you had said that you had gotten the hotel room in West Virginia, the judge should not consider it as factually true because you don't have a memory of who got the hotel room?
- A. I don't remember for sure if I did or not.
- Q. Do you remember if you went to the hotel room together or not?
- A. No, we did not.
- Q. Do you remember if you took your clothes off with him that night?
- A. I had no idea that we were going to be staying there overnight. I was in a separate bed. I was sleeping in my underwear; there was no --
- Q. Why did you get into your underwear?
- A. Because I brought one outfit. I didn't know we were going to be staying overnight. I was wearing jeans and like a sweater. I didn't -- I don't sleep in my jeans.
- Q. Have you been to the field before?
- A. Yes.
- Q. Do you -- in the field -- do you just kind of loosen your belt, take your boots off, and crash in your cammies or do you go down to your underwear?
- A. In the field, I would only probably go down to my cammies, because that's what everybody else does.
- Q. Okay. So this man took you to West Virginia, where you didn't want to be; correct?
- A. Yes.
- Q. And he is gambling and he is ignoring you; correct?
- A. Yes.

Q. And you really want to go home, but he doesn't want to leave; correct?

A. Correct.

Q. And he has a drinking problem?

A. Yes.

Q. And you got into an altercation with him in the car because he wanted you to drive and you didn't want to drive?

A. That was on a separate occasion.

Q. So there were two occasions in West Virginia?

A. No, the separate occasion was when -- that he got pulled over because he was going to get a DUI.

Q. And I think you testified that you got a hotel room that night?

A. No, it wasn't at night it was during the day. The agreement with the cop was that if he slept it off, he would not get -- cite him for the DUI.

Q. Okay. And so -- that's fine. And you got a yucky hotel; right? And you slept it off.

A. We walked to the nearest anywhere.

Q. Okay. And then -- so we're talking about another occasion when you are in West Virginia?

A. No, that's incorrect. This is the same occasion that I'm talking about.

Q. Didn't you testify that you went to West Virginia and he went to a casino -- you. I may be wrong, but let me get this straight. You testified that on one occasion, you went out for a drive, he'd been drinking -- and I may have it wrong so please correct me -- he got stopped, and then you got a hotel room to sleep it off?

A. There was one occasion where he drove south somewhere --

Q. Let -- did I get that correctly?

A. It sounded like you were talking about two events combined into one.

Q. I'm going to try to figure it out because I'm probably confused too. So just work with me. If I don't get it right, I'll just let you explain. I heard -- or understood that, on one occasion, you went for a drive, you were talking about drinking, and "ironically," your words -- you were talking about quitting drinking and ironically, your words, you were drinking at the time. You --

A. That's --

Q. -- get back in the car, you start to drive, he gets stopped; right? He wants you to drive, you say no, and then you get a hotel to sleep it off.

A. This was the first time I had ever hung out with Rowe --

Q. Did you testify to that?

A. You are taking it out of context.

Q. Okay. Please tell me about that incident then because I don't have it right.

A. Okay. So after -- um -- I had met him, he said that he had --

Q. I'm sorry. To be shorter, just tell me when you went to West Virginia. I don't need the background.

MJ: She's not saying "West Virginia." But, let's go with the car ride with the police stop and the walk to the hotel; that's the one you are talking about right now.

CC: That's the confusion probably, because I keep saying "West Virginia." I apologize for that.

Questions continued by civilian counsel:

A. So there was a drive south to Virginia -- the Virginia area where he, in the middle of the day, he said -- you know, he said I have some advice to give you, but I don't want to talk to you in public because I don't talk to female Marines, but I have some advice that I think could help you. And he gave me -- like, while we were driving an hour drive, he gave me very good advice: Not to hangout with Suzanne, what different people thought of different things, how I could more gainfully employ myself, how to avoid getting molded into the culture of

the Barracks, not to drink with Suzanne during the workday. Um --

Q. Did you really need someone to tell you not to drink during the workday?

A. Suzanne -- that was the expectation that I would drink with her.

Q. I know. But did you really need someone to tell you not to drink in your office during the workday? I mean, you're a First Lieutenant of Marines --

A. Uh-hum.

Q. -- and you believe yourself to be more capable than her.

A. I didn't drink and -- um --

Q. Did you need somebody to tell you that?

A. I only drank when she would --

Q. Did you need somebody to tell you that?

A. -- pour me a drink. I -- you're -- that's very true. I definitely should not have drank --

Q. Did you need someone to tell you that? That's how I asked nine questions because you don't answer them. Did you need someone to tell you that?

A. I -- I was -- it was very -- it was hard to know which way was up at the Barracks because a lot of my most senior officers were --

Q. Did you need someone to tell you that?

A. I think I needed somebody to tell me how to handle working for Suzanne, yes.

Q. Okay. Did you need someone to tell you that if the culture of the Barracks is inconsistent with what you believe to be a professional environment that you just draw away from it, did you need that also?

A. Um -- if I didn't hangout with Suzanne -- Suzanne was very cruel to me. But when I did and when I drank with her, she was very nice and let me leave to go workout during the day. So it seemed -- it just was easier to do what her and everyone else was doing, which was cowardly. But it was, unfortunately, my failure at the time.

Q. Okay. Let's get back to the drive south in Virginia.
A. Uh-hum.

Q. I'd like you to shortcut the advice that he was giving you, because that just sends me out on tangents, and I'd like you to focus on the events of the drive.
A. So we drove about an hour south and ate at a restaurant that had meat out of it. I'm a vegetarian, so I just ate -- like, mac-n-cheese. He ordered a drink; I ordered a drink; we just started drinking. I said it was ironic because on the way down we were talking about -- we talked a lot about his struggle with alcohol and how hard it was for him at the Barracks.

Q. And then, you got in the car; correct?
A. That's correct.

Q. And then, at some point, you were stopped?
A. We were heading back up to the city because we were an hour --

Q. You were stopped; right, by police?
A. Yes.

Q. And then you got into an altercation with him about who was going to drive?
A. He just --

Q. I don't want to call it an altercation.
A. There was an argument because he thought I should drive. I didn't want to drive; I didn't think I could drive. Um --

Q. When you would speak and he would say -- when he would talk to you, would he say, Lieutenant, I need you to drive because I'm drunk or how would he talk to you?
A. He didn't say my -- he didn't say my name or Lieutenant, because actually after the assault, he told me that he realized --

Q. No, no. Right there, then. When he would address you, how would he address you?
A. He didn't say my name or Lieutenant; he didn't say either.

Q. How did you address him?
A. Um -- I didn't really say --

Q. You called him Jim.
A. No, I didn't. I did not call him -- I did not call him Jim.

Q. You never called him Jim?
A. I did -- never -- I do not have any memory of ever calling him Jim. I called him Rowe.

Q. Okay. I want to exhaust and search your memory -- search and exhaust your memory -- it's important -- if you believe you have ever called him Jim.
A. I have no memory of calling him -- I always call him Rowe.

Q. Okay. So that's the one time when you get the -- you just finished with the time when you get the hotel and you sleep off the alcohol.
A. So he agreed to -- the police officer or highway patrolman that pulled him -- he agreed to sleep it off. And -- when after he left, he told me that I should drive, and I didn't want to drive. So then, fully clothed, with no physical interaction slept there for like a couple of hours, and then he drove back.

Q. Okay. Now, let's talk about the West Virginia trip -- the casino trip. That did take place?
A. Yes.

Q. Okay. And I want to make sure that it's your testimony today that there was only one trip to West Virginia?
A. Yes, that's correct. I only recall one trip to West Virginia.

Q. When you say, "I only recall," does that mean that there could have been another trip that you have forgotten about?
A. No. I didn't -- I hung out with Rowe on like -- on about three occasions during the four-month period.

Q. Simple question. Sometimes we don't recall things because we are not sure.
A. Uh-hum.

- Q. Sometimes people say they don't recall as sort of a throw-out, but what they really mean is no, there isn't; right? So my --
- A. No.
- Q. -- question to you is: Could there have been more and you just don't remember?
- A. No, I would've remembered if we went to West Virginia again.
- Q. So as you sit here today, there's only one West Virginia trip?
- A. Yes.
- Q. Okay. And that's the trip where you now don't remember who got the hotel room, but you went up to sleep?
- A. Yes. There was no way that -- I didn't know how far away West Virginia was; I didn't even know we were going there. When he said that we were going to the casino, I thought he was going to the casino that he went to during -- sometimes he would miss work and go to this casino during the day that was like two hours away. I didn't know we were driving however many hours it was -- four hours -- or whatever it was.
- Q. So you were alert enough to know that "this is further than I want to go;" right?
- A. Yeah. I still just -- I didn't have any plans.
- Q. Okay.
- A. I didn't really have any friends at the barracks, so I just --
- Q. You had a husband.
- A. Yeah, he was not there.
- Q. Okay. So he says -- you find out you are going further than you really want to. What do you say to him in the car? You don't say anything?
- A. No, I didn't. I was very intimidated by Rowe. I let him --

Q. Then you get to the casino; right?
A. Yes.

Q. And you now don't remember who got the hotel room.
A. I mean, that was like late in the evening when I --

Q. You now don't remember who got the hotel room; correct?
A. I do not remember.

Q. Who got the hotel room; correct?
A. No, I don't.

Q. How did you get the keycard to get into the room?
A. I don't know.

Q. Did it magically appear in your purse?
A. I have no idea. I'm sure it didn't magically appear in my purse. I probably went up to the counter and got it.

Q. Do you have a memory of getting it at the counter?
A. No, I don't.

Q. Have you ever wondered how you came to be in that hotel room?
A. Yeah, I wondered how I came to be in West Virginia.

Q. Okay. So you don't want to be there?
A. No.

Q. You're unhappy with the decision to get to West Virginia or go so far; right?
A. Yes. It's not fun to just be at a place four hours away from your home watching somebody gamble.

Q. I would be very upset.
A. Yeah.

Q. Was it a weekend?
A. Yeah, it was a Saturday.

Q. So he essentially ruined your weekend?
A. Yes.

Q. Even if sometimes you just want to sit by yourself on Saturdays and unwind, that's a decision you make.

A. He did offer -- when he was sober -- he offered sound advice --

Q. I understand. But that whole thing was -- messed up your weekend.

A. I would say that I was definitely irritated that I was stuck out in West Virginia.

Q. Okay. So you go up to the room, and then you get into your panties and you go to sleep.

A. I was wearing my underwear to sleep in.

Q. The time before when you went to south of Virginia and you got stopped, you testified that you just sort of sat -- laid in bed and went to sleep to sleep it off --

A. No, it was like an hour. I just -- I just wanted to -- it was just enough time to sober up. I was actually trying to sleep.

Q. Okay. And you already testified that when you are in the field, you just sleep in your cammies; correct?

A. Yes.

Q. And that day you were in jeans, you said; right?

A. On -- in West Virginia, yes.

Q. It's not much different than cammies; right?

A. I would say that cammies are more comfortable.

Q. Okay. And you testified that you believe he was masturbating or you saw him masturbate?

A. I saw him masturbating.

Q. Okay. So you saw his penis?

A. I don't know what it was -- like, it was dark in the room and he was -- you know, moving his hand by his --

Q. Did you see his penis or was it under the cover?

A. There was no cover; it was out in the open.

Q. Did you see his penis?
A. Um -- I just saw his hand on something.

Q. Did you see his penis?
A. There was like a --

Q. You either saw his penis or you didn't.
A. I don't -- I really know what to tell you --

Q. And "I don't know" isn't an answer. If you don't know what you saw, you can say I don't know what I saw, which means you didn't see his penis.
A. Yes, there was some small -- it looked like he --

Q. Did you see his penis, ma'am?
A. It looked like he was impotent, so yes, I think I did see it.

Q. So you're not sure. "I think I did see it," means you're not sure.
A. I feel confident that I saw it -- part of it.

Q. And what makes you so confident?
A. Because he was holding on to something, and it was probably his penis.

Q. Got it. So it's something that's probably his penis, but you're not sure? You're sure you're seeing this pen?
A. Yes.

Q. Okay. That's certainty. You're not sure if it was his penis or not?
A. I'm certain that it was his penis.

Q. Okay. So we've evolved now into certainty as to his penis. How was he holding it?
A. He was holding it like he was trying to masturbate.

Q. Got it. And you deduced that he was impotent?
A. I don't know. He just -- it looked like he was trying to --

Q. You deduced that he was impotent, because you just said that.
A. No, I deduced that he was -- in conversation he told me that he could not have sex with his wife or period

because of his alcoholism; that was one of the things he said to me in basic conversation as why alcoholism is bad. He said it has ruined almost everything in his life.

Q. Got it. Did you not testify just a few seconds ago --
A. Uh-hum.

Q. -- that you think he was doing it because he's impotent or words to that effect?

A. I don't think he was doing it --

Q. Did you say that? Did you say something about impotent just a few minutes ago?

A. When I said "impotent," I was meaning not being able to like harden your -- like, his own penis.

Q. That's generally the common understanding. So you thought he was -- like, I don't understand what you were thinking at the time.

A. I was thinking that's disgusting and weird and not something I wanted to see.

Q. You get out of bed and say what the hell are you doing; I'm getting out of here.

A. I didn't say anything; I just rolled over and went to sleep.

Q. Why not?

A. Where would I go? What would I do? How would I get home?

Q. I'm getting out of here. I'm renting a car; I'm calling a friend; I'm getting another room. I'm not sitting in here with you. I'm a married woman while you play with your penis, did you say that?

A. Seeing Rowe doing his weird thing was no different than seeing Suzanne perform oral sex in her office with one of our other senior officers.

Q. Now, you were asked that particular question many, many times by many investigators, and you said -- you always said, "No, I didn't personally see it."

A. I said I did see -- you're incorrect. I said I didn't see the penis; I saw a head and my boss.

Q. Right.

A. And that's pretty disgusting to see --

Q. I'm sure it is disgusting. It is disgusting as assaulting a junior Marine while he stands at parade rest.

TC: Objection, sir. That's argumentative.

MJ: Mr. Faraj, please keep it to the questions.

Questions continued by the civilian counsel:

Q. What did you do when you saw him masturbating in the hotel room?

A. I turned away and went to sleep.

Q. Why didn't you get up and make your way out of the room if it was so disgusting?

A. Where would I have gone?

Q. You're in a hotel. Do they have other rooms for rent?

A. [Nonverbal response].

CC: Shaking your head, no. And you're kind of looking away.

Questions continued by the civilian counsel:

Q. Do they have other rooms at that hotel?

A. I just saw it as a completely disgusting act and something that was probably wrong with Rowe, but I thought it was associated to his alcoholism.

Q. What did you do when you got up the next day?

A. He started gambling again. I said that I wanted to go home; he said that he was just going to play one more game, so I went and had breakfast by myself until he was done. He said he won a bunch of money, and then when he won, then we went home. He drove home.

Q. Now, I want to come back to the other hotel room stays that you have denied today; right? You're saying that you did not stay in hotel rooms besides those two times?

A. No.

CC: All right. Please take a look at Defense Exhibit A.

The witness did as directed.

Questions continued by the civilian counsel:

Q. At page 108, four questions from the bottom, do you see that?

A. Uh-hum.

Q. It begins with a question about the -- "you participated in the Miss D.C. Pageant." And you say, "Uh-hum." Do you see that?

A. We left in a cab --

Q. Do you see that?

A. Yeah. It still doesn't say --

Q. Now, the question below that "Do you remember staying in a hotel in D.C. with Captain Rowe that night of the Miss D.C. Pageant or perhaps the night after?" You say, "No, I did forget about that, but yes."

A. What I meant was, I had left in a cab. I went --

Q. Did you say --

A. I went home.

Q. -- "No, I did forget that, but yes." Did I read that correctly?

A. Rowe said he slept in the Barracks that night and Captain Dewire (ph) found him. There's no -- there was no hotel.

MJ: That's not responsive, ma'am. Please answer his question. And counsel -- the trial counsel --

WIT: Yes.

MJ: -- will have an opportunity --

WIT: Yes, I did say --

Questions continued by the civilian counsel:

Q. Did I read that correctly?

A. Yes, you read it correctly. But that is taken out of context again. And I misunderstood your question.

Q. Okay. And then I say "I know. You stayed together; right?" And you say, "There was no sex."
A. It's still taken out of context. There was -- he stayed --

Q. Did I read that correctly?
A. There was no hotel stay. He stayed in --

Q. Did I read that correctly?
A. You did, but there was no hotel stay.

Q. Did I read that correctly?
A. Yes.

Q. Thank you. And then, at the bottom, I ask you: "I asked you about that before -- how many times did you stay together, and you said, you know, only those two times." And then, you answer: "I didn't remember." Correct?
A. Yes.

Q. Which means, my question triggered a memory in your mind at that time, under oath, at the Article 32 Hearing. I'm up here, ma'am, please don't look at that paper until I tell you.
A. Uh-hum.

Q. Right?
A. I'm sorry. What was going on?

Q. My question triggered, in your mind, the memory of additional stays, and you were responsive.
A. I didn't know -- I misunderstood what you were talking about.

CC: Go back to the bottom of page 108.

The witness did as directed.

Questions continued by the civilian counsel:

Q. I say: "I asked you about that before -- how many times did you stay together, and you said, you know, only those two times." And your answer: "I didn't remember." Correct?

A. I didn't remember.

Q. Did I read that correctly?

A. That's correct.

Q. So my answer to -- I asked you before about those hotel stays was: "I didn't remember the hotel stays," meaning that you did remember at that time.

A. That's not what I was meaning. I didn't remember at all.

Q. Got it.

A. I was not saying that I didn't remember -- yes, that's accurate. I really don't remember.

Q. Well --

A. There was no hotel stay --

Q. Based on the reading of this here, the most common -- the only understanding is, you didn't remember the stays before but that you remembered them at that time; would you agree with that?

A. Say that one more time.

Q. Based upon the reading of that question and answer, would you agree that the most common understanding, perhaps the only understanding is that you didn't remember the question about the hotels, but that you remembered them after that question?

A. That is incorrect.

TC: Objection, sir.

MJ: She said it was incorrect. Yes, he had a couple of questions tucked in there.

Questions continued by the civilian counsel:

Q. I think you said earlier that you have never made out with Captain Rowe?

A. That's correct.

Q. Do you recall testifying that you had made out with Captain Rowe at the Article 32 hearing?

A. No, I don't.

CC: Please refer to page 109.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Four Q's from the bottom. The question is: "Your testimony here today is that your relationship continued to be plutonic?" And you answer: "I think it could have gone that way very easily."

A. That doesn't make any sense.

Q. Hold on. I'm just putting it into context. And then I ask you: "Gone which way?" And then, your answer -- I never say sexual -- your answer is: "In like the sexual way."

A. What I was trying to say --

Q. Did I read that correctly?

A. You are. What I was trying to say is that -- in --

Q. Ma'am, please respond to my questions --

A. -- you're taking it out of context.

Q. I'm not taking anything out of context; it's in black and white; your testimony. I say nothing about sex --

A. If I could --

MJ: Ma'am --

TC: Objection --

MJ: -- hold --

TC: Sir, counsel is arguing with the witness.

MJ: Okay. Ma'am, answer the question.

Mr. Faraj, you got the page and directed everyone's attention to it.

There is a redirect, Captain Combe will deal with that.

WIT: Uh-hum.

MJ: Once you get her answer, point out what you want to make, and then move on, please.

Questions continued by the civilian counsel:

Q. So your response to: "Gone which way?" You say: "In like the sexual way." Did I read that correctly?

A. Yes.

Q. And today, you're backing off from that testimony?

A. No -- I -- you're misunderstanding what I said.

Q. Okay.

MJ: It's a "yes" or "no" question. Are you amending your testimony today?

WIT: "Amending," you mean like explain -- furthering or explaining my --

MJ: Are you going to change your testimony today?

WIT: I'm not changing the testimony; it's just taken out of context, and --

Questions continued by the civilian counsel:

Q. The context you provided, ma'am, is: "In like the sexual way." You said that; correct?

A. I did say that.

Q. Okay. What did you mean by "in a sexual way?"

A. I meant that -- um -- it could have happened, but it didn't.

Q. Well, it says that. That's all -- I mean, that's what it says. "I think it could have gone that way very easily." "In like the sexual way;" that's what you said.

A. Yeah, it could have gone that way, but it didn't.

Q. Okay. Well, isn't that what it says?

A. Yes.

- Q. Okay. And then the following question -- I'm not going to read the question, but your response: "I mean, there was a couple other minor incidents of making out type stuff, but it was never sex. My husband is aware."
- A. That doesn't make any sense. What I was meaning to say is there was -- if there -- there was opportunity that it could have happened, but it didn't.
- Q. I know.
- A. And when I said my husband is aware, I was saying that I had relayed to my husband that I had put myself in these positions that -- that were very upsetting; that's what I was saying.
- Q. My question was about drives in the country, and you -- you -- and there aren't nine questions about kissing, by the way, before you ever say it. You say, "I mean, there was a couple other minor incidents of making out type stuff, but it was never sex." Did I read that correctly?
- A. You read it correctly, but there wasn't any -- I never made out with Captain Rowe.
- Q. What does that question mean to you -- what does that answer mean to you as you read it right now? "Other incidents of minor --"
- A. Yes, I clearly misspoke. I mean, this is an incomplete sentence; it doesn't even make sense.
- Q. Got it.
- A. But I never made out with Captain Rowe. I was stating that there could have been with all the heavy drinking and incidents there could have been, but there was no -- Rowe had no sexual attraction to me and I had no sexual attraction to him.
- Q. So your testimony today is that you never kissed him?
- A. That's correct.
- CC: All right. So let's flip to the next page, because you provide explanations there.
- WIT: Uh-hum.

The witness did as directed.

Questions continued by the civilian counsel:

Q. The top question is: "I'm asking you if you don't think that kissing another man is a romantic relationship." And then, you begin to answer there: "Not when you're -- and it actually continues -- and the very next answer: "It only happened if we were hammered. It would never happen if we were sober, so I don't think there was any kind of --"

A. I was --

Q. Did I read that correctly?

A. I was not talking about kissing --

Q. Did I read that correctly?

A. You read the words correctly, but I was not talking about making out or kissing.

Q. And so, the next question I ask you: "What does it matter if you're hammered or not, you were still doing it?" And you say: "Yes, it is more impulsive if you're going to go that way. It is not, like, romantic -- like, oh, I love you. It is more -- then we stop; that's an incomplete sentence. Did I read that correctly?"

A. You did, but that doesn't make any sense.

Q. All right. And then, I ask you a question later where I asked you if: "You made out and kissed him when you stayed in a hotel in D.C. after the pageant." And you said: "That's possible, but I know that we didn't have sex that night." What is so confusing about: "That's possible; we kissed and made out --"

A. I do think that it's -- it's possible if there --

Q. Let me finish my question.

A. Okay. I didn't -- I'm sorry. I thought you asked me a question.

MJ: You may have asked her a question, Mr. Faraj.

I'm going to let you answer, because I think he asked you a question.

Questions continued by the civilian counsel:

A. I was saying -- what I was meaning is, it was possible in the sense that there were times when I was blackout drunk and I have no memory. But I have no memory of ever doing anything with Rowe. He had never demonstrated that he had any sexual attraction to me; I never had any sexual attraction to him.

CC: Oh, but let's get to that point, because I have a bunch of stuff about that.

MJ: Mr. Faraj, please act professionally and go to the part that you want to examine without the commentary.

CC: I apologize, Your Honor.
Questions continued by the civilian counsel:

Q. You never made sexual advances at Rowe?

A. No, I did not.

Q. You never suggested to him that you were available for a sexual relationship?

A. No, I did not.

Q. You never --

A. In fact, Rowe --

Q. -- believe --

A. -- Rowe actually gave me advice about my marriage and we discussed -- um --

Q. You never believed that you could get his attention by being more sexually available to him?

A. I'm sorry; I don't understand what you are saying.

Q. You never behaved in a way to capture his attention by being more sexually desirable or more sexually available to him?

A. That is correct. There was never any intentional way to make myself more available or sexually desirable to him.

CC: Please flip to page 38 in Defense Exhibit A.

MJ: For identification.

CC: I'm sorry. It's on -- we are going to flip back between 38 and 39. So I'm going to begin at 39 and flip back to 38.

Questions continued by the civilian counsel:

Q. Middle of the page, four Q's from the top. It says: "What did [*inaudible*] to be desirable?" And then, your answer is: "I wanted to be desirable to him." Did I read that correctly?

A. Desirable --

Q. Did I read that correctly?

A. You read that correctly, but it's desirable in the sense of --

CC: Your Honor, I'd ask that the witness limit her answers to the questions, and we would go a lot faster.

MJ: It is a "yes" or "no" question. Is that an accurate --

WIT: Yes, that's -- um -- that is accurate. That's what it reads, but I did not desire to be --

MJ: Trial counsel will have an --

WIT: -- sexually --

MJ: Ma'am, trial counsel will have an opportunity to follow up in this area, if he so chooses, with you. Please answer his questions.

WIT: Yes.

Questions continued by the civilian counsel:

Q. And then the next question I ask: "Sexually desirable?" And it says: "[*Nonverbal answer*]" and then, the next question: "You shook your head 'yes?'" And you say: "Yes."

A. That's not what I meant.

Q. Did I read that correctly?

A. You read it correctly, but it's not --

Q. So when I questioned you at the Article 32 hearing --
A. You asked me the same --

Q. -- about --

A. -- kind of questions over and over again --

MJ: Ma'am, please confine yourself to his questions. Thank you.

Questions continued by the civilian counsel:

Q. When I asked you the question -- well, let's go to the answer before; the second question from the top.

A. Uh-hum.

Q. I ask you -- it's an open-ended question; it's not leading. "I'm asking you if you recollect making any sexual advances at Captain Rowe?" You said: "I can remember drunkenly, like kissing him at one point, and I think I initiated it." Did I read that correctly?

A. Yes, you did.

Q. What did you mean by the incident?

A. I think I was just telling you what you wanted to hear.

Q. Okay.

A. That's not true. I never kissed Rowe.

Q. So if we can't tell as we read through this what you meant and what you didn't mean and what's true and what's not true, how can we tell, today, what you're really telling is the truth?

A. Because --

TC: Objection, sir. The question is argumentative.

WIT: My --

MJ: Hold on a minute.

Let's tighten the question up. Sustained.

WIT: I was not --

MJ: Hold on, ma'am. He's going to ask the question again.

Questions continued by the civilian counsel:

Q. Ma'am, when I asked you how you made yourself more sexually desirable --

A. Uh-hum.

Q. -- or how you -- "if you recollect making any sexual advances," you answered, you remembered kissing him, though drunk, and that you initiated.

A. I don't remember that.

Q. You remembered on -- at the Article 32.

A. I did -- I have no idea what I was thinking during the Article 32. I was not prepared for the Article 32. I did not sleep; I did not remember your questions; I don't remember my answers --

Q. That's what you said at the Article 32; isn't that true?

A. Yes, it is. That's --

Q. Very well.

A. -- very unfortunate because that's not the truth. It would have been a lot easier for me to just say, yes, that's true. But, to me, I did not understand why you were asking me all these questions because they had no relation to me to the assault.

Q. All right. And, of course -- is it fair for me to assume that since you are denying ever making any sexual advances at him -- initiating kissing, that you also wouldn't find him desirable?

A. That is correct. I --

Q. And if you don't find someone desirable, then there would be no reason for you to feel jealousy if he has contact with another woman --

A. There was no jealousy. I was upset because I thought Rowe was one of the few officers not having sex --

Q. My question --

A. -- with Suzanne.

Q. My question is simple.

MJ: It's a "yes" or "no" question, ma'am.

WIT: Okay.

Questions continued by the civilian counsel:

Q. If you don't -- is it fair to say --

A. Uh-hum.

Q. -- that if you don't have feelings towards someone or you don't find that person to be desirable, than there probably would be no reason to be jealous of that person engaging with another woman --

A. I look up to Rowe a lot, and I was very disappointed that he was one of the guys involved with Suzanne.

Q. All right. I'm going to try --

A. It was not a sexual jealousy --

Q. -- one more time.

MJ: No, I get it. The answer is there.

CC: I want it on the record, Your Honor. We are entitled to it.

MJ: Ma'am, it is a "yes" or "no" question.

WIT: Yes, I was upset that he was -- had any kind of involvement with Suzanne.

CC: If --

Questions continued by the civilian counsel:

Q. Let me ask you the question again.

MJ: No. Based on him -- he's asking: Based on your life experiences, you don't find someone desirable when you saw them with someone else; would you have feelings of jealousy?

WIT: I wouldn't say the feeling would -- jealousy --

MJ: Yes or no, based on your life experiences.

WIT: Yes, because -- um -- it was somebody that you look up to; just like if you had a friend who had an affair that you didn't think would do that. You would be -- um -- you would be upset. You would -- especially if they were someone you looked up to.

Questions continued by the civilian counsel:

Q. Okay. "Upset" is an emotion I understand; and I think "jealousy" is an emotion I understand. I'm not -- I don't think I've ever felt jealous about hearing a friend doing something improper with someone else. So --

A. I was not jealous of what he was doing with Suzanne; I was disgusted and disappointed.

Q. Okay. Great. So there's no reason for you then to feel jealous of him being with Suzanne -- or doing anything with Suzanne; right?

A. It was -- like, the one person in the command that wasn't --

Q. There would be no reason for you to become jealous if he's doing something with Suzanne, because you don't have any feelings for him.

A. I had feelings in the sense that I cared about what he thought and -- um -- respected his opinion and wanted him to approve of me.

Q. Okay.

A. When he would say advice -- like, he would say "You dress much more conservatively than Suzanne and that's good." So I would -- whatever he would say, I would kind of do because it felt like it helped me.

Q. Have you ever been jealous of another woman because Captain Rowe was doing something with that woman?

A. Um -- I would say I was disgusted by it. But I wouldn't say --

Q. The question is about jealousy. Do you know what the term "jealousy" means?

A. I wanted his marriage to succeed. I --

Q. Do you understand what jealousy means?

A. Could you tell me what your definition of jealousy is?

Q. I'd have to look it up. But when you feel an emotional hurt that a person you care about is doing something that might betray you or might --

A. Yeah, I did feel hurt that -- um -- Rowe lied to me about being one of the people not involved with Suzanne. I mean, she was this 44-year-old woman who was having sex with everyone, and he knew about it. And he was -- acted like he was above that, and then I found out he was kind of participating. And that was -- that was just hurtful.

Q. Participating in what?

A. Whatever he was doing with her.

Q. All right. Let's talk about that. But I want to -- I still don't understand, so you did feel jealous?

A. I don't think jealousy -- I don't know what the definition of jealousy is. I felt hurt that -- and -- um -- betrayed that he was dishonest with me about his relationship with Suzanne.

Q. You don't understand what "jealous" means?

TC: Your Honor, I think the --

MJ: She's answered she was not jealous, and we're moving on.

CC: I don't think she's answered, Your Honor, and this is important.

Questions continued by the civilian counsel:

Q. Do you understand what "jealous" means?

TC: Your Honor, we've been through this at least three or four times. I think it's clear from her answers that she wasn't jealous; she felt some other form of emotional anger or hurt based on some other feelings or connection.

Questions continued by the civilian counsel:

Q. Is that what you felt, what he just said?

A. I think -- you're over simplifying that I --

Q. You're over simplifying too.
A. No, he's -- you're over simplifying, Captain Combe, I didn't --

Q. Did you hear his answer --
A. I didn't hear what he said. No, I didn't.

CC: Would you say it again? I'll take that.

TC: Sir?

MJ: That's -- as the finder of fact, I'm hearing what she's saying. I believe that the question has been answered.

CC: Which question, Your Honor? I need to --

MJ: All right. Pick one and keep it very short.

Questions continued by the civilian counsel:

Q. Did you feel jealous about Captain Rowe engaging with -- in any type of contact with another woman?

A. No.

Q. Okay. Do you remember testifying that you felt jealous of Suzanne Brick when he was -- when he gave Suzanne Brick a massage? Do you remember testifying to that?

A. If I used that word, it was used --

Q. Do you remember testifying about that?

A. I don't. But if I -- "jealousy" was used that way, than I told you I felt hurt and betrayed that he -- um -- was dishonest with me about -- um -- I mean, I -- as far as I knew, he was loyal to Maigan at that point. And for him to be like --

Q. Well, you knew that he wasn't loyal to Maigan because he was sleeping with you. You know that.

A. No, he wasn't. No, he wasn't, and I do know that.

Q. You felt jealous because he gave Suzanne Brick a massage.

A. I --

TC: Sir, asked and answered.

WIT: It was out of character from what he would normally --

CC: It is not answered, Your Honor.

MJ: The questions is --

CC: She said, "I felt hurt."

MJ: Ask a question. It's the testimony you're trying to draw out. Bring her to the testimony about the massage.

CC: Ma'am, please refer to Defense Exhibit A, for identification, at page 38.

The witness did as directed.

Questions continued by the civilian counsel:

Q. At the bottom of the first paragraph, of the first answer, you say: "I felt jealous that he would touch my boss --

A. I'm sorry. Where are you at, because I don't -- like, see it.

MJ: The first question on that page.

CC: Bottom -- first paragraph of the first answer, on page 38. Go to the first A on that page -- the first A; that's a paragraph.

WIT: Uh-hum.

CC: Go to the bottom two lines of that paragraph.

The witness did as directed.

Questions continued by the civilian counsel:

Q. "I felt jealous that he would touch my boss, who we both had agreed, was kind of disgusting." Did I read that correctly?

A. Yes. So you just --

CC: You may put the exhibit back on the stand.

The witness did as directed.

Questions continued by the civilian counsel:

A. I was not sexually jealous. I was -- how would you be sexually jealous of somebody --

CC: Nonresponsive.

MJ: Ma'am, he hasn't asked you a question.

WIT: I know.

Questions continued by the civilian counsel:

Q. At the Article 32 hearing, under oath, you testified that you felt jealous that he would touch -- or give a massage to Suzanne Brick.

A. You could be jealous because somebody makes a sports team over you. You could be jealous because your -- um -- anything happens. I was disappointed that somebody, who I thought was actually trying to give me help, was somebody other than who I thought.

If the definition of "jealousy" is hurt and betrayal, than I felt those two things. If the definition of "jealousy" is some kind of -- like, sexual or romantic desire, than no, I did not; it just depends on your -- definition is.

Q. Kind of like your definition of sex? Remember testifying about not being able to identify the definition of sex?

A. No, I don't. I have no idea of what you're talking about.

Q. We'll get to that. So as I understand your testimony, you weren't jealous?

MJ: We got the answer in the "jealousy" category. You're moving on, Mr. Faraj.

CC: Well, I've got more on this category, Your Honor.

MJ: You're --

CC: Let's flip to page 137.

MJ: A new page; a new opportunity.

Questions continued by the civilian counsel:

Q. Let me ask you the question before we flip to it. Do you remember having -- up here, ma'am. Up here, ma'am.

MJ: Ma'am, please put it back on the rail.

Questions continued by the civilian counsel:

Q. Do you remember having dinner with the Agoulnik's (ph) after August 28 of 2010?

A. Yes, my husband and I had dinner with the Agoulnik's.

Q. And do you remember a conversation where Captain Agoulnik -- or I don't know who said it because it's not very clear -- but you came to find out that there was a rumor that Captain Rowe was sleeping with Suzanne Brick; do you remember that?

A. I had heard the rumor before then.

Q. You don't recall Agoulnik telling you that night that there was a rumor about Captain Rowe sleeping with Suzanne Brick?

A. I -- it sounds familiar.

Q. Okay. And when he told you that, you became emotional and began to cry?

A. No, I didn't cry about that.

Q. You became emotional and began to cry?

A. Not about that.

Q. You became emotional and began to cry?

MJ: It's a "yes" or "no" question. Again, trial counsel will follow up if there's something --

WIT: I don't remember -- um -- I don't remember getting emotional during the dinner at all. I remember afterwards.

CC: Okay. Let's go to that; page 137.

The witness did as directed.

Questions continued by the civilian counsel:

Q. The second answer paragraph -- and there's kind of a darkened area.

A. It's incorrect. I cried after the dinner not during.

Q. It says: "And then, I cried during most of dinner and then we never had an awkward thing again because he said that Rowe was a drunken nightmare," and so on. You said that you cried during most of dinner.

A. I didn't -- honestly, I just -- I don't remember --

Q. Did I read that correctly?

A. Yes.

CC: Okay. You may put the exhibit back.

The witness did as directed.

Questions continued by the civilian counsel:

Q. And that happened after the discussion about Rowe having a relationship with --

A. It had nothing --

Q. -- Suzanne Brick?

A. -- to do with Suzanne Brick.

Q. I understand what you want to explain --

A. I do not care what --

Q. I understand that you want to explain. My question is simple. You -- he disclosed --

A. I had never -- I've never shed a tear about Captain Rowe and Suzanne Brick having a sexual affair. I don't -- that has nothing to do with any of my crying.

Q. Okay. But, at dinner --

A. I don't remember if I was crying --

Q. -- when that information was disclosed, you began to cry?
A. You can ask the people next to my husband; I don't remember.

Q. Okay. Well, I've got it on the Article 32. Let's go back to that page --
A. But it was not --

Q. -- 137 --
A. -- because of Suzanne and Captain Rowe doing anything.

CC: Okay. Go ahead, page 137.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Six Q's from the bottom. The question is --
A. I said: "It grossed me --

Q. Let me read the question. The question is: "When he told you that, that hurt your feelings; didn't it? That Captain Rowe was maybe sleeping with Suzanne?" You say: "It grossed me out." I say: "You start crying?" You say: "I wasn't crying because of that. I was crying because of everything that happened in the command, and now." Did I read that correctly?
A. Yes.

Q. Okay. So is it fair to say, at the Article 32, you do remember the sequence that he said that Rowe was sleeping with Suzanne Brick, you began to cry, and you tried to explain that that wasn't why you were crying?
A. No, that is incorrect.

Q. Ma'am, is that the sequence that I just read?
A. It is the sequence you read, but I was not crying because -- that's incorrect. I was not crying --

Q. I didn't ask you the reason. I said: "Is that the correct sequence?"
A. I said --

MJ: The reason --

WIT: -- I wasn't crying --

MJ: Ma'am, the reasons will be followed up in the redirect by the trial counsel.

WIT: I said I was crying because of everything that --

MJ: Ma'am.

WIT: -- happened in the command.

CC: It might be a good -- I think it's about time we took a break. We've been going for a little over an hour. Actually, we may want to take a lunch break.

MJ: Trial counsel?

TC: I think this is a good time as any to take a lunch break, sir, if Mr. Faraj feels that this is a good stopping point.

MJ: At 1245? I think that puts us past the crowd in the passageway as well.

TC: Aye, sir.

MJ: Ma'am, my instructions remain the same. Do not discuss your testimony with anyone during this lunch recess. You are free to move about the base consistent with any passes that you've received. Again, do not discuss your testimony with anyone.

Please, be back in the building by 1240, and I'll reconvene at 1245.

The court's in recess.

The court-martial recessed at 1128, 13 December 2011.

The court-martial was called to order 1242, 13 December 2011.

The military judge called the court to order and stated that all parties present when the court last recessed were again present.

The military judge discussed the R.C.M. 802 conference held between trial and defense counsel concerning Defense Exhibit A, for identification, the Article 32 transcript testimony.

In response to the military judge, the trial counsel had no objection to Defense Exhibit A, for identification. Absent objection from the government, the military judge admitted Defense Exhibit A, for identification, into evidence and the words "for identification" were struck.

In response to the military judge, both counsel were prepared to bring the witness back into the courtroom.

The witness resumed the witness stand and reminded of her oath.

Questions continued by the civilian counsel:

Q. Ma'am, we left off, before the lunch break -- and we had been talking about jealousy and your response to a comment made by Captain Agoulnik. And I think you were trying to -- you were explaining that the reason you cried was not because you were jealous. Do you recall that?

A. Yes.

Q. Okay. I'm going to move on to another instance, where you indicated a jealous response, at the Article 32 hearing; and I know you are backing off some of those. Do you recall testifying that in another instance you saw Captain Rowe interacting with Suzanne Brick in public, and that you sent him a message about a threesome?

A. I never sent a message about a threesome.

Q. Okay. Do you recall testifying to that at the Article 32 hearing?

A. You must have misinterpreted what I said; that never happened. There's just no chance in hell that would happen.

Q. Do I take that response as a "no," that you do not recall saying that at the Article 32 hearing?

A. I -- there was something in my discharge -- in the context -- that was -- that I was confused about your question. There's no -- I sent a text message to Rowe about that, it had nothing to do with a threesome with my

boss, that had herpes, and was pass -- knowingly passing it to other officers. Why would I solicit her for sex?

Q. Okay. So again, just to make sure I have it correctly, you do not recall saying that at the Article 32 hearing?

A. That's correct.

CC: I've retrieved Defense Exhibit A and I gave it to the witness.

Now, on page 46 of that exhibit, ma'am -- when you get to page 46, look up at me, please.

The witness did as directed.

CC: Okay. You're there.

Questions continued by the civilian counsel:

Q. The fifth question from the top, I ask you: "Would it be fair to say that in order to get that --

A. I'm sorry. Which -- the sixth?

Q. The fifth question from the top; the fifth Q.

A. This is --

Q. Let me guide you through the discussion --

A. Okay.

Q. Okay. I ask you a question about a threesome. Essentially saying: "You wanted to have a threesome with him?" And then, your answer to that is: "Rowe always said that's the one thing that he wished I did after I," is the answer.

And I ask: "I'm sure he did. I'm not denying that he said it, but did you come back with a message that you wanted to have a threesome with him?" And you said: "I don't think I said exactly that, but" I said: "What did you say?" You said: "I don't remember what I said, I was drinking."

Actually, flip to the next page.

A. But do you want to read the context here?

Q. Well, there's nothing there until we get to the next page -- about --

A. Because.

Q. Five questions from the top, again, on page 47. I go back to the question and say: "I asked you about a text message regarding a threesome, and you said: 'Well, probably because -- the words to the effect of 'I saw him with Suzanne. I wanted him to get away from her.' Do you remember saying that?" Now, that's my question. You say: "Yeah. I said that I was jealous that he would give --" "-- a neck massage?" And that goes -- or that's my question. And you say: "It's just weird, especially, based off the conversations that we had about Suzanne." Did I read all of that correctly?

A. You did. But I don't see anywhere in there anything about a sexual text message to Suzanne.

Q. I'm talking about Suzanne; I said to Captain Rowe.

A. To -- even to Captain Rowe.

CC: Okay. Well let's go back through it again.

Questions continued by the civilian counsel:

Q. Let's start with the fifth question from the top on page 46. I asked you if you had sent him a message about a threesome. And then, your answer is: "Rowe always said that's the one thing that he wished I did after I --" Did I read that correctly?

A. Yes.

Q. And then on the next question I asked you: "What did you say?" And you say: "I don't think I said exactly that, but --" Did I read that correctly?

A. No. It says: "I don't remember what I said, but I --"

Q. No, the answer before it: "I don't think I said exactly that, but --"

A. Yes.

Q. And the "exactly that," refers to a threesome?

A. I didn't say that at all.

Q. At the Article 32?
A. I didn't say anything about a threesome to Rowe at all in a text message ever.

Q. But I did read the transcript from the Article 32 correctly; right?
A. Yes.

Q. Okay. And then I ask, "What did you say?" And you say: "I don't remember what I said, but I was drinking and that was the night that he was giving Suzanne a massage, and I was so -- like, angry that I just said something -- I had been drinking, so I said something like, 'whatever.' I guess I wanted to divert his attention away from her too."
A. Yes, I sent him an angry message about it. There was nothing --

Q. Did I read that correctly?
A. -- sexual about it.

Q. Did I read that correctly?
A. Yes.

Q. And so, you were trying to divert his attention away from Suzanne Brick?
A. Yeah. Because I think that if he hadn't had sex with her, I don't -- I think it's something he probably wouldn't want to do. I -- we had a discussion about her having herpes. I don't think he wants to give that to his wife.

Q. You wouldn't want him to have sex Suzanne Brick and give it to you.
A. No.

Q. What do you care what he does with his wife?
A. I wanted his --

Q. You never even hung out with her. You didn't meet her by that point. You hardly ever -- you didn't associate with her.
A. She wasn't really around.

Q. Yeah. So you were concerned that he had sex with Suzanne Brick and he would give it to his wife --

A. I was concerned.

Q. -- and not you?

A. I mean, he was somebody I looked up to. I could not look up to a person who had sex with Suzanne Brick. And it looked like he was thinking about going down that road.

Q. Uh-hum. Why would you look up to him?

A. Because he was very respected at the Barracks; he didn't -- um --

Q. Why did you look up to him?

A. Because he actually had -- um -- the insight to know -- um -- what kind of corruption there was there. And he recognized -- like, alcoholism within himself and was trying to stay away from all of that -- that stuff that was harmful to him. And like most of the officers there, he -- um -- when -- um -- he didn't seem like he was kissing up to -- like, the Generals and Colonels; he kind of just did his job and went home and did --

Q. So he had good military character?

A. Um -- he did not -- I didn't think -- I thought he was part -- not part of the crowd that was doing --

Q. He had good military character?

A. Yes.

Q. Alleged assault aside, he had good military character based on what you observed of him?

A. Um -- well, he -- I also saw him pissing in the garbage can in front of his duty when he was drunk. And saw him throw up all over himself -- I mean --

Q. That's not something to look up to.

A. Yeah. But that's what everybody -- all the other officers were doing. The one thing that made Rowe stand apart is he -- he might have been an alcoholic, but he acknowledged that it was bad and was trying to remove himself from it.

Q. Got it. So let's get back to this.

A. Uh-hum.

Q. I'm asking you about threesomes, and you say: I don't remember exactly -- yes, but I was trying to divert his attention from Suzanne Brick. Is that a fair summary of what you testified to --

A. No it's not --

Q. -- at the Article 32?

A. -- because it says -- I said: "And I was so -- like, angry that I just said something -- I had been drinking, so I said something like, 'whatever.'" "I --

Q. I guess I'm on to the --

A. -- guess I wanted to divert his attention away from her too." That wasn't a sexual text message.

Q. Okay. Now, at the bottom of page 47, I ask you a question about the threesome and you brought up Suzanne, and that's the question -- the bottom question on page 47, do you see that?

A. Uh-hum.

Q. I say: "Well, you remembered something because I didn't bring it up; you brought up Suzanne." Kind of just -- exactly the way we did it now --

A. Uh-hum.

Q. Right?

A. Yeah.

Q. And then you say: "I am just speculating. I don't even know for sure --" "I just know Rowe said that I sent him some explicit sexual messages, and he would always use that and bring that up, and I would just laugh about it because, in our day-to-day talks, we did not have any romantic relationship or anything. He used it more to make fun of me."

A. Yes, because I didn't actually send those messages. I was using to help in the same stuff -- he says --

Q. Well --

A. -- in the phone conversation --

Q. Let me --

A. -- that was --

Q. I have a question to ask --
A. -- since Rowe had humiliated himself in front of me, he felt compelled to fabricate things that I had done to try to put us --

Q. Let's --
A. -- on some kind of equal playing field.

Q. Let's stop for a minute. So when did he humiliate himself in front of you?
A. Um -- multiple times.

Q. What was the first time?
A. The first time was when I met him.

Q. Okay. And so you still looked up to him? And every other time after --
A. After --

Q. -- he humiliated himself, you kept looking up to him?
A. He -- I looked up to him outside of his alcoholism. His alcoholism was -- acknowledged, he knew he was an alcoholic; he was trying to get -- deviate away from that. And -- um -- his reputation around the Barracks was basically one of the few people that -- um -- actually tried to provide mentorship to his Marines and didn't get himself involved in all the bizarre social circles that were going on.

Q. Okay. Let's get back to --
A. So I knew of Rowe for six months before he threw up on himself when I met him in person.

Q. All right. Let's get back to -- thank you. I just want make sure -- make clear that he humiliated himself, he threw up on himself, and your testimony is that you continued to look up to him? Did I say that correctly? Did I --
A. Yeah.

Q. -- capture that?
A. Yeah. I've seen people make fools of --

Q. Okay. Let's move on --
A. -- themselves and still --

Q. Let's move on.
A. -- they still had other good things going for them.

Q. By the way, do you remember urinating outside in a back alley behind 8th & I?
A. No, I don't. You've asked me that before.

Q. All right.
A. Is that the night that I was -- um --

Q. I don't know --
A. -- intoxicated?

Q. -- I just asked you question.
A. Yeah.

Q. But back to the question at the bottom of page 47; I read it to you earlier. Do you remember me reading it correctly as it appears in the transcript?
A. Yes.

Q. Okay. And that question -- the substance of that question is about explicit sexual text messages between you and Rowe?
A. Yes, I never in this -- um -- dialog said that there were explicit sexual text messages.

Q. But you acknowledged that it happened. And you just said that --
A. I didn't say --

Q. -- you and him went back in forth making fun of them.
A. I did not say that it happened. I acknowledged that Rowe accused it of have happening [sic], but I did not say that it did.

Q. Okay. After --
A. I said I knew that I sent him a text message to divert him away from having sex with Suzanne, but I didn't -- it wasn't a sexual text message.

Q. Okay. Let's take this one step at a time.
A. Uh-hum.

CC: You can set aside the exhibit.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Let me give you a hypothetical; okay? You get a text message from a friend that is sexual in nature or your friend tells you that "you sent me a sexual text message" or "a message that was sexual in nature --

TC: Objection, sir. I think that this hypothetical is going to call for speculation or an improper opinion or both.

MJ: I'm inclined to agree with the government at this point, Mr. Faraj.

CC: It goes to her response, Your Honor. If you'll allow me, you'll see where I'm going.

MJ: Renew the objection at the conclusion --

TC: Aye, sir.

MJ: -- and I'll disregard it if need be.

Questions continued by the civilian counsel:

Q. -- what does Ariana Klay do?

A. In what situation?

Q. If Ariana Klay gets told "I got an explicit sexual message from you;" you get told that by a friend.

A. Uh-hum.

Q. Okay. Or a friend sends you an explicit sexual text message, who you don't have a sexual relationship with, what do you do?

MJ: I'm seeing the relevance.

TC: I object on relevance and the fact that it still calls for speculation.

MJ: Sustained.

Questions continued by the civilian counsel:

Q. Is it fair to say that after the supposed communication from him about an explicit sexual text message you did nothing?

A. Um -- are you talking about -- like, after the fact, later when he brought it up and made a joke about it; is that what you're talking about?

Q. You remember him bringing it up, now?

A. Yeah. He made -- I mean, he always said dirty -- um -- kind of fantastic little tall-tales that happened when he was drinking.

Q. You testified at the Article 32 that Rowe said that he got an explicit sexual --

A. Yes.

Q. -- text messages from you.

A. Like I said, Rowe fabricated all kinds of crazy tall-tales when he drank.

Q. Okay. That's a pretty important fabrication; right?

A. Um -- they were actually not nearly as disturbing as other things he would say -- like --

Q. Okay. Would you agree that that's a pretty serious fabrication?

TC: Objection, sir. It's argumentative.

MJ: We'll let this one go, and then --

Move on.

TC: Aye, sir.

Questions continued by the civilian counsel:

Q. Would you agree that's a pretty serious fabrication?

A. To me, it seemed so ridiculous I didn't even -- it did not faze me; it was just -- it was the same as him saying that he didn't speak to female Marines in public. It was just -- his kind of delusional alcohol world.

CC: All right. Can I have those text messages.

The documents were proffered by defense counsel.

Questions continued by the civilian counsel:

Q. Could you have sent a message about a threesome and you just not -- don't recall right now?

A. I just -- there's just no way that I would want to have sex with somebody with herpes or want to have sex with Rowe, so no.

Q. I assume that you're referring to Suzanne Brick?

A. Yes.

Q. You just said, "someone with herpes," and I don't know that she has herpes, but you said that earlier. So that's why I'm assuming you're referring to her?

A. Yes, it's in the Hudspeth investigation.

Q. Well, fine. But right now, I assume you are referring to her?

A. Yes.

Q. Okay. Why did you just bring up Suzanne when I asked about the threesome?

A. Because you accused me earlier of sending her a -- or you accused me of sending a threesome -- a text message to Rowe about Suzanne.

Q. I asked you if you sent him a text message about a threesome; I didn't bring up Suzanne.

A. That's what was in my discharge paperwork -- was the -- it like, cutoff after you asked a question about a threesome with Suzanne.

Q. Okay. Well, I'm asking you questions today. I didn't do your discharge paperwork.

A. Yeah.

Q. You know that; right?

A. Yes.

CC: Okay. So I'm going to hand you a couple of exhibits to see if it will refresh your recollection about messages exchanged between you and Captain Rowe.

MJ: Do it one at a time, please.

CC: I'm handing you Appellate Exhibit XX, and I'll give you Appellate Exhibit XXI in a minute.

Questions continued by the civilian counsel:

Q. Do you recognize -- do you see that message?

A. Yes, I did not send him this text message.

CC: I've retrieved Appellate Exhibit XX, and I'm handing Appellate Exhibit XXI to the witness.

Questions continued by the civilian counsel:

Q. Do you see that one?

A. I did not --

Q. I'm just asking you if you've seen them.

A. I have not seen them, but I did not send those text messages [sic].

Q. Did you just see them now?

A. Yes.

Q. Okay. And that does not refresh your recollection?

A. No, it doesn't.

Q. Okay. Very well. Now, I'd like to touch on this issue of Suzanne. So you're saying that the reason you thought about Suzanne is because it was in your discharge paperwork?

A. There was something at the end where it kind of -- it was at the very end of the seven pages, and it said: "Did you -- something with Suzanne?" And then, it said -- my response was: "I don't know what you're -- what do you mean?" And then, it cut off. It was on the last page.

CC: Ma'am, I'm handing you what has been marked as Defense Exhibit B, for identification. It's actually eight pages, not nine pages; so I'm going to refer to it as an eight page document.

The defense counsel conferred.

CC: I'm handing you what has been marked as Defense Exhibit B, for identification, consisting of five pages.

WIT: Uh-hum.

Questions continued by the civilian counsel:

Q. Do you recognize that document, ma'am?

A. Yes.

Q. What is that?

A. It's -- um -- part of my discharge.

Q. Okay. Please review it and tell me where in that document --

A. It's -- um -- it was a -- it was attached.

Q. I didn't ask my question; let me finish.

A. Okay.

Q. Is there anywhere in that document that Suzanne Brick is referred to?

A. Um -- I've looked at this before; I don't think that she's mentioned in this.

Q. And this is the resignation request for cause and report of nonjudicial in your case; correct?

A. Yes.

Q. And this is the document that actually affected your discharge from the Marine Corps; signed by the Assistant Commandant of the Marine Corps for Manpower and Reserve Affairs?

A. Uh-hum.

Q. Correct?

A. Yes.

CC: I'm retrieving the exhibit.

The exhibit was proffered to the military judge.

WIT: Sir, so is it clear that that's not all my discharge --

The military judge gestured to the witness.

MJ: There was a highlight on page seven on the initial exhibit that was being handled by counsel. And when the

court reporter is writing, he can't always catch the transcription portion; that's why I stopped you, ma'am.

Mr. Faraj, we have a clean Defense Exhibit B, for identification, up at the court reporter's table if you need it further.

This is the portion of the discharge -- this is a second endorsement, so obviously there are other endorsements.

You may proceed.

Questions continued by the civilian counsel:

Q. The purpose of my questions, Mrs. Klay -- hold on. Let me back up. First of all, you said there was more to these discharge papers that we don't have?

A. Yes.

Q. Okay. Do you recollect what those documents were?

A. Yeah. It was about seven pages from the Article 32 hearing that were attached. It was not in any chronological order, and the last page -- and Captain -- um -- Wade told me that Colonel Miner had attached those to my discharge to make sure that it -- that I was -- um -- that I got out of the Marine Corps as soon as possible -- to expedite my exit from the Marine Corps.

Q. Okay.

A. And one of those pages had you asking me the question -- um -- "Do you ever remember sending a threesome text to Suzanne Brick?" And then, I said: "I'm not sure what you're asking." And then it ended. And that was the end of the seven pages that were attached.

Q. Who did you get those from?

A. I got them from -- I picked them up from Henderson Hall. I still have all of them -- um -- they gave them to me at Henderson Hall.

Q. Okay. Let me try to clarify some things. Were they attached --

CC: I'm going to show you Defense Exhibit B again.

Questions continued by the civilian counsel:

Q. Do you recognize that?

A. Yes.

Q. That's the second endorsement?

A. Uh-hum.

Q. Were they attached to that one or were they attached to something else?

A. They were attached to this.

Q. I see. Okay. Thank you for clarifying.

CC: I'm retrieving the exhibit.

Questions continued by the civilian counsel:

Q. When I asked you questions about the threesome today --

A. Uh-hum.

Q. -- you referred to Suzanne, but you were referring back to what you read in the --

A. I thought that's what you were talking about, is that same issue.

Q. I understand. You referred to what you had seen in the Article 32 --

A. What I had seen in my discharge. The discharge -- the excerpts from the Article 32 that were in my discharge.

Q. Okay. And I want to go back to that particular point because -- I'm going to have to go to the Article 32 because you're saying you don't remember any of it. At the Article 32, when I brought up the threesome, you also brought up Suzanne. Do you recall that?

A. No -- well, because of the context -- was that you said that I sent it when Rowe was giving Suzanne a massage. So I thought you were trying to say that that's what I was sending.

Q. Okay. I asked you about sending a text message to Captain Rowe --

A. Uh-hum.

Q. -- and you brought up Suzanne, even at the Article 32 as you did today.

A. Uh-hum.

Q. Okay. I never asked you if you sent it to Suzanne; right?

A. No.

Q. Do you recall that?

A. I don't recall at all.

CC: Okay. If we could have you take a look at -- and I think the easiest way to do this, at this point, is having you review pages 46 through 49.

MJ: Do you have page 48 in there?

WIT: There's no 48.

MJ: Do you have page 48 there, Mr. Faraj, now?

CC: I do not, Your Honor.

Your Honor, I think --

MJ: I don't have 48 either in the copy that I have.

CC: None of us do, and I just realized that. Even though I had read this many times, I've never looked at the pages because it sort of flowed. But I think -- and there several pages missing of this transcript that we weren't able to obtain.

MJ: Do you need a recess?

CC: I think we need to recess because I don't think I've seen them before.

MJ: Well, you obviously were present for the Article 32. But it might change the tactic that your taking in cross.

CC: I was.

MJ: Let's take a 15-minute recess or 10?

CC: Yes, 15 is fine, Your Honor.

MJ: To the bottom of the hour, make the copies; give me a copy, and counsel a copy.

The court is in recess.

The instructions remain the same. Don't discuss your testimony with anyone, ma'am.

The court is in recess.

The court-martial recessed at 1314, 13 December 2011.

The court-martial was called to order at 1326, 13 December 2011.

The military judge called the court to order and stated that all parties present when the court last recessed were again present.

MJ: Page 48 has been distributed to all parties.

CC: I'm retrieving Defense Exhibit A again and handing it to the witness.

Questions continued by the civilian counsel:

Q. Ma'am, I don't need you to look at it right now, I just need to ask you a question. When we began to talk about the issue of a threesome at the Article 32 -- follow me so far?

A. [Nonverbal response].

Q. You shook your head; is that a "yes?"

A. Yes, I follow you so far. Yes.

Q. Okay. I -- at the Article 32, you brought up Suzanne, do you recollect that?

A. In the context of the situation, because it was -- because Rowe was giving Suzanne a massage or something.

Q. Great. So I didn't ask you a question if the text message was to Suzanne, but you brought up Suzanne in the context of my question. Is that your answer?

A. Yeah. I guess I thought you were -- assumed you were

making an accusation that it was towards Suzanne --

Q. Okay.

A. -- because she was in the situation.

Q. And you have an independent recollection of that now or is that because you read it in the transcript?

A. I'm not even sure where the recollection comes from.

Q. Okay. Now do you recall testifying, at the Article 32 --

CC: I'm sorry. Your Honor, it's difficult -- I don't normally ask a question about what a person said before; I would normally ask a question about what the person recollects, but I'm doing that -- I'm explaining to, Your Honor, because she said she didn't say anything. So that's why I'm beginning my questions that way.

MJ: When the --

CC: So I'm kind of shortcutting because I know she's backed away from that testimony; is that okay?

MJ: Captain Combe, do you understand where --

TC: I understand, Your Honor.

MJ: Okay.

CC: Okay.

Questions continued by the civilian counsel:

Q. Do you recollect testifying, at the Article 32, that the threesome text message was sent for shock value?

A. I was probably speculating.

Q. Okay.

A. I don't remember sending any text message.

Q. Do you remember reading that in your discharge paperwork?

A. No, I don't.

CC: Okay. I'd ask you to please refer to page 48 of Defense Exhibit A. And, please, read from the top of the page -- well, just read that entire page to yourself. When

you're done, look up at me.

WIT: Okay.

The witness did as directed.

CC: All right. Put the exhibit away.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Is it fair to say that, at the Article 32, when you were asked about a text message about a threesome, you said:

"It was probably for shock value or something"?

A. There was a lot more context before and after that. So, I don't think that would be fair to say.

Q. Okay. Well, we can get into that.

A. Okay.

Q. But did at least capture that particular point?

A. That was a statement amongst ten other statements.

Q. Okay. Let's take a look at page 48 again.

MJ: Mr. Faraj, remember, you're looking for the inconsistencies here. The item has been admitted into evidence, so.

CC: And I've been debating whether I should just move on since you'll be reading it anyway.

MJ: Well, I'll be reading where there are inconsistencies with the testimony, so those are the things that should be highlighted; otherwise, this is going to go on for a period that is too long.

Questions continued by the civilian counsel:

Q. And the answer to the question before that statement -- "I think it was probably done for shock value or something," was me asking you: "Okay. Then, you came back to him and you say, 'I want to have a threesome.' How does he know that you haven't changed your mind now

because you desire --" and you cut me off.

And you say: "Because he knows me well, and he knows that was way out of the realm of something I would normally say. I think I probably did it for shock value or something." Did I read that correctly?

A. Yes, and I was probably just speculating if it did happen, and that's why. But I don't -- like I told you before, I have no memory of ever sending -- and still don't think I sent that text message.

Q. I understand. I'm just referring to what happened at the Article 32.

A. Okay.

Q. And that was read correctly?

A. Yes.

Q. Now, you testified that Captain Rowe was impotent -- or he told you that he was impotent?

A. Yes, he said that he -- because of his alcoholism, he could no longer have sex; that's what he said verbally to me.

Q. And you recollect testifying -- do you recollect telling him that you also have sexual problems?

A. I told him that I have body image issues.

Q. You don't recollect telling him that -- that you talked to him about your sexual problems?

A. The sexual problems are basically, I did not like being seen in a sexual manner at 8th & I; and it felt like all everybody ever -- the Marines were just -- like, openly making comments about my body and stuff. And I was uncomfortable with that, and it did -- it affected my sex life.

Q. My question is: Do you recollect --

A. Yes.

Q. -- telling Captain Rowe about -- talking to Captain Rowe about your personal sexual problems?

A. It was in the context of body images issues and 8th & I and the sexual comments, yes.

Q. Okay. What did you say to him?

A. Well, he's the -- he's the one that said when he came up to me --

Q. No, about your sexual problems at 8th & I.

A. Yeah. That's what I'm talking about. Um -- he said that -- when came up and he sounded -- like, all frightened and scared, and he thought I had really poor confidence -- and that half my problem at 8th & I is because I let all these things bother me. And -- um -- he said, "Do you have dad problems or something? Why do you have such a poor self-image?" And I just said that I just -- I'm uncomfortable about that kind of stuff.

And -- um -- he said that his problems -- he said that, "Well, alcoholism makes everything worse; that's not the solution." So --

Q. How is that sexual problems?

A. That's how we discussed sexual problems; that was the context.

Q. Do you remember telling me that you talked to him about sexual problems after I asked you about what you meant by the text message, and it was referring to a sexual text message.

A. Um -- I'm sorry. Can you repeat the question?

Q. Do you remember telling me, at the Article 32, that you were talking about sexual problems, but you answered that question after we'd been talking about the text message with sexual content?

A. Um -- I got -- I don't see that connection.

Q. Would it refresh your recollection if you read your testimony from page 48 again?

A. Okay.

CC: Okay. Please do so. Most of that stuff is at the top of the page.

The witness did as directed.

WIT: So I said: "Because Rowe knows I had -- like, major body image and self-confidence issues. I think he knows I

wouldn't do that anyways." "How does he know that?"
"Because I talked to him about my sexual problems." So
it's the same context I just told you.

Questions continued by the civilian counsel:

Q. And tell me the context again. Because we're talking
about sexual problems in the context of sexual --

A. To me, this --

Q. -- relations with him.

A. To me, sexual problems related to the sexual harassment
about my body image issues; that's what I was talking
about. And I did talk to Rowe about that and how 8th & I
was particularly hard for me because of all the sexual
comments that were made.

Q. You said your relationship was a mentor/mentee
relationship?

A. Yes.

Q. Do you feel that the sexual conversation that --
conversations involving sexual issues, with you and he,
was a proper mentor/mentee relationship?

A. I felt like it was fine because -- um -- you know,
alcoholism is a very personal issue. And when he
discussed his problems with it -- um -- I trusted him
because he actually seemed to -- um -- want to help me
with it. And he wasn't saying it in a way that was
trying to be sexual or anything; he just was
describing it in a way of how it just -- like, consumed
his life.

Q. Okay. Do you remember -- I've asked you several
questions about hotel stays, and I'm going to go back to
that and ask you if you recall -- would it help you
remember if I tell you that you testified previously
about kissing Captain Rowe during one particular hotel
stay? Do you remember that testimony?

A. No, I don't.

Q. Okay. And that's the night where you got all emotional
after a big fight with him.

A. That sounds like several -- that sounds like each time I
hang out with him.

Q. You get emotional and have a big fight?
A. No, I only hung out with him a couple of times during the four months. But every single time I did it would start with good advice, and then it would end with him drinking and saying upsetting things.
Q. And how many times did that happen?
A. I would say -- like, three times.

Q. So you -- in total, you hung out three times?
A. No, I hung out with him probably four times, that I can remember. And three out of the four of those times, there was some kind of -- I mean, he was an alcoholic; he was a different person when he drank than when he was sober.

Q. And you kept going back to hang out with him?
A. Yeah. He was one of the only people -- um -- at 8th & I that actually seemed to -- that acknowledged what was going on was wrong.

Q. But you didn't have to hang out with people from 8th & I; right?
A. I didn't really have any friends in the area.

Q. You didn't have to hang out with people from 8th & I; right?
A. I didn't know anybody else.

Q. Do you have a husband?
A. He was usually at work.

CC: I'm going to ask you to refer to page 110 of Defense Exhibit A.

Questions continued by the civilian counsel:

Q. For questions from the bottom -- four Q's from the bottom. I'd like you to start reading there, and I'm going to have you read along with me. The question is: "You made out and kissed him when you stayed in a hotel in D.C. after the pageant." You said: "That's possible, but I know that we didn't have sex that night." Did I read that correctly?
A. Yes.

- Q. And I asked you: "How do you know?" And you said: "Because I remember getting -- like, all emotional and him getting pissed, and we got in this -- like, big fight." I read that correctly as well?
- A. Yes.
- Q. Okay. So when I asked you that question at the Article 32, you believe that it was possible that you could have engaged in kissing with him?
- A. It's like I told you before, you say that -- and when -- anytime that I was butt-hurt -- I really don't know. You could say that I did cartwheels naked down 8th Street and did cocaine or something, and I would have no idea if it was true because I remember nothing when I was blackout drunk.
- Q. I'm talking about the Article 32.
- A. I know, that's what I'm talking about.
- Q. Okay. So it's possible that you could have kissed him at that pageant?
- A. I don't -- I don't think that's -- I don't have any recollection of it, so I don't think it's possible.
- Q. Okay.
- A. That same way I never saw Quinn in my house. I --
- Q. But at the Article 32 it was possible?
- A. I feel like anything, when I'm blackout drunk, that you say -- you fit the definition of, "if you don't know what happened during the period of time, anything is possible." I don't think it's -- I don't think it happened.
- CC: Stay on page 110, please.

The witness did as directed.

Questions continued by the civilian counsel:

- Q. At the bottom of page 110, I ask you a question about why you -- after the fight, you didn't leave the D.C. Pageant -- or the hotel room and go home. And you said: "Because I had also gotten into a fight with my husband, and I didn't want to go home." Did I read that correctly?

- A. That's true, but I did go home.
- Q. Well, at the Article 32, you said that you didn't leave the hotel room that you were staying in because you didn't want to go home because you had a fight with your husband.
- A. I think you just -- you had asked me why I didn't go home, and I gave you a reason. Any reason that there ever was that I didn't go home when I had been drinking was because my husband would be legitimately upset that I had been drinking.
- Q. Okay. But we are not talking about the universe of possibilities. Here, I say: "Why don't you just -- you're in D.C., why don't you just get up, grab a cab, and go home?"
- A. It sounded hypothetical.
- Q. I -- this sounds hypothetical?
- A. Yeah. It did do to me. It said, why don't you -- when you're in D.C., why didn't you get up, grab a cab, and go home? To me, it sounded --
- Q. No, I said: "Why don't you just -- you're in D.C., why didn't you just get up, grab a cab, and go home?" And you said: "Because I had also gotten into a fight with my husband then, and I didn't want to go home." We had just got done talking about a fight with Captain Rowe. And you said: "I had also gotten into a fight with my husband then, and I didn't want to go home." That's not a hypothetical, would you agree?
- A. Um -- I -- I don't know. Um -- the only reason why I wouldn't -- like, anytime I didn't ever go home was because of some kind of contention about drinking -- um --
- Q. Okay. Well, the following page --
- A. But I told you before, Rowe didn't even -- Rowe stayed at the Barracks and saw Captain Dewire; I went home, so --
- Q. Well, at the Article 32 hearing, you and he were in a hotel room in D.C. during the D.C. Pageant. Today --
- A. Not being in --

Q. -- you're saying he was at the Barracks.
A. In your mind, that's where we were; that's not where it was.
Q. Okay. And then the next page, I ask you a few more questions --
A. Uh-hum.
Q. I say: "You could've; right?" And you say: "Could've done what?" I say: "You could've left." "That's true; I should have --"
A. Did you mean leave -- leave the -- um --
Q. The hotel.
A. I wasn't talking about the hotel; I was talking about the drinking event after the Miss D.C. Pageant -- I'm guessing; I have no idea.
Q. Okay. Well, let's see if we can find out where you testified about the hotel. Because you're saying today that you didn't stay at the hotel on the night of the D.C. Pageant --
A. No, I didn't.
Q. -- right?
A. Yes.
CC: Please flip to page 126.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Three questions from the bottom, I ask you: "Where there any other stays together besides the two D.C. hotel stays and the two trips to West Virginia?" And you say: "No, not that I can think of." Did I read that correctly?
A. Yes.
Q. And then, I say: "Are you sure about that?" And then, you say: "What do you mean by 'stays,' like going to the country and --" And I say: "No, stays together, where you went to a hotel or --" And you say: "No, those are the only things I can think of, or what we've already discussed." Did I read that correctly?
A. Yes.

CC: Great. You may put that exhibit back down. Thank you.

The witness did as directed.

CC: I'm sorry. Let's go to page 127, top question.

I apologize, Your Honor. I see that you are looking at me.

Please read the first question and answer of page 127.

The witness did as directed.

Questions continued by the civilian counsel:

Q. That question summarizes your statements about me reminding you of the D.C. trip, and then you remembered. And I asked if there was anything else, if I've exhausted your memory. And you say: "No, actually the predominant memory is -- and you go on to the answer.

A. "No, actually the predominant memory is Rowe telling me to show Jeremy what a slut I was, and telling me to suck his dick or he would tell the command or Ben; that's my predominant memory. I really don't spend a lot of time thinking about the times that I actually enjoyed with Rowe, because there was some of those."

Q. Great. And the times that you enjoyed with Rowe are the times you stayed at the hotels.

A. No, those are not. The good times I enjoyed with Rowe were when he actually gave me advice that was -- um -- helpful to abstaining from alcohol and -- um -- just acknowledgement about the bizarre dynamic of the command and the psychopathic behavior that it encouraged.

Q. Now you're saying that the times -- I just asked you if the times included some hotels stays when you enjoyed time with him, and you said, "no."

A. I did not enjoy my -- anytime when I was at a hotel and Rowe was there.

Q. Okay. I'm assuming your -- my questions about additional sexual contact would also continue to be that you don't remember any sexual contact?

A. That's correct.

Q. Okay. Do you recall me asking you if you had sexual intercourse with Captain Rowe at the Article 32 hearing?

A. You asked me -- um -- like, a series of -- um -- scientific terms for various forms of sexual contact.

Q. Okay. My question is simple. Do you remember asking me [sic] if you had ever engaged in sexual intercourse with Captain Rowe, do you remember me asking you that question?

A. I remember asking you [sic] something along those lines.

Q. Okay. And you said "no"? Do you recall that or not?

A. I don't remember what I said during the Article 32, but I can tell you the answer here today.

Q. Okay. Let's refer to page --

MJ: What is the answer today?

WIT: No, I did not.

CC: Okay. Great.

Questions continued by the civilian counsel:

Q. But you did acknowledge there might have been some other type of sexual contact?

A. Once again, any acknowledgement was based off of speculation that if I was blackout drunk and had no idea what happened, then something could of happened. But I have no memory of it.

CC: Okay. Please refer to page 28 and 29 -- bottom of page 28.

The witness did as directed.

Questions continued by the civilian counsel:

Q. Are you there, ma'am?

A. Yes.

Q. Okay. Bottom question -- fourth -- the last question on page 28, I ask you: "Okay. Was there any kind of sexual relationship between you and Captain Rowe?" And you say:

"I would say -- could you define your definition of 'sexual relationship'?" And I say: "Fellatio, cunnilingus on you, engaging in sexual touching, touching of the female breast, the genital area of the male or female." And then, you cut me off -- I'm sorry. And you say: "Yeah. There was some of that."

A. There was none of that. It was just --

Q. Did I read that correctly?

A. You did, but it's incorrect.

Q. Did I read that correctly or not?

A. Yes, you read it correctly, but that's --

Q. Okay.

A. -- incorrect information.

Q. All right. So long as you continue to say that, I'm going to continue to repeat whether I read it correctly, and I'd ask you to stop.

TC: Your Honor, I --

MJ: She is --

TC: -- the answer is clear from her answer.

MJ: Yes, the answer is clear. You've read it correctly, and she's denying -- or now she's denying it -- the sum of that.

Is that an accurate --

WIT: Yes.

TC: Yes, Your Honor.

MJ: -- summation?

So tailor your questions off of her denial of the sum of that. However, your point has been made.

Questions continued by the civilian counsel:

- Q. And then, when I ask you how frequent, you said, "Not very frequent."
- A. I said: "It only went when -- like, both of us were -- like, extremely intoxicated, and it was usually -- like, mean, weird things. It wasn't -- like, something of a pleasurable thing." I don't even -- this doesn't make sense; I -- I was not answering the question you asked me.

CC: All right. I'll retrieve the exhibit.

The document was proffered to counsel.

Questions continued by the civilian counsel:

- Q. But I did read correctly that I asked you: "How frequent?" And you said: "Not very frequent." I'm talking about the quality of the sexual touching in the relationship, just the frequency.
- A. There was no sexual anything.
- Q. I know that you're saying that today. But at the Article 32, under oath, you testified that there was fellatio, cunnilingus, and engaging in other sexual touching and petting.
- A. There wasn't any of that.
- Q. Yes, but at the Article 32, you said there was?
- A. Yes, unfortunately.
- Q. I'm sorry.
- A. Yes, unfortunately.
- Q. And, of course, you wanted Captain Rowe to see you as attractive?
- A. I wanted him to see me as -- um -- a good Marine.
- Q. Is there --
- A. I didn't want him to think I was -- an example would be: He advised not to workout at the gym during certain hours, because he said if I worked-out at the gym during these hours, than people would think that I was a slut.
- So I didn't workout at the gym during those hours. He said that if I didn't dress like Suzanne, than people

would not say sexual comments like [sic] me -- about me. So the fact that he said -- he said you're good on that; you don't dress -- you don't have things hanging out everywhere like Suzanne. So that was -- yes, I did -- um -- I did value his -- um -- judgment in ways that I could help improve negative perceptions.

CC: Okay. Let's refer to page 46 of that exhibit.

The witness did as directed.

Questions continued by the civilian counsel:

Q. The third question from the top.

A. "Also that you are sexually desirable," you asked. I said --

Q. Right.

A. -- "'Attractive' is a --

Q. Hold on. Hold on.

A. -- better term."

Q. We are getting to it. I asked you if you wanted him to see you as sexually desirable --

A. And I said --

Q. -- instead you say: "Attractive is a better term." Did I read that correctly?

A. Yes.

Q. And then, I say: "Okay. Attractive is different than sexually desirable?" And you say: "I would have liked if Rowe thought I was attractive; that would have been flattering to me." Did I read that correctly?

A. Yeah. I would think that was -- um --

Q. Did I read that correctly?

A. -- I would think that was flattering if almost anybody said that.

Q. Did I read that correctly?

A. Yes, but that --

Q. Thank you.

A. -- doesn't mean sexually desirable; it means --

Q. I didn't say sexually desirable --

A. -- if anyone said that you looked nice today, I would find that to be flattering.

Q. Did I ask you if sexually desirable -- I said "You wanted him to see you as attractive?" And you said: "No." But you said, "Yes," at the Article 32.

A. I said, "No," to sexually desirable; I said, "Yes," to attractive.

Q. Today, I asked you about being attractive. I have the question. "You wanted Rowe to see you as attractive?"

A. I want -- I would want anyone to see me as attractive. I did not care especially about Rowe's aesthetic opinion of me anymore than I did my -- his military performance -- my military performance.

CC: Okay. Now, let's talk about being sexually attractive, because we've talked about just attractive.

Let's go to page 67. Do you still have the exhibit or did I take it from you?

WIT: I do not have it anymore.

The exhibit was proffered to the witness.

Questions continued by the civilian counsel:

Q. Now, there's a top question, then the answer to that; and that's where the question really begins. And we'll begin at the point -- and I want you to find this -- it starts after a comma. It says: "As my boss did and as she encouraged the female Lance Corporal, who got pregnant from having sex with a Captain at our house." But I think you meant "at her house."

A. Uh-hum. Are you at the very top?

Q. Are you following me?

A. No. Are you at the top?

Q. The top A -- the very top A; that paragraph.
A. Where?

Q. Three lines from the bottom of that paragraph where it says: "As my boss did." Do you see that?
A. Okay. "It was the norm to build up your relationships of power by having sex with people, as my boss did and as she --

Q. Right.
A. -- encouraged a female Lance Corporal, who got pregnant from having sex with a Captain --

Q. And I asked you --
A. -- at her house."

Q. "You followed that example by making sexually suggested comments to Captain Rowe?" And you say: "Yeah, I did. That's pretty fucked up. On top of that, I was in a very fucked up state of mind then. Yep."
A. You can tell I'm being sarcastic -- this entire thing -- because I said: "Feel free to diagnose me from the DSM. That seems to be a popular trip to the inside of a personality disorder." You can tell I'm being completely sarcastic.

Q. I can't tell.
A. I can.

Q. Really?
A. I'm sorry. So I started out being completely sarcastic in this dialogue.

Q. That doesn't sound sarcastic to me. You say: "Yeah --
A. I said: "Yeah, I did. That's pretty fucked up. On top of that, I was in a very fucked up state of mind then. Yep." "Feel free to diagnose me from the DSM. That seems to be a popular trip to the inside of a personality disorder."

CC: Very good. Let's see if you were sarcastic at this point. Let's go to page 44.

The witness did as directed.

Questions continued by the civilian counsel:

Q. The very bottom question. The question is: "Is it fair to say that in order to get validation, you suggested to Captain Rowe that you were available for a sexual relationship?" And you answer: "But, because --" And then, I cut you off and say: "My question to you is --" And you say: "Yeah." "-- because you wanted that validation; is it fair then to say that you communicated to Captain Rowe your availability for a sexual relationship?" And then, you say: "No, because when we would actually talk, there was never -- sober talk was never relationship-esque [*sic*]."

MJ: Page 42, you said?

CC: No, Your Honor. I'm sorry, pages 44 and 45.

MJ: Thank you.

Questions continued by the civilian counsel:

A. Um -- I think it's clear that I said, "No;" that I --

Q. Did I read that correctly?

A. You did.

Q. Okay. And when I ask you -- you don't say, "No," you say: "But, because --" And then, you continue: "-- because -- I'm sorry. And then, I say: "My question to you is --" And you say: "Yeah."

A. I said, "No." I was answering -- um --

CC: Show me the "no," please.

The witness indicated.

Questions continued by the civilian counsel:

Q. Very good. We'll go to that, but that's -- I'm talking about the question before that -- and the answer before that.

A. You said: "My question to you is --" I'm not even -- um -- responding to your question yet. I said: "But, because --" That's not even -- that's not the answer.

When I say, "Yeah." That's not a response to your question.

Q. Okay. Then, we go the next question: "-- because you wanted that validation, is it fair then to say that you communicated to Captain Rowe your availability for a sexual relationship?" And you say: "No, because when we would actually talk, there was never -- sober talk was never relationship-esque." So you're admitting that you did it when you were not sober, but when you were sober, you didn't talk about --

A. No, that's not what I was --

Q. -- those issues?

A. -- saying. I was saying that -- um -- there was never anything relationship-like in our -- um -- there was nothing of a romantic relationship in our -- um -- rapport.

Q. But I did state correctly, that when I asked you about being sexually available -- or available for a sexual relationship, you said, "But, because --" That is a correct statement of what's in that transcript?

A. And then, I followed with "No."

Q. You followed with "Yeah," before you --

A. I said, "Yeah," in response to your precursor to your --

Q. The judge can read the transcript. Thank you. Now, you have described an environment at 8th & I that was very hostile to you; correct?

A. Um -- you can describe it many ways. It was -- um -- stranger than fiction.

Q. Do you believe that 8th & I was hostile to you?

A. I believe there was -- um -- at the time that I had incompetent leadership and not -- um -- an environment that encouraged binge drinking and alcoholism, and I think -- um -- there was a lot of focus on sexuality and sexual anything; it was just very -- very unprofessional. And it was very difficult because there was this pop -- you know, perfect image projected to the public, but -- um -- I've never -- I could have never even of imagined what was actually going on inside.

MJ: Do you want that as nonresponsive or "No, hostile towards me"?

CC: Just nonresponsive, Your Honor.

MJ: "Yes" or "No" question: Do you believe that the work environment was hostile towards --

WIT: Yes.

MJ: -- you?

Questions continued by the civilian counsel:

Q. And you made several reports alleging sexual harassment, and on one occasion, a sexual assault while you were at 8th & I?

A. That's true.

Q. The sexual harassment claim was made against Captain Brian Wilson; correct?

A. Um -- the formal and that General Flynn directed me to route, yes. But informally, I made previous -- um -- reports to my supervisor and a few of the other senior officers, including Lieutenant Colonel --

Q. And the sexual harassment claim against Captain Wilson was a result of an allegation Captain Wilson made against you alleging misconduct; is that correct?

A. It's much more complicated than that.

Q. Isn't it true that Captain Wilson alleged misconduct committed by you?

A. Yes.

Q. You thereafter made a sexual harassment claim against him?

A. Yes.

Q. That claim was investigated; correct?

A. Um -- it's still under review; it's not complete. It's not been signed off by the Secretary of the Navy.

Q. I'm talking about the initial investigation.
A. No, it's not; it's an open investigation until it's gone through its appeal process. So no, it's not.

Q. Well, you appealed it, but the investigation was completed.
A. I don't know; I'm not a lawyer, so I don't know what the legal terminology is of what the status of it is.

Q. You were unsatisfied with the conclusions of that investigation?
A. That is true.

Q. And the conclusions of the investigation found that there was no sexual harassment against you?
A. Yeah.

CC: It's time. We can take a break right now.

MJ: A little early, but --

CC: To talk to -- pass a message to a certain witness.

MJ: Coordination.
Ten-minutes or fifteen?

TC: I think ten is fine, sir.

CC: Ten is okay.

MJ: Sixteen after. Court is in recess.

The court-martial recessed at 1406, 13 December 2011.

The court-martial was call to order at 1418, 13 December 2011.

The military judge called the court to order and stated that all parties present when the court last recessed were once again present.

Questions continued by the civilian counsel:

Q. Ma'am, we left off where I asked you about your business with Captain Wilson in the sexual harassment allegations you made. Do you recall that?

A. Yes.

Q. Another basis for the hostile work environment at 8th & I was your perceived failure of the Command to handle a situation involving a Corporal Gillespie or Lance Corporal Gillespie? Do you recall that?

A. Yes.

Q. Now, during that situation, Lance Corporal Gillespie came up to you in a bar, had some comments related to -- he came up to you in a bar; correct?

A. Yes.

Q. At the time he came up to you, you were speaking to an enlisted Marine at that bar, Francas [ph]?

A. No. It was Dominguez.

Q. Dominguez?

A. It was Dominguez.

Q. I got it wrong. He commented about the inappropriateness of the conversation -- not the inappropriateness, but the appearance of the officer/enlisted conversation at the bar?

A. No.

Q. He didn't comment about your positioning at the bar or Dominguez?

A. His comments were not related to anything having to do with appearance.

Q. Okay. Eventually, the bar began to close and you walked outside and Lance Corporal Gillespie was outside also?

A. Yes.

Q. At that point, you began to have a conversation with Lance Corporal Gillespie?

A. Yes.

Q. You were essentially -- Gillespie said something to the effect of "You were buddy/buddy with that Corporal right there," referring to Dominguez?

A. I don't remember his exact dialogue. I remember denunciatory comments made by him.

Q. Do you recall responding, "No. I was not buddy/buddy with him. Are you kidding me? No we are not"? Do you recall saying that?

A. I don't recall the dialogue; no.

Q. Do you recall telling him that you got a Master's Degree from Harvard?

A. My husband got a Master's Degree from Harvard.

Q. Do you recall telling him that you got a Master's Degree from Harvard?

A. No.

Q. Because that would be a lie; would it not?

A. It --

Q. You don't have a Master's Degree from Harvard?

A. I definitely don't. My husband does.

Q. I'm sorry?

A. He --

Q. Let me stop. I said "Master's"; I meant to say "Graduate Degree." You don't have a Graduate Degree from Harvard; do you?

A. No. I do not have any Harvard degree.

Q. You don't recall saying that to Corporal Gillespie?

A. No, I don't.

Q. Would it refresh your recollection if you took a look at the transcript of the conversation captured on video?

A. I have seen the transcript before. I don't need to see it.

Q. I'm sorry?

A. I don't know if I have to see it, but I don't need to see it.

Q. Okay. Do you remember reading a command investigation to that incident?

A. Yes, I do.

Q. That included the transcript?

A. Yes.

CC: Okay. A few more minutes.

TC: Your Honor, I think I know where defense counsel is going with this. I would object to trying to refresh the witness' recollection as a summing consistency on a collateral issue not related to her relationship with the accused or the assault, sir.

MJ: Mr. Faraj?

CC: It goes to the creditability of the witness, Your Honor. It actually has a more direct purpose in that we began this line of question with a hostile work environment.

MJ: Have it marked. Before you show it to the witness, be sure you show it both to the Court and to counsel before you go there as to the portions you intend to refresh. Have you already highlighted the portions you intend to refresh?

CC: I haven't. I didn't think I was going to use this.

MJ: Can you show me where you are going to be going?

CC: I'm sorry, Your Honor.

MJ: Captain Combe, if he stays within the bounds of Page 10, he moves along.

TC: It's still the government's contention, sir -- understanding that this is a specific incident -- that it's on a collateral issue. It's not directly related to her relationship with the accused or the assault here, sir. It just seems tenuously connected, sir.

MJ: Renew your objection after a line of questions; all right?

TC: Yes, sir.

MJ: Let's hear how it plays out first.

CC: May I approach the witness?

MJ: You may.

Questions continued by the civilian counsel:

Q. I only have one copy, ma'am, so I'm going to show it to you. Are you familiar with this document, the command investigation?

A. Uh-hum.

Q. I'm referring to Page 7 of that investigation, which has been marked as Appellate Exhibit XXII. Do you see here, Klay -- it actually says, "I actually did get my Graduate Degree from Harvard, so you can say whatever you want." Did I read that correctly?

A. Uh-hum.

Q. Is that right?

A. Yes.

Q. Okay. You didn't get a Graduate Degree from Harvard?

A. Yes.

CC: At the time, this conversation was taken place -- Lance Corporal Gillespie is standing at Parade Rest?

TC: Sir, again, I renew my objection to that particular piece of evidence.

MJ: I'm not seeing it. I don't see the relevancy of it. I'll give you a little latitude to get there. Continue to renew the objection, and I'll disregard the answers if you make the objection.

TC: Aye, sir.

MJ: Go ahead.

Questions continued by the civilian counsel:

Q. Lance Corporal Gillespie was standing at Parade Rest?
A. Inside the bar, Lance Corporal Gillespie came up to me and called me "a big slut, WM" and said that me and my slut Lance Corporal, who is pregnant, were the Barracks whores.

Q. Ma'am, I'm asking you about outside. Was he standing at Parade Rest?
A. He put himself at Parade Rest. I have never put a Marine at Parade Rest.

Q. I didn't say you did. I'm saying he was standing at Parade Rest.
A. Because he was mocking me with his friends.

Q. Was he standing at Parade Rest?
A. Yes.

Q. Okay. At some point after the conversation had gone back and forth, after you said "Whatever," and he says "Whatever" back to you, you struck him on the face and neck?
A. I slapped him because this was one of hundreds of times that a junior Marine approached me and called me a "slut" in the Barracks. Nobody did anything about it.

Q. If that's even true, that hasn't been substantiated by any investigations?
A. It has been substantiated. Have you read Hudspeth's investigation?

Q. I have.
A. Then --

MJ: You're standing?

TC: Again, sir, I'm renewing my objection to the impeachment.

MJ: Sustained.

TC: I still don't see where it's going.

MJ: Sustained. I don't see the relevancy. Move on.

CC: I'm going to get to the relevancy, Your Honor.

MJ: I don't see it. If you want to excuse the witness and make the argument --

CC: I'm not going to argue. I just got a couple more questions, but it's not about this directly. You'll see where I'm going. It's not about --

MJ: You are moving on from Gillespie.

CC: Right.

MJ: All right. Move on from Gillespie. I'm not going to consider -- you can renew the request for me to consider that testimony; but at this point, I don't find it relevant. If you make the connection, I'll certainly reconsider my ruling.

Questions continued by the civilian counsel:

Q. That incident was investigated?

A. Uh-hum.

Q. Correct?

A. Yes.

Q. That incident was also part of your argument or your allegations that you had a hostile work environment at 8th & I?

A. Yes. A junior Marine approaching me and calling me a slut --

Q. It's a simple question.

A. Yes.

Q. Okay. That incident was also investigated; right?

A. Yes.

Q. You went to NJP for it?

A. Yes, and so did the Marine.

Q. Okay. At the NJP, you admitted fault to General Flynn?

A. I always have.

Q. Did you admit fault to General Flynn?
A. Yes, I did.

Q. That you are responsible for the incident?
A. Yes.

Q. Your conduct in that situation -- isn't it also fair to say that contributed to the hostile working environment that you complained about?
A. It was three weeks before I left the Command. That incident happened three weeks before I left.

Q. You have complained that incident was a source, was an example of the hostile work environment that you experienced; correct?
A. Yes. Corporal Gillespie calling me a "slut" and saying those other things were examples. Yes.

Q. Okay. Again, my question to you is: It was that you were at fault; correct?
A. Yes, both me and the Corporal were NJP'd.

Q. I understand. You contributed -- the General said, "You contributed to that incident," and you admitted it?
A. Yes.

Q. Isn't that right?
A. Yes.

Q. This entire claim of hostile work environment is the very basis of your excuse to have been unable to report the alleged assault?
A. I had no confidence that anybody would actually --

Q. Great. The government went and got you a famous psychiatrist to try and explain why you had delayed the reporting; right?
A. Rowe said, the day of the assault --

Q. The government went and got you a psychiatrist that --
A. Rowe said, the day of the assault -- he said, "Nobody will ever believe you --

Q. The government --
A. -- because you already got in trouble for the slap."

Q. The government went and got a psychiatrist that you met for four hours who is going to explain to this court, and he has explained to you why your late reporting is known; right?

A. I don't have any idea what --

Q. Dr. Grieger met with you and he -- one of the things he talked about is your late reporting?

A. I don't know what Dr. Grieger talked about. He just interviewed me. I have no idea.

Q. I'm sorry?

A. I don't know what the plan is with Dr. Grieger. I have no idea.

Q. Okay. One of the things you talked about is a hostile work environment; right?

A. Yes.

Q. You established now that two of the incidents that you alleged were part of the hostile work environment. Is the Wilson incident that was found after investigation to be -- the sexual harassment was unsubstantiated. The second incident was the incident that you actually also reported and you admitted to General Flynn that you contributed to it?

A. Uh-hum.

Q. "Uh-hum" means "Yes"?

A. Yes. I told General Flynn that I found slapping a Marine to be unacceptable conduct. That's true.

CC: At this time, Your Honor, I would ask the Court to reconsider the testimony as a foundational basis for this testimony about the hostile work environment.

MJ: Within the context of that as a foundational matter?

TC: As a foundational matter, then no objection, sir.

MJ: Under those conditions, I'll consider it.

Questions continued by the civilian counsel:

Q. Another person that contributed to your hostile work environment is Suzanne Brick; correct?

A. Yes.

Q. Suzanne Brick was your boss at 8th & I at the Protocol office; correct?

A. Yes.

Q. You have alleged that she had sex with multiple people; correct?

A. Yes.

Q. That she drinks at work?

A. Yes.

Q. That she has allowed people who are subordinates of her have sex at work; correct?

A. Yes, with her.

Q. That she is generally incompetent?

A. Yes.

Q. That you could certainly do a better job than she could?

A. I think almost anyone could.

Q. Okay. Do you remember a series of e-mails that you sent Suzanne Brick after you left 8th & I?

A. Yeah. I have seen them multiple times. They appear in every investigation.

Q. Beginning on or about October. These are the only ones I have. There might be others.

A. Uh-hum.

Q. A few about October 14th. Would you say that the tone of those conversations are -- those e-mails -- generally cordial?

A. They were very cordial.

Q. At some points, apologetic for your conduct?

A. Yes.

- Q. In fact, Ms. Brick admonishes you to stop contacting the Marines in the office because you're having a bad impact on them, a negative impact. Do you recall that?
- A. Suzanne knew she was under investigation so she told the Marines --
- Q. Answer my question. Do you recall Ms. Brick admonishing you not to contact her Marines anymore?
- A. Yes. I already recorded Suzanne Brick -- I reported Suzanne to Colonel Montanus immediately after I left.
- Q. This hostile-creating woman, who was really terrible to you, still receives the benefit of your very nice e-mails after you leave the Barracks?
- A. Suzanne is very powerful. She used to work for General Dunford. Mrs. Amos really liked her personality, at least her --
- Q. You are now at Henderson Hall.
- A. I don't think you understand the powerful ties that Suzanne has.
- Q. I know. Everybody is in a conspiracy against you, but I'm talking about Henderson Hall.
- A. It's not conspiracy. It's the matter of Suzanne's ability to manipulate and lie.
- Q. Okay. At that time in October, you were done at 8th & I? You had no need to contact those Marines; correct?
- A. The only thing --
- Q. You had no need to contact those Marines?
- A. I did not see that there was anything inappropriate --
- Q. You had no need to contact the Marines at the Protocol shop at 8th & I after you left to go to Henderson Hall?
- A. I sent Lance Corporal Tinsley an e-mail recommending that she go to Henderson Hall.
- Q. You had no reason to contact any of those Marines anymore?
- A. I didn't think a Marine that was pregnant from having sex in my boss' house should still have to work for her as I told Major Barkley. I e-mailed Lance Corporal Tinsley to recommend that she leave.

CC: I can keep asking the questions. I ask the Court to please ask --

MJ: She gave one reason. Otherwise, did you have any other reasons other than that one professional concern about the Marine that worked for you?

WIT: No. I didn't really contact the Marines besides one or two e-mails.

MJ: Context from my question there, Mr. Faraj.

Questions continued by the civilian counsel:

Q. You talked about Tinsley. You told her that you could hook her with a job at Henderson Hall?

A. Yes.

Q. You had powerful contacts at Henderson Hall?

A. No, I don't. I talked to Colonel Anderson, and he was like, "We have to get her out of there. That sounds like a terrible situation." I don't have any contacts --

Q. The same gossip that you spread at 8th & I you are now spreading at Henderson Hall about 8th & I?

A. No. The only two people that I talked about it were Captain Raymonds and Colonel Anderson.

Q. What business was Lance Corporal Tinsley of yours?

A. She was one of my Marines that I had failed by not turning Suzanne in sooner. If I had, I don't think Tinsley would have gotten pregnant.

Q. She was raped?

A. You can ask her about it. Tinsley said that Captain Gallagher bought her 12 shots and then she had sex with him at --

TC: I don't see the relevance. It's hearsay and all sorts of things.

CC: It is not relevant.

MJ: It's not relevant. You are certainly allowed to make a report or encourage a report.

WIT: I have no idea what the story is, but I know that she is pregnant.

MJ: Ma'am.

WIT: I'm sorry.

MJ: Asked and answered. I'm not going to consider the last part.

Questions continued by the civilian counsel:

Q. You don't have any idea what the story is, yet you were spreading rumors? The same rumors you spread at 8th & I?

A. Who was I spreading rumors to?

Q. You just said that you had no idea what the story was.

A. I don't know what happened between Captain Gallagher and Lance Corporal Tinsley.

Q. Very well.

A. All I know is that she is pregnant with --

Q. Yet you still took it upon yourself to go to Henderson Hall and tell stories about that?

A. Colonel Anderson asked me what happened, and I told him the story of what was going on at 8th & I.

Q. Colonel Anderson did not ask you about a Captain and a Lance Corporal at 8th & I?

A. He did ask me what was going on at 8th & I, and he said that he used to be at 8th & I in the early 90s, and it just shocked him.

TC: Sir, this is speculation and hearsay.

CC: It is.

MJ: It's sustained. I will not consider it.

Questions continued by the civilian counsel:

Q. Is it fair to say that your e-mails were apologetic in tone to Suzanne Brick?

A. Yes.

Q. For spreading rumors about Suzanne Brick?
A. No. It was not apologetic for spreading rumors about her.

Q. She says, "Stop calling, e-mailing, texting the Marines in the office with regard to any incidents." You respond, "I agree, Suzanne. I have been disappointed to hear various [*inaudible*]" or words to that effect. Do you remember that e-mail?
A. Yes.

Q. Okay. You didn't come back to say, "I didn't contact them or text them or e-mail them." You didn't contact to say, "You are a failure. I need to take it upon myself to report you," as you have stated today? You were apologetic in tone?
A. To Suzanne?

Q. Yes.
A. Yes, I was.

Q. Okay.
A. I was very polite in tone. I did not want Suzanne to know that I had reported her.

Q. Okay. After you left 8th & I -- this horrible, terrible place -- you went to Henderson Hall. You continued to come back to 8th & I?
A. I live -- I didn't go back to 8th & I.

Q. I'm not asking you if you went home. I'm asking you if you went to 8th & I or any 8th & I facilities.
A. I worked out at the public gym half-a-block from my house.

Q. Did you go back to 8th & I or 8th & I facilities?
A. Yes.

Q. They actually had to get an MPO on you and had it issued at Henderson Hall [*sic*] to stop you from going there?
A. Yeah. That was one of the most illegal things I have ever witnessed.

Q. You did get an MPO to not go back to Henderson Hall
[sic]?

A. Yeah.

Q. You were actually escorted from their gym?

A. By seven armed Guard Marines.

Q. Imagine that. I wonder why?

A. In an empty gym on a Sunday afternoon. I don't know. I
don't know why.

Q. Why did you keep going back if it was such a terrible
place?

A. It was an empty gym, and I worked out there on the
evenings.

CC: Why did you keep going back to 8th & I if it was such a
terrible place for you?

TC: I think that has been answered, sir.

WIT: Captain --

MJ: The answer is: An empty gym.

WIT: It was half-a-block from my house.

MJ: And a half-a-block from the house.

Questions continued by the civilian counsel:

Q. You had an MPO. Do you understand what that is?

A. I --

Q. A Military Protective Order.

A. I don't think you understand what happened. They issued
the MPO the day after the Article 32. The day after the
Article 32, Colonel Montanus said that because I was
speaking negatively about --

CC: Objection, hearsay.

WIT: -- senior officers.

MJ: I will consider this.

WIT: He said because I was speaking negatively about a senior officer at the Barracks, they found me to be prejudicial to good order and discipline. Colonel Anderson said that Colonel Montanus asked him to give me the MPO based on that statement, that I said something negative about a senior officer.

The day after the Article 32 hearing, it was in place until I got out. When I got out in August, my husband was still an inactive reservist Marine, so I assumed that it was gone. On a Sunday afternoon, I went down to the Annex to workout, and seven Guard Marines showed me their SOP that said -- came from Colonel Montanus -- "Lieutenant Klay is not allowed on board the base." Seven armed Guard Marines came and escorted me out of the gym on a Sunday afternoon by order of Colonel Montanus.

CC: Because you were a toxic presence at 8th & I; right?

TC: Your Honor, that's argumentative.

MJ: That's an argumentative question. The basis and purpose of the MPO -- I'll consider the hearsay statements important.

WIT: They never had any rational -- when Lieutenant Colonel --

MJ: Ma'am, we got the answer. We don't need your justification. Next question, Mr. Faraj.

Questions continued by the civilian counsel:

Q. What is the exact date that you left 8th & I?

A. I don't remember. It was like --

Q. It was September; right?

A. What do you mean? The first day that I could go back to work, I requested to leave the Command.

Q. They sent you to Henderson Hall. You did not request to leave?

A. I requested to leave before they sent me. That's incorrect.

Q. Did you put in a request?
A. I put in the request immediately.

Q. Great. Because you wanted to get away from there?
A. Yes. I didn't want to work for Suzanne anymore.

Q. Yet, you continued to go back there?
A. I worked out in an empty gym in the evening that no one was at. I didn't think that because --

Q. There are two gyms at 8th & I; right?
A. Yes.

Q. Right?
A. Yes.

Q. You went to the gym that the Body Bearers work out at?
A. I went to the gym by my house.

Q. You went to the gym where the Body Bearers work out at?
A. They don't workout up there at night.

Q. You ran into Corporal Quinn at least one occasion?
A. I don't remember ever seeing Corporal Quinn.

Q. You ran into Corporal Hill, Corporal Quinn's friend, on many occasions and asked about Corporal Quinn?
A. I did ask Corporal Hill about Corporal Quinn. I never ran into Corporal Quinn.

Q. You ran into Corporal Quinn and he told you to stay away from him?
A. Corporal Quinn never said anything to me. He said -- I sent him a message about -- he told a civilian friend of ours --

TC: Your Honor, this is hearsay.

MJ: I think it's going to be subject of the Article 32 again?

CC: Well, I didn't ask the question, so it's nonresponsive.

MJ: I'll disregard that.

Questions continued by the civilian counsel:

Q. You hate Corporal Quinn?

A. Yeah. I think he is pretty disgusting.

Q. Why? He walked you home at a time of need?

A. He is one of Rowe's Marines. After everything that happened, he --

Q. He walked you home when he found you drunk on 8th Street in Southeast D.C., walked you home, took care of you that night, did not do anything bad to you. Why do you hate him?

A. Because he is one of Rowe's Marines. He started spreading rumors after the incident.

CC: Well, let's talk about that. On August 28th --

TC: Your Honor, we addressed it once or twice already. I think we can do it without defense counsel's commentary.

MJ: Let's go to the next theory without the editorial.

Questions continued by the civilian counsel:

Q. On August 28th, after the alleged assault, you texted Corporal Quinn; he didn't text you?

A. Uh-hum.

Q. "Uh-hum" means "Yes"?

A. Yes. I wanted to see if there was a witness. I wanted to see if he was actually even there.

Q. You texted Corporal Quinn; he didn't text you; right?

A. What happened was --

Q. Right?

A. I saw Hill --

Q. Right?

A. -- [inaudible]. I saw Hill, and I said --

Q. Did you text Corporal Quinn that day?

A. I said, "Something really terrible happened. Do you have --

MJ: Ma'am, the questions was, did you have --

WIT: Yes. Yes.

Questions continued by the civilian counsel:

Q. You got Corporal Quinn's number from Corporal Hill?

A. Yes. I just said that.

Q. You told Corporal Hill, "Corporal Quinn spent the night at my house and I need to talk to you to get Quinn's number"?

A. I didn't say that. I did not say that he spent the night at my house. I said that something had happened with Captain Rowe and Gunny Duboy, and I think that Quinn was a witness, and I wanted to contact him to see if he was.

Q. You were ready to report this?

A. I was thinking about it.

Q. All right. We are going to talk about that, but I want to focus on Hill. You're testifying today that you didn't tell Hill that Quinn spent the night at your house and you needed to talk to him?

A. No. I did not tell him that Quinn had spent the night at the house. I said that something had happened with Rowe and Gunny Duboy. I was really vague about it, and I wanted to see if Quinn was a witness.

MJ: Mr. Faraj, while you are finding that, there have been references to the e-mail exchanges in October which is Defense Exhibit C, for identification. That's where those questions are *[inaudible]*. Please proceed.

Questions continued by the civilian counsel:

Q. You called Hill and told him what again?

A. I told Hill that -- it was the very next day, and I said, "Do you have -- I didn't even say his name. I said, "Do you have so and so's information?" I described him. I said that something had happened with Captain Rowe and Gunny Duboy and I wanted to see if Quinn could be a witness.

Q. Now, let's talk about that. How could Quinn be a witness if you didn't know that Quinn was even in your house?

A. I didn't and I wanted to find out if he was.

Q. In the world of Marines at 8th & I, why is it Quinn that you were looking for?

A. Because Quinn would have been the one that heard Rowe screaming at --

Q. No. No. If you don't know that Quinn was in your house --

A. Because Rowe told me when he came in. Remember, when Rowe came in, he was saying that he knew that there was this Body Bearer so and so that was upstairs in the bedroom.

Q. How did he know who was upstairs in the bedroom?

A. Because he had a report from some Staff NCO that called him and told him -- this is what I remember him saying.

TC: I think the question was answered. I meant, the question calls for speculation, sir, and the answer is certainly is.

MJ: I think it's already been answered. Move along. Sustained.

Questions continued by the civilian counsel:

Q. Let me understand this. You believe that Rowe called his Gunny. His Gunny told him that one of his Body Bearers was missing and that Body Bearer happened to be at your house?

A. I don't know what happened. Rowe came in --

Q. That's fine.

A. He was on the phone with Gunny Duboy.

MJ: That's it. You don't know what happened.

Questions continued by the civilian counsel:

Q. When you talked to Quinn, he basically told you that none of the stuff you're saying was true?

A. I don't even remember what his response was. It was very -- some kind of like, "I don't want to have anything to do with any trouble." Something. I don't know. He was one of Rowe's Marines, so I don't know. Their Company Motto was, "snitches get stitches and get buried in ditches." That was his motto.

Q. Okay. Rowe threatened to kill you?

A. Yes.

Q. Quinn is his Marine who is loyal to him?

A. I don't know what his loyalty --

Q. You hate him for that?

A. I don't know if he is loyal to Rowe. I don't know what his deal is.

Q. Well, you just talked about the snitches and ditches?

A. I don't know if Quinn -- you never know if a Marine actually buys into whatever the mottos are. I just wanted to see if there was going to be a witness.

Q. Nonetheless, you are afraid of Rowe because he threatened to kill you?

A. Yeah.

Q. You contact one of his Marines to inquire as to whether he was a witness to this alleged assault?

A. Yes. Argue would have only been --

Q. Once you contacted Quinn, the information was already out?

A. I didn't tell Quinn. I just said -- I don't remember what I said to Quinn actually. I was just upset that he would, like, not just tell the truth. If he was there and if he heard something, then he should have been able to just say it.

Q. How do you know if he didn't tell the truth?

A. I don't know if he told the truth or not. I don't know if he was even there.

Q. You just said that you called him because you believe he was there?

A. I don't know if he was. If he was there, then he was a witness.

Q. Okay. You called this random person to see if he was a witness?

A. Yeah because nobody would believe me unless there was a witness.

Q. After this enlisted Marine told you to stop contacting him -- he doesn't want to talk to you -- you continued to contact him?

A. I sent him one follow-up e-mail that said, "You should just tell the truth. If you did witness anything, blah, blah, blah." It disgusted me that at so many levels, nobody would just tell the truth.

Q. You contacted Quinn on several occasions?

A. It wasn't on several occasions. It was immediately afterwards when I was trying to find out if he was a witness or not.

Q. After he told you to not contact him -- this enlisted Marine -- you continued to contact him?

A. I sent him one e-mail that said, "Tell the truth."

Q. The e-mail was on Facebook?

A. Yeah.

Q. Your testimony today is that you have no recollection of walking home with Quinn that night?

A. That's correct.

Q. Do you recall running into Quinn the night before while he was eating a pizza; do you know?

A. I have a vague memory of talking to him. Rowe yelled at me on the street and him walking away from him. I don't remember anything else.

CC: Do you remember seeing him with a pizza or no, the night before?

MJ: Who is "he"?

Questions continued by the civilian counsel:

Q. Quinn?

A. I don't remember. I don't have any memory. If I ever did, I don't remember anymore.

Q. Okay. Let me refresh your recollection to your testimony from the Article 32 about that particular event.

Please refer to Page 54 of Defense Exhibit A.

A. It just says, "I just remember --

Q. You are just reading it to yourself and if you recall.

A. Okay.

MJ: If that triggers a memory for you.

Questions continued by the civilian counsel:

Q. Read the second question and answer there.

A. It says, "Rowe --

Q. Just read it to yourself.

A. Okay.

Q. Are you done?

A. Yes.

CC: Retrieving the exhibit.

Questions continued by the civilian counsel:

Q. Do you now recollect what happened on the night of August 27th or the morning of August 28th?

A. I mean, I don't remember that. It is just slightly more descriptive than what I just said. It just says, "I don't remember anything except for Quinn eating a pizza and Rowe yelling at me."

Q. Okay. At the Article 32, you did remember running into Quinn while he was eating a pizza?

A. I guess so.

Q. Okay. You testified today that you have no memory until you woke up on the living room couch?

A. Uh-hum.

Q. Is that "Yes"?

A. Yes.

Q. Would it be fair to say that Mrs. Ariana Klay would not run around naked in front of a man other than her husband?

A. I don't even know what kind of question that is.

Q. It's an appropriate question.

A. No. I would not run around naked in front of people that are not my husband.

Q. Okay. That's what I'm getting at. It's unlikely that you would walk around naked in front of a man foreign to you or not someone that you have a relationship with?

A. Yes.

Q. That day, August 28th, after Captain Rowe left your house in the morning, you texted him a number of times and you called him a number of times?

A. Rowe called me that day.

Q. You texted him first and you called him a number of times?

A. I don't remember the order of it, but I already described that to --

Q. Is your answer that you don't remember texting him a number of times?

A. No. I told you that I don't remember. I know that there was communication.

Q. Do you remember testifying earlier today that he was the one that called and texted you because he wanted to check up on you?

A. Yeah. I do remember him checking up on me.

Q. Okay. My question to you is: Isn't it true that you were the one that texted him many times?

A. I have no idea. I do not know or remember.

Q. I'm going to ask you to refer to the bottom of Page 74 of Defense Exhibit A. Please read that to yourself and go on to the next page, top question and answer.

Have you had a chance to review that question and answer, those two questions and answers?

A. Yeah.

Q. Bottom of Page 74 and top of Page 75?

A. Uh-hum.

CC: Let me retrieve that.

Questions continued by the civilian counsel:

Q. Is it fair to say that you called him on August 28th several times after he left?

A. I really don't remember at all. I just know that he called and checked on me.

Q. Was that your testimony at the Article 32, that you called Captain Rowe several times that day and you said, "Yes"?

A. Yes.

Q. This is the person that you randomly -- you just contacted Corporal Quinn earlier that day; right?

A. Yes.

Q. Because you were upset?

A. Uh-hum.

Q. Right?

A. That's correct.

Q. Yet, you are calling him several times that day, "him" being Captain Rowe?

A. He contacted me. I don't remember. I think part --

Q. My question is: You contacted him several times that day?

A. Yeah.

Q. Okay. You continued to call him for months after that, on a regular basis?

A. It was initially -- like I told you, as I described earlier.

Q. My question is: You called him for several months after the incident?

A. No, not on a regular basis. It was more of him calling and checking on me.

Q. Okay.

A. To see who I was talking to.

Q. Back to Page 75 of Defense Exhibit A.

A. I remember what it says.

Q. Okay. You testified at the 32 when I asked you if you continued to call him for several months after that on a regular basis, you said "That's true. We inaudible at several times a day, I think."

A. Yeah.

Q. That's what you read in the transcript?

A. When he would contact me, I would initially, for the first three weeks, I would --

Q. That's what you said? That was what was in the transcript?

A. It's more complicated than that. You asked it --

Q. You'll be allowed to explain on redirect.

A. Okay.

Q. That is what you said at the Article 32 hearing under oath?

A. Yep.

Q. You also testified that you met with Mrs. Rowe; right?

A. Rowe directed that I --

Q. You met with Mrs. Rowe?

A. Captain Rowe directed that I meet --

Q. You met with Mrs. Rowe?

A. Yes, I saw her.

Q. You saw her that weekend or shortly thereafter?

A. No. It was like the next week.

Q. Next week? Okay. But before the next weekend?

A. Yes.

Q. That's the weekend you went to New York?

A. No. I saw her after I went to New York.

Q. Okay. You don't recall seeing her on a Monday after August 28th?

A. I was in New York on -- I don't remember the exact time. I did not see Maigan Rowe until after I came back from New York. Rowe sent her to make sure I didn't, like, kill myself after everything came out.

CC: Objection, calls for speculation.

MJ: Sustained for nonresponsive.

Questions continued by the civilian counsel:

Q. Do you recall receiving an e-mail from Captain Rowe a forwarded e-mail from Maigan?

A. Rowe -- that weekend of the assault -- forwarded me --

Q. Listen to me. Do you recall receiving an e-mail from Captain Rowe?

A. Yes.

Q. It was a forwarded e-mail from Maigan?

A. Yes.

Q. The substance of that e-mail was: Mrs. Rowe is raising a lot of concerns --

A. Uh-hum.

Q. -- about the way you two look at each other? "You two" being you and Captain Rowe.

A. Uh-hum.

Q. About how she feels that she is being ignored --

A. Uh-hum.

Q. -- around you?

A. Uh-hum.

Q. Right?

A. Yes.

Q. "Uh-hum" is a "Yes"?

A. Yes.

Q. How he is adamant about talking to you alone?

A. Uh-hum.

Q. This is the e-mail that he forwarded you?

A. Yes. I remember and I gave it to NCIS.

Q. She is essentially raising concerns to her husband about a relationship between you and he, an affair; correct?

A. It was an e-mail about his alcoholism and about wondering why that he was so preoccupied with me and the investigation. It was what the e-mail was.

Q. Did she say anything about an investigation?

A. Yes, she does.

Q. Okay. Which investigation are we talking about?

A. Um -- the -- she said something about -- like, why are you so concerned about the investigation -- I don't know which one she was talking about; I don't remember. I just remember her -- thinking that it was weird that -- like, she noticed too. Like, he was concerned with these investigations that had nothing to do with him.

Q. She's concerned about a relationship between you and he?

A. Yeah, she seemed concerned about that too.

Q. Right. And he forwards it to you; correct?

A. Yeah.

Q. And shortly after you received the email, you invite Maigan to your house; you call her up.

A. That is not accurate.

Q. What happened then?

A. Um --

Q. You didn't invite her to your house?

A. Rowe told me to --

Q. Did you invite her to your house?

A. I don't remember who invited who, but Rowe told me --

Q. You invited her to your house.

A. He directed Maigan to come to my house.

Q. You invited her to your house.

A. I -- I complied with it. I was just like --

Q. You invited her to your house.

A. I mean, regardless, Maigan is not Rowe. And Rowe was directing it. I was going along with whatever Rowe told me to do. He said that she was going to --

MJ: Ma'am, wait for Mr. Faraj's question --

WIT: Okay.

MJ: -- it tends to work better that way.

Questions continued by the civilian counsel:

Q. And when Mrs. Rowe came to your house, one of the things she asked you is -- well, you talked about alcohol; correct?

A. Yes.

Q. And I think you testified on direct that you had no further contact with her?

A. Um -- I did -- that's not correct; I didn't see her again --

Q. No, you testified on direct that you had no further contact with her; do you recall that?

A. I don't remember saying that, but I did have -- I did email her a couple of times after that.

Q. Okay. So if you said on direct that you didn't have any further contact with her; that would be a lie?

A. I didn't have contact in person with her.

Q. Got it. So when we talk about contact, at this point from now on, we have to distinguish between in person, by email, by telephone, by text? You were asked if you had further contact, and you said "No." Do you recall that?

A. I don't recall that.

Q. Okay.

A. But -- um -- I didn't see her again in person, and that's what I thought --

Q. Okay.

A. -- that was my --

Q. But you did have contact with her?

A. I sent her a few emails back and forth about --

Q. Right.

A. -- a job application.

Q. You sent her an email asking her, the wife of your rapist, to look over your resume because you wanted to look for jobs?

A. Maigan is an HR Specialist, and she said --

Q. You sent her your resume --

A. Maigan is not a rapist. Maigan --

Q. You sent her your resume --

A. -- has nothing to do with what happened.

Q. You sent her your resume --

A. Uh-hum.

Q. -- to ask her to look it over?

A. Because she volunteered to do that when she -- um -- had come over. I talked to her about how I wanted to get out of the Marine Corps, and that would help my alcoholism. And she was -- like, "Well, I'm an HR person," blah, blah, blah. And --

Q. Do I take that as a "Yes," that you sent her your resume?

A. Yeah, I did.

Q. Okay. On September 15 of 2010, you went to NJP?

A. Uh-hum.

Q. Correct?
A. Yes.

Q. And I think, at that NJP, you spoke to General Flynn?
A. Yes.

Q. You had an opportunity to report some of the things that were going on in your life at 8th & I?
A. Uh-hum.

Q. Correct?
A. Yes, and I did report that I --

Q. And you did report. And the General took your report seriously?
A. Yes.

Q. He looked for your answers to his questions regarding the Gillespie matter, which is what you were there for, but he also listened to what you had to say?
A. Yes.

Q. And I think you did that off record after it was over?
A. Um --

Q. You were done with the NJP, and then you spoke to either Colonel Miner or someone about these allegations; isn't that true?
A. Um -- no, I don't know what was on and off the record. I just know they asked me questions.

Q. Okay. And at that time, you could've reported the rape by Captain Rowe?
A. Yes. I did report it; I just didn't say who it was.

Q. You reported it to General Flynn?
A. Yes.

Q. You reported -- you -- throughout the process, you reported -- before January --
A. Uh-hum.

Q. -- you reported a sexual assault at 8th & I and a sexual harassment claim at 8th & I.

A. Um -- two sexual assaults, one sexual harassment.

Q. You reported one sexual assault and one sexual harassment claim?

A. Yes.

Q. You -- the one sexual assault was by Major Warren?

A. Yes.

Q. And the sexual harassment claim was Captain Wilson?

A. And I said there were two -- I specifically said two --

Q. I will get to that eventually. At that point, whatever you reported, was one sexual assault --

A. Uh-hum.

Q. -- and one sexual harassment claim.

A. No, there were two sexual assaults and one harassment.

Q. Is it your testimony that at the -- at the Article 15 hearing, you reported two sexual assaults?

A. Article 32?

Q. I'm sorry. No, Article 15; the NJP.

A. Yeah. Um -- I said -- yeah, I did say that there were two assaults. It should be in my top cover letter.

Q. What top cover letter?

A. There's -- um -- a cover letter -- that I just met with -- um -- I think it was Captain -- I don't remember the Captain's name. That --

MJ: It's something you drafted?

WIT: Yeah, it was something I drafted probably -- like, it went along with all the other evidence of NJP. They said, "Do you have any additional materials to describe the command environment?" And I submitted that to him.

CC: We don't have that document, Your Honor. And I see Captain Combe shaking his head, and it sounds like he doesn't have it either.

WIT: It's in the same package where -- um -- Suzanne Brick talks about what a good employee I am; that package.

CC: I've seen that. Okay. We'll talk about that. I'll come back to it.

Questions continued by the civilian counsel:

Q. Now, after August 28th -- I'm jumping around, but I'll come back to the Article 15. After August 28th, you told your husband that Captain Rowe was a big help to you?

A. Yeah. I did tell -- I did tell my husband that he was helping me with alcoholism.

Q. That he was a big help to you and that you're -- he's changing your life around?

A. Yeah, he was -- he was going out of his way to help me.

Q. You told your husband that?

A. Yeah. He -- Rowe --

Q. So going out of his way to help you is one thing; you acknowledging it and appreciating it and telling your husband about it is another thing; would you agree?

A. There was not a single person at 8th & I that was talking to me, and Rowe was --

Q. Ma'am, it's a simple question.

A. Uh-hum.

Q. Do you understand the difference? Someone might want to aid me with something, and I --

A. Yes.

Q. -- can refuse it.

A. Yes, Rowe was -- was offering it --

Q. Let me finish. Let me finish. Someone can offer me aid, and I can refuse it because I don't want to deal with the person --

A. Uh-hum.

Q. Which is different -- "Uh-hum," means yes?

A. Yes, he offered --

Q. Which is different than someone offering me aid and me being appreciative of it and talking about it to other people; would you -- do you understand the difference?

A. Yes.

Q. Now, in your case, the aid being offered by Captain Rowe was like the second example; and you discussed with your husband how appreciative you were of that assistance?

A. Yeah. Rowe showed remorse and -- after -- he went from not --

Q. That's a "Yes"?

A. Yes.

Q. Okay. Because when you say, "Yeah;" if we read it later, you'll say, "No, that's not what I meant," and -- you know --

A. Yes.

Q. So, yes, he did --

A. Yes, he did help me.

Q. And you told your husband that you appreciated the help?

A. I told -- um -- a couple different people that Rowe was helping me.

Q. But your husband; that you appreciated the help?

A. Yeah.

Q. And your husband then wrote a letter -- based on your comments -- wrote a letter to the General saying how Captain Rowe is helping you move your life forward, and that the General should take that into account in determining punishment at the NJP.

A. Ben was so happy that I was -- that I quit drinking.

Q. Did you understand my question?

A. Yes. I mean, I don't really see what --

Q. Okay.

A. -- the thing is because --

Q. Your husband -- I'll ask it again, so that we are clear for the record.

A. Uh-hum.

Q. Your husband wrote a letter to the General based on your comments --

A. Uh-hum. Um --

Q. -- describing how Captain Rowe was helping you move your life forward.

A. It wasn't just based on my comments; it was based on everything he had observed. And I had told Rowe before -- before the assault, I went into detail with my husband and told him how Captain Rowe is the first person that told me that he knows that Suzanne is having all these sexual relationships, and --

Q. Let's take it one step at a time.

A. I'm just saying, Ben --

CC: She's nonresponsive.

WIT: Okay.

Questions continued by the civilian counsel:

Q. Before the NJP, Captain Rowe was helpful?

A. Yes. Um -- he was helpful at a distance and --

Q. Even though he would --

A. He did not --

Q. -- humiliate himself and --

A. -- he wouldn't talk to me in public.

Q. -- make sexual innuendos at you, that you are now denying or remember; I don't know. But, this was before August 28th; right?

A. Before August 28th, he did -- um -- give me some sound advice about how to -- um --

Q. Good.

A. -- navigate in the command and leave the command.

Q. Great. After August 28th --

A. Uh-hum.

Q. -- August 28th is the date you alleged you were raped.

A. Yes, I'm familiar with the date.

Q. Okay. After August 28th, you are not under charges -- on August 28th. You have not been charged; you've not been notified of NJP. In fact, as far as you know, Corporal Gillespie is going to NJP?

A. That's not true.

Q. All right. You remember going to New York a week after the alleged assault?

A. It was -- it was not the week after --

Q. Do you remember going to New York a week after the alleged assault?

A. It was the same weekend; it was the same weekend. It wasn't the --

Q. You went to New York that weekend?

A. Yes.

Q. When did you leave for New York?

A. My husband came back from California the next day and --

Q. Which is Sunday.

A. -- and we went to New York.

Q. You left for New York on Sunday?

A. Yes.

Q. How long did you stay in New York?

A. Um -- I think not even a day. They called me and said that I needed to come back. Um -- they said that there was an urgent matter that I needed to come back for. And I needed to pay out of pocket to come back off of leave.

Q. Suffice it to say -- well, let me back up. Do you remember making a statement -- you made many statements; and I'll have to look for it here in a little bit.

A. Uh-hum.

Q. Do you remember making a statement that you went to New York in early September, and that you were called back -- you were called --

A. Yes.

Q. -- to come back, but it turned out to be not to just come back, but to be notified of NJP. Do you remember making a statement?

A. So -- I'll tell you the sequence. So -- assault happened, next day my husband came back -- um -- I drove with my husband with our dog up to New York. Um -- that evening -- or that day, on the way up there, I called Jim Bob and said that I want to self-refer for alcoholism. And I promised my husband that I would -- um -- get help and not spend another day at 8th & I. That evening, Lieutenant Colonel Hanger [ph] called me and said that I needed to be there the next day, and I need to pay out of pocket and fly back. Um -- because they --

Q. You weren't on leave; right?

A. I was on -- um -- it was -- like, a 96 status. So, either way, he said I needed to -- um --

Q. You had a day off on Monday?

A. He -- I think it was leave, because it was preapproved by Lieutenant Colonel Hanger; that's why it came in the Hudspeth's investigation that he had preapproved my leave, and then told me to fly out of pocket during my leave to come back to notify me about something that could've happened a couple of day later.

Regardless, I flew back -- um -- came in, they notified -- I already knew I was going to get NJP'd for that, so that was -- like, always the assumption. And -- um -- I thought Gillespie would get NJP'd too, and he did.

Q. You thought you deserved to be NJP'd? You didn't --

A. I didn't really care to be honest with you. I didn't -- I didn't really care. I really wanted to leave my environment and get better.

Q. Well, let's talk about everything you talked about; the sequence. You weren't notified of NJP until after the alleged assault?

A. I was notified -- I mean, the investigation was going on at that time.

Q. Isn't it -- you just said it. So just --

A. Yes.

Q. You were notified of the NJP after the alleged assault?
A. So August 7th was the slap, August 28th was the assault.
I was not --

Q. You were notified --
A. -- notified until -- um -- like, September 2nd; for NJP.

Q. Okay. Which is after the alleged assault?
A. Yes.

Q. Great. So, at this point, you don't know when the NJP is going to take place. You just know it's going to take place.
A. They told me it would be -- like, in the next week.

Q. Okay. And it actually took place on September 15th?
A. Yeah.

Q. Right. So between the time you're notified -- September 2nd -- and September 15 is when Lieutenant Klay is getting together her extenuation and mitigation package for the General; right?
A. Uh-hum.

Q. Right?
A. Yes.

Q. And that's when you ask your husband to write a letter for you; correct?
A. Yes.

Q. And that's when you tell your husband how he should write about how you are changing your life based on help you're getting from --
A. I just --

Q. -- Captain Rowe?
A. I didn't tell him to write anything. I didn't tell Ben to write anything; he did it on --

Q. You didn't tell --
A. No.

Q. You didn't tell your husband that Captain Rowe was helping you --

A. I told my husband that Captain Rowe was helping me; I didn't tell him what to write. I didn't have any --

Q. You told him that he was helping you?

A. I did tell him that Captain Rowe was helping, yes.

Q. Okay. And that was after he raped you?

A. Yeah, he was helping me.

Q. Okay.

A. He went from not making contact with me in public to all of a sudden, going out of his way to advocate for me after that.

Q. And you asked Captain Rowe for a statement?

A. Yes, and Suzanne Brick too.

Q. Why would you ask this terrible, horrible woman for a letter of recommendation, who was making your life miserable?

A. Because I had reported her to Colonel Montanus -- I knew that there would be investigations, and I wanted there to be a record -- there was with my fitness reports -- but I knew that she was going to retaliate against me once she knew I had reported her.

Q. How did you know that?

A. Um -- that's what she did. She went -- that -- um -- how she conducted herself with other -- um -- other people external to the Barracks. If someone --

Q. Well, you discovered that to be different than what you believed. You're making this stuff up, because based on her emails to you; she was cordial back and said -- you know, "that's fine;" right?

A. Anybody who reads the Hudspeth investigation will see what kind of person that Suzanne is -- or even if you -- um --

Q. Ma'am -- Ma'am.

A. Yes.

Q. You made a statement -- you made an allegation, just now --

A. Uh-hum.

Q. -- that she was going to retaliate against you?

A. Yes. She --

Q. Right?

A. Yes, I believe that --

Q. She never retaliated against you though.

A. She did.

Q. When?

A. Um --

Q. What did she do after you reported her that was retaliatory?

A. She told me that I -- she said that I needed to be escorted -- um -- that I needed to be -- when I PCS'd -- or when I had PCA'd to Henderson Hall, she told Major Anderson that I needed to be escorted off base so I wouldn't steal anything from her office. She went on a campaign and told -- um -- all kinds of people that -- um -- Lance Corporal Tinsley told me that she wanted to -- even in her statements --

CC: Hearsay.

WIT: Her statements in the Hudspeth investigation talk about how she was asking people for --

MJ: Is there an objection there?

WIT: -- dirt on me.

CC: I have an objection to hearsay about Tinsley and --

WIT: She was actively asking --

MJ: Is there any relevancy to this?

WIT: -- for dirt.

TC: No, sir.

MJ: Hearsay objection -- you're objecting to nonresponsive.

I'm not going to consider that.

Ma'am, this will go much faster if you answer "yes" or "no" to the questions --

WIT: Okay.

MJ: -- and allow Captain Combe, in redirect --

WIT: Okay.

MJ: -- to clean up the areas that to need to be --

WIT: Okay.

MJ: -- as he perceives them, cleaned up or clarified.

WIT: Okay.

Questions continued by the civilian counsel:

Q. You testified that she retaliated against you just now; correct?

A. Yes.

Q. Okay. Yet, in October, after you had left; after she supposedly -- she escorted you -- you will still very cordial with her?

A. Yes.

Q. And she was cordial back to you in the emails?

A. In the emails, not really.

Q. Okay. Now, what did you ask your rapist for a reference letter; to catch him also?

A. No -- um -- I didn't -- at the time, I didn't think I was ever going to report Rowe. I thought it was --

Q. No, no. That's not what you -- I'm not talking about reporting. You were --

A. I thought it was something that --

Q. Let me finish the question.

A. -- it would just go away.

Q. Let me finish the question. When you testified about this alleged rape, on direct, you began to tear up and show a lot of emotion --

A. Uh-hum.

Q. Right?

A. Yes.

Q. And you were so upset by Quinn's nonresponsive-ness [sic] that you decided that you hate him because he's part of this.

A. I don't know what Quinn's role is in all of this.

Q. You decided that you hate Quinn; right?

A. I don't hate Quinn; I -- I think he's just one of Rowe's Marines.

Q. Do you recall testifying that the reason you hate Quinn is because he's just another participant?

MJ: Cite your page.

CC: Page 106, Your Honor.

Questions continued by the civilian counsel:

A. Yes.

Q. Do you recall that?

A. [Nonverbal response].

Q. So at the -- you don't recall that?

A. Yes.

MJ: She said, "Yes."

Questions continued by the civilian counsel:

Q. So you're in a state of mind, at this point, of hurt and anger and rage at Rowe and his body bearer Marine, Quinn; right?

A. Yes.

Q. Would it be fair to say that you're even more angry because you feel like you can't do anything about it, based on your testimony?

A. I don't even know.

Q. Okay. And so, within a week or 10 days, you're asking your rapist for a letter of recommendation to put in front of General Flynn?

A. Yes.

Q. And he actually gave you one?

A. Uh-hum.

CC: I'd like to take a break at this time, Your Honor.

MJ: Ten or 15 minutes?

CC: Fifteen minutes. I need to just check my notes and -- we might be wrapping up pretty soon.

MJ: All right. Quarter to the hour.

Again, the instructions remain the same. Do not discuss your testimony with anyone, ma'am.

The court is in recess.

The court-martial recessed at 1530, 13 December 2011.

The court-martial was called to order at 1544, 13 December 2011.

MJ: Court will come to order. All parties present when the court last recessed are again present.

Mr. Faraj.

Questions continued by the civilian defense counsel:

Q. Ma'am, one of the things you testified about for not reporting is you feared Captain Rowe's influence over the command

A. Yes.

Q. Isn't it true that you had quite a bit of influence yourself?

A. I had no influence.

Q. Your husband worked at the Whitehouse, for the Whitehouse budget office; correct?

A. That has no influence over 8th & I whatsoever.

Q. Your husband works at the Whitehouse Budget Office?

A. Yes.

Q. It is a fairly important position.

A. It has nothing to do with the Barracks.

Q. It is a fairly important position.

A. It is, but it has nothing to do with 8th & I.

Q. I understand, but it is an important position.

A. Yes.

Q. You had a direct line of communications to a Vice Admiral in the Navy; isn't that true? Isn't that true?

A. Yes.

Q. You also -- regardless of your statements about Captain Rowe's influence, you were very familiar with an incident, in which a Marine went to jail because that Marine made a sexual comment at 8th & I and Colonel Smith found out about it; correct?

A. Yes.

Q. So, as soon as Colonel Smith got wind of a comment by a Marine that had anything to do with -- that was sexually related, he put him in the brig.

A. Yeah, when I told Lieutenant Colonel Henger, he told me to not make allegations.

Q. My questions is: You were aware that when an allegation was made of a sexual nature, Colonel Smith took it seriously.

A. That's not true. He took it seriously at certain times. I don't know -- I never told Colonel Smith directly about the sexual harassment that was going on. I told Lieutenant Colonel Henger.

Q. You are aware of at least one incident -- at least one incident, when someone at the Barracks made an allegation of a sexual comment. Colonel Smith put that Marine in the brig who was responsible for the comment; isn't that true?

A. Yes. I guess some people are protected and some people are not.

MJ: Ma'am, please. Answer the question, save the commentary. This is the same counseling I gave the attorney, I am giving to you. Answer his questions, it will go much quicker.

WIT: Yes, sir.

Questions continued by the civilian counsel:

Q. With every investigation that has taken place into your allegations, when you were dissatisfied with the conclusions of the investigating officer, you appealed.

A. Yes.

Q. And you write prolifically; right?

A. Yes.

Q. In fact, your appeal to the Hudspeth decisions was 22 or 23 pages of single space text that went into great detail on why it was faulty; correct?

A. Yes.

Q. You communicated with Lieutenant Colonel Shinkel [ph] on more than one occasion to direct him to evidence that you believed he should go into in conducting his investigation.

A. Yes.

Q. So, you are well aware of how to place your thoughts or your concerns on paper; correct?

A. Yes.

Q. And to direct them to the appropriate authority or person; correct?

A. Yes.

Q. When you read the allegations underlying the cause for separation from the Marine Corps, you made no challenge to those.

A. Which ones?

Q. The seven or eight pages you referred to that are part of your resignation document -- not resignation document -- your show cause document --

A. I did not -- I did not challenge them because I did not see them until after I was given my DD-214.

Q. You're saying that you did not see a lawyer in this office about being forced to resign or face administrative discipline or legal discipline?

A. That's correct.

Q. So you did see somebody?

A. That was not the -- that was not the message that I was given. I was given the choice that -- I kept expressing my concern to Colonel Anderson that I wanted to resign as soon as possible and --

Q. Why didn't you resign?

A. I tried to. I did everything I could.

Q. You put in papers?

A. Yes. And they told me I was on legal hold.

Q. Oh, okay. That's -- well, so you were on legal hold.

A. But I didn't know what I was on legal hold for because the slap and NJP had already happened in September.

Q. And you were on legal hold after that for other matters.

A. I didn't even know why I was on legal hold. No one could give me an answer.

Q. Okay. Nonetheless, when you saw these papers that I referred to, these for cause papers that had the Article 32 documents appended to them, you made no appeal.

A. The Article 32 was not attached to it when I made the appeal.

Q. You did not appeal.

A. Yeah, I didn't appeal. I just wanted to get out; that's correct.

Q. But you were getting out under circumstances that would suggest that you were at fault for something.

A. I just wanted to get out. I didn't -- I didn't --

Q. So you did not appeal?

A. I did not at that time because I just wanted to get out of the Marine Corps.

Q. Got it. And the reason you got out was because -- look if you don't get out, you're going to be processed for either administrative separation or a legal proceeding.

A. But that happens with NJP anyways. So --

Q. But you had been done with your NJP, we're talking about other misconduct.

A. But -- no there wasn't any other misconduct. General Flynn had made the decision to -- he hadn't decided if -- after an officer goes to an NJP, you know, as you know, you get sent to a board or not. So, they said, instead of going to a board, if I wanted to, I could just resign, and I said that I would resign.

Q. The commentary on this Defense Exhibit B, for identification, included statements about your conduct with Captain Rowe?

A. Yes, it did.

Q. And lots of other matters that would be considered misconduct by an officer in the Marine Corps: do you not agree with that?

A. Yes.

Q. Okay. So, NJP regarding Gillespie aside, you could have, though not necessarily, you could have faced additional misconduct charges.

A. For -- For what?

Q. For the conduct that you testified to at the Article 32 hearing, which is listed in Defense Exhibit B, for identification.

A. Okay.

Q. Right?

A. Yes.

Q. Okay. And of course, the documents you referred to from the Article 32 are simply the supporting documents to that letter.

A. That I saw after, yes.

Q. Right? Okay.

A. I didn't see that letter though. It was just the letter that was given to me after I was discharged; doe that make sense?

Q. Yes. But you still didn't file an appeal or anything of that nature.

A. Yes, because the letter I saw that I signed was just that I am requesting to resign, and I will not get any worse than general and under honorable, and I just signed that. There was nothing else attached to it at that point. It was just a single letter with one paragraph attached.

Q. So, based on your testimony today, the Marine Corps gave you none of this -- these documents before you signed and made a statement agreeing to leave the Marine Corps.

A. I'm trying to remember if they did or not. I don't remember.

Q. Well, you just said that you didn't, so --

A. I know. I misstated.

Q. You're under oath. You've got to testify truthfully.

A. Yes. Let me think about if I got them or not. Yes, there were documents and then I talked to him about it and he said, yeah, it'll just slow down the process if you appeal, but if you sign it, it'll go really fast; and so I just signed it.

Q. Who told you that?

A. Captain White.

Q. Okay. I don't want to get into what he told you because he was your lawyer; suffice it to say, you saw all the documents that I referred to.

A. I assume so, there were --

Q. Before you were --

A. Yes.

CC: -- discharged; right?

MJ: She answered it; she said "yes."

WIT: But before that I did not know that there was going to be any additional misconduct that I was going to be tried for. I assumed that --

MJ: That's all speculative, Mr. Faraj.

CC: I didn't ask that question, Your Honor.

MJ: But you did earlier, and she is trying to answer that part of the question with regards to your 32 comments. So, again, wait for the next question, ma'am. We'll simplify throughout the process.

Questions continued by the civilian counsel:

Q. Now, you failed to report on December 4th at the NJP; correct?

A. I'm sorry you said --

Q. We've already established that you didn't report at the NJP; you agree with that?

A. I don't agree with that. I reported that there were two assaults and harassment.

Q. You didn't report that Captain Rowe --

A. I did not say his name.

Q. To NCIS on October 5. Do you remember giving a statement to NCIS on October 5 of 2010?

A. Yes. I did not -- I told them that I did not want to give any names.

Q. You did not report then either; correct?

A. Correct.

Q. You gave another statement to NCIS on September 20?
A. Yes.

Q. None of these statements were about this matter. They were about other matters, other allegations that you were making?
A. Yes.

Q. And on that one, you didn't report either; correct?
A. Correct.

Q. On November 3rd, you reported that there was one sexual assault and one instance of sexual harassment; do you recall that?
A. To where?

Q. To one of your therapists.
A. Yeah I guess there -- I don't know why --

Q. You reported one sexual assault --
A. Maybe I was talking about Rowe and the harassment.

Q. Okay. And maybe you were talking about Major Warren --
A. I don't remember.

Q. -- which was a sexual assault.
A. Yes.

Q. Based on your report --
A. Yes, it was a less severe incident of sexual assault that's [inaudible].

Q. Got it. Now, you have made a sexual assault allegation every time you've been in trouble.
A. No.

CC: At the naval academy, you assaulted a person --

TC: Objection, sir; relevance.

MJ: I'm going to allow it for a limited purpose. I'm going to allow a line of questioning in this area consistent with the earlier motions practice we had in this area. This is the past acts in the MO motion.

TC: Your Honor, I think that --

MJ: Do we need to excuse the witness?

CC: If we're going to get into this we need to excuse the witness. I would request --

TC: I think that we need to excuse the witness and --

MJ: Ma'am, if you would step down, I would ask you not to discuss your testimony with anyone. You may return to the witness area.

The witness departed the courtroom.

The trial counsel argued on his objection.

The civilian defense counsel argued the trial counsel's objection.

The military judge overruled the trial counsel's objection.

The witness entered the courtroom.

MJ: Ms. Klay, again, I'll remind you that when the counsel asks you a question, listen to the question, answer it yes or no within reason. If you feel that you need to clarify, ask permission to do that.

WIT: Okay.

MJ: This next section will go much easier if you do all that suggested course of action.

Questions continued by the civilian defense counsel:

Q. Ma'am, you attended the Naval Academy.

A. Yes.

Q. At the Naval Academy, you were accused of assaulting a Midshipmen.

A. No.

Q. Did the Midshipmen accuse you of assault?
A. After I made a sexual assault complaint, he made that accusation.

Q. Okay. Well, you began that process by saying that there was no sex involved between you and the Midshipmen we are referring to is Midshipmen Campbell.
A. Yes.

Q. And after that, you changed your story to consensual sex.
A. No.

Q. Do you recall that there was a physical altercation between you and Campbell?
A. Yes. After the assault, there was.

Q. Okay. At this point, after that physical altercation, you went and reported Campbell; right?
A. Yes.

Q. Campbell told the police, based on what you learned later, that you were engaged in a sexual relationship.
A. I had never met him before. There was no sexual relationship.

TC: And the question calls for hearsay as well, Your Honor.

CC: It's the --

MJ: She denies any relationship with this individual Campbell.

Questions continued by the civilian defense counsel:

Q. So you, after that, said there was no sexual relationship.
A. I had never met him before that day.

Q. I understand. After that, you said -- you told the police that there wasn't any sex between you.
A. I don't remember, but I didn't report it until the next day.

MJ: That was nonresponsive. You may answer his question.

WIT: Yes. Yes, I reported it.

Questions continued by the civilian counsel:

- Q. You reported -- the police came to you to ask you, and you said there wasn't a sexual relationship between you.
- A. I have no idea. I don't remember. It was in 2003 or 2004. I wasn't going to get in trouble for anything. Sir, can I clarify?

MJ: Captain Combe is ready to clarify when he gets his chance on redirect.

Questions continued by the civilian defense counsel:

- Q. So, you never met Campbell before?
- A. That's correct.
- Q. You don't recall telling the police that you met him in a bar?
- A. Yeah, I met him that night.
- Q. Okay. That's what I meant.
- A. Yeah.
- Q. So, he wasn't someone that was completely alien to you; you had met him.
- A. I mean for -- I had met him briefly, earlier in the evening that same evening.
- Q. I don't want to get into the details. I just misunderstood. So you do know Campbell?
- A. I don't know him.
- Q. I'm sorry, you met him that night --
- A. Yes.
- MJ: I get it. You met him. Move along. This is a limited area for a specific instance of conduct and [inaudible] character. That is the limited purpose I am considering this for.

Before you move about with that, do you have an actual statement or do you just have some [inaudible].

CC: We just have some *[inaudible]*, but I would move to have it admitted under 803(8)(c).

MJ: We're not taking it as a defense exhibit at this point. Lets see what happens with this question.

CC: May I approach the witness, Your Honor?

MJ: Captain Comb, he wants to approach with this document.

TC: Your Honor, I --

CC: I'm not moving to admit. I'm moving to refresh her --

MJ: I know. I know, but the nature of this document --

TC: Understanding that the defense counsel is going to attempt to refresh recollection I don't think there is a proper memorandum to do that; its not anything produced by her.

MJ: That's the problem I have, Mr. Faraj; I don't have -- You're free to work -- you're not going to be able to refresh her memory, but you certainly can work from the document asking your questions.

CC: Your Honor, I can use anything to refresh her recollection. I mean, it doesn't have to be produced by her. It may refresh her recollection; it may not. I apologize, but anything can be used to refresh her recollection.

MJ: Lay the foundation for how that -- what you're going to show her.

Questions continued by the civilian defense counsel:

Q. Do you recall being interviewed by NCIS?

A. Yes.

Q. Regarding this matter?

A. Yeah.

Q. And you recall talking to a Special Agent Michelle Robinson?

A. Yes.

Q. Special Agent Robinson was one of the investigators on this matter?

A. Yes.

Q. That's how she talked to you and you spoke to her? That's why you spoke to each other?

A. What do you mean? I'm sorry.

Q. Michelle Robinson contacted you and you spoke to her because of these allegations.

A. Yes.

Q. I have what has been marked as Appellate Exhibit XXIII, and it's the executive summary of -- well, I am referring to the last page of Appellate Exhibit XXIII, which is the executive summary of the events. Do you think that if you reviewed the executive summary, that it might refresh your recollection of what exactly took place?

A. I don't know -- I don't understand why you want me to review Michelle Robinson's --

Q. Just to see if that would refresh your memory as to what happened. It may not.

A. I don't think it will, but I'll look at it if that's what --

MJ: I'm going to allow her to look at it. You're asking for the bottom of the --

CC: Last page.

MJ: -- last page, carrying over to the completed end of that paragraph about narrative?

CC: Yes, Your Honor.

MJ: Limiting yourself to the last sentence as it begins on that first page, and completes just above the words all caps "NARATIVE." Read just that. When your done please look up.

WIT: I don't think that this is accurate.

CC: Okay.

MJ: Her memory has been refreshed. She doesn't believe that it's accurate. Please, move along.

CC: I'm going to ask that this be moved into evidence as Defense Exhibit D, and the words "for identification" be stricken, and I move to have it admitted under 803(8)(c), Your Honor.

MJ: It's offered, but not admitted at this time. I certainly will litigate at the appropriate -- a later time, unless you need --

WIT: Sir, it seems like --

MJ: One moment.

WIT: Okay.

MJ: So, its not admitted into evidence at this time, and we will litigate its admission, but it appears that Captain Combe is prepared to object to that. But if she needs it to refresh, its an appellate exhibit. Please move on to the next line of questioning, Mr. Faraj.

CC: I have one last question on this matter.

WIT: Sir, can I make a comment about that? When --

MJ: Captain Combe will try to draw it out for you, unless counsel wants the comment to be made.

CC: Nope.

MJ: Captain Combe? Negative response from Captain Combe. You will get your chance, ma'am, on redirect.

Questions continued by the civilian defense counsel:

Q. And then, again, the allegations in this case, the alleged assault took place in August 2010, late August. Once you got to NJP, you begin to, sort of, generally state that there was another sex assault.

A. And that's not true. There were always two incidents.

Q. Okay. But this alleged second incident doesn't really become clear until January of 2011.

A. I said there was an incident, I didn't share who it was. Rowe was still living in the same state and [inaudible].

Q. Got it. On November 3, 2010, when you spoke to your psychiatrist or the therapist, you reported only one incident of sexual assault and one incident of harassment.

A. Yeah, I just told her about the Rowe thing and the -- I didn't discuss Major Warren.

Q. And you have -- at the time you were doing this therapy, you developed a deep trust with Ms. Piacquadio?

A. Ms. Piacquadio.

Q. Piacquadio. You told her everything.

A. I told her everything about Rowe.

Q. You told her about everything that had happened to you.

A. I told her about Rowe within a one hour time constraint over the period of --

Q. You met with her several times.

A. Yes.

Q. And you met with her several times before November 3.

A. Yeah, yes.

Q. But even on November 3, you only are reporting on sexual assault incident, and one incident of sexual harassment.

A. To Ms. Piacquadio?

Q. Yes.

A. I didn't even talk to her about Major Warren's thing.

Q. I understand. We're not talking about specifics. We're saying one incident of sexual harassment and one incident of assault.

A. Yes.

Q. And this is a person who you testified you had deep trust in and you told her everything; correct?

A. No.

Q. You testified previously at the Article 32 hearing that you trusted her and that you told her everything.

A. You can't tell somebody everything within an hour, once every couple weeks.

Q. Well, you did go through the trouble of reporting one assault and one sexual harassment claim.

A. Yes.

Q. You didn't give specifics, but you said one and one.

A. I did give specifics to Ms. Piacquadio.

Q. I understand, but on that occasion, you said one and one.

A. That is fine, yes. I don't even think it's relevant.

Q. So you could have said two assaults and one --

A. The Major Warren incident of him groping me was not a -- destructive to my life.

Q. Well you alleged a sexual assault and he was investigated and you finally dropped the charges. It was sexual assault --

A. Actually, I never dropped the charges.

Q. Okay. But it was a sexual assault. He groped you on the breast?

A. Yes.

Q. Or at least you alleged that he did.

A. He did during the --

Q. He groped you on the thigh.

A. Yeah, before he got a DUI that night --

Q. Okay.
A. -- and he did it in front of other officers.

Q. But he -- that was a sexual assault.
A. Yes.

Q. And you reported it as such.
A. Yes.

Q. Okay. And so, going back, on November 3rd, to Ms. Piacquadio, you are only reporting one and one.
A. I did not discuss -- Yes.

Q. Right. And you did testify previously that you completely fully trusted her and told her everything?
A. Yes.

Q. Who is Phil Klay?
A. He is my brother-in-law, and a good friend of mine.

Q. He got a \$350,000 book deal?
A. Yes.

Q. And that book is suppose to include your story?
A. No.

Q. You never said that one of the chapters in the book is going to include this story? Or your story?
A. No. No.

Q. Tell us about that please.
A. What would you like to know?

Q. Why is he writing a book?
A. He is writing a book because he is a phenomenal writer. He's already been published in the New York Time, New York Daily News --

Q. What is the book about?
A. Its five fiction stories over the course of the Iraq and Afghanistan wars.

Q. And it has nothing to do with you?
A. No.

Q. So, as you sit here today, it is your testimony that Mr. Klay will not include any part of your story or the emotional toll of this story allegedly had on you.

A. He is writing a fiction novel, and as of right now, that is not his plan.

Q. It might become his plan?

A. I have no idea of what Phil is going to write about. I know he has an interest about sexual harassment in the military, based off of what he observed while he was in. But I have no idea. He has never discussed with me that he is going to -- even when -- the last time I talked to him, he said that he is not planning on right now writing anything about it.

Q. Is Mr. Klay in the courtroom today?

A. No.

Q. Phil Klay?

A. No, not that I know of.

Q. Okay. I want to talk about the morning of August 28th. Its your recollection that you woke up on the couch?

A. Yes.

Q. Rowe walked in.

A. Yes.

Q. How did he know where you lived?

A. I live, like, a-half a block from the Barracks.

Q. How did he know where you live?

A. I have no idea.

Q. Could it have been because he had been there before?

A. No.

Q. In fact, he has been there before.

A. No, he hasn't.

Q. He's had sex with you in your house.

A. No, he hasn't. No.

Q. He walks in, and you hear him screaming?

A. Yes.

Q. What was he screaming?
A. Just obscenities and saying how --

Q. Say what he was saying.
A. He said that I had humiliated him in front of his wife, his Marines, and that --

Q. Where was he standing when he was saying these things?
A. By the door.

Q. Inside, outside?
A. Inside.

Q. Okay. Where were you?
A. When he first came in, I was sleeping on the couch.

Q. You closed your eyes. Could you not remember? Did you have to reflect back?
A. No. I just was laying there and I could hear him, and that's -- I just remember that. Because that's --

Q. Is there a pillow underneath your head?
A. The first thing I noticed was the sound.

Q. Was there a pillow underneath your head?
A. Um, just the couch pillows, yes.

Q. Okay. Were you covered?
A. No.

Q. What were you wearing?
A. Underwear.

Q. How did you get out of your clothes?
A. I don't remember.

Q. Do you believe you took your own clothes off?
A. Yes, I would believe to think that.

Q. Okay. Where were your clothes?
A. I don't remember.

Q. Were they in the living room where you were sleeping?
A. Yes, I believe that I found them there later.

Q. You said you don't remember and then you said, yes, I found them there later. So, do you remember or do you not remember?

A. I don't really remember.

Q. Okay. So you don't know where your clothes were?

A. No.

Q. Where did you find them later?

A. Find where? Like, in the living room?

Q. You said you found them there later, but you said you don't remember.

A. I just -- I don't remember. I'm guessing I found them because that would have put me at ease that nothing had happened.

Q. Were you concerned that Quinn had done something to you?

A. Yes, I was concerned.

Q. Like what, that he raped you or --

A. I had no idea what had happened. I didn't have any memory of it at all.

Q. Okay. What did you do when you hear Rowe saying the statements that you just said?

A. I was very upset and very --

Q. What did you do?

A. I just started crying and yelling back at him that I didn't know what he was talking about.

Q. Okay. Let's stop there for a minute. Where were you positioned when that happened?

A. When he first came in and was yelling, I just, kind of like, slowly got up; and then he was just kind of yelling.

Q. What do you mean "when you slowly got up"? You stood up, or you sat up?

A. I don't remember if I sat up or stood up.

Q. I would like you to use your courtroom, to the best of your abilities and try to orient me, sort of geographically in this courtroom, where you would be and where Captain Rowe would be.

A. So, if that door -- that door would be where my front door was. My couch would be, like, like this front area right here.

Q. Where would it be facing?

A. The couch is facing that front.

MJ: Use those as reference points please. We will attach that as an appellate exhibit. We can go burn a copy then for the next appellate exhibit.

Court is in recess in place.

The court-martial recessed at 1624, 13 December 2011.

The court-martial was called to order at 1628, 13 December 2011.

The military judge called the court to order and stated that all parties present when the court last recessed were again present.

The military judge further stated that the court had counsel mark a diagram of the courtroom, Appellate Exhibit XXIV, which included distances from the witness stand and provide it to the witness. When the witness resumes the cross-examination with counsel, she'll mark on her copy, the location of the different items within the living room and other relevant portions of the house as the examination unfolds.

In response to the military, the counsel had no questions regarding the judge's instructions.

MJ: Mr. Faraj, your witness.

Questions continued by the civilian counsel:

Q. Okay. Ma'am, I asked you a question to geographically orient us to furniture items in your house, so using that diagram you have in your hand, please make a notation for where your door would be using the diagram of the courtroom.

MJ: Well, first off, placing -- I think, the couch is now the center of the discussion, being the reference point.

CC: Well, I'd like to begin with the door where Lieutenant Klay was standing.

Questions continued by the civilian counsel:

Q. Let's place an A where the door would be on that diagram.

A. The thing is that -- because the kitchen is relevant -- like, that area would need to be the kitchen?

MJ: Okay. So the gallery is the kitchen. So you would write that.

The witness did as directed.

CC: Are you done with that?

WIT: Uh-hum.

CC: Can you mark this as Defense Exhibit E.

MJ: Are you moving to admit it into evidence?

CC: Not yet, we just need to mark it.

MJ: So you want it as a defense exhibit vice an appellate exhibit?

CC: I going to admit it eventually, but I'm going to speak off of it first, Your Honor.

MJ: Okay. So right now it's Defense Exhibit E, for identification.

The clean copy is Appellate Exhibit XXIV, for the courtroom diagram.

CC: I'm retrieving the exhibit.

Questions continued by the civilian counsel:

Q. Okay, ma'am. So you're on the couch; correct?

A. Yes.

MJ: Just for the record. Now Defense Exhibit E, for identification, has been placed on the ELMO and is in view by all parties of the courtroom.

Questions continued by the civilian counsel:

Q. Do you see the exhibit on your screen?

A. Yes.

Q. Okay. You're on the couch. Captain Rowe, you said, is at the front door?

A. Yes.

Q. Is he inside or outside the front door?

A. He's inside.

Q. How far inside?

A. He's -- um -- within a couple feet of me.

Q. Okay. So he's next to the couch?

A. He is -- um -- next to the couch on the door side.

Q. Okay. How far away is the couch from the door?

A. I would say -- like, probably four feet -- four or five feet.

Q. Okay. We -- you already testified that you could not -- you cannot recall whether you were standing or still sitting on the couch and that you began to scream back at him; do you recall that?

A. I -- yeah -- I was yelling back at him because I didn't know what was going on.

Q. Okay. Is there anyone else in that room at that time?

A. No.

Q. What is the next thing that happens?

A. Um -- he told me to go to the kitchen and that -- um -- and stay in there, and that Jeremy was going to go -- go upstairs to try and find the body bearer.

Q. When he told you to go into the kitchen, you didn't refuse?

A. No.

Q. You didn't say, "I'm not going anywhere; get out of my house"? Right?

A. That's correct. Yes.

Q. And, as you've testified, he'd never been in your house before?

A. That's correct.

Q. So he wouldn't know the layout of your house?

A. Yes, I guess not.

Q. I'm sorry.

A. I said, "Yes." I mean, it's a townhouse.

Q. How did he know that your bedroom was upstairs?

A. Um -- he -- there's only two rooms.

TC: Objection, sir. Speculation.

WIT: There's only two rooms that -- when you come in to my house --

MJ: Ma'am.

It calls for speculation. Sustained.

Questions continued by the civilian counsel:

Q. Do you know why Captain Rowe would know where the bedroom is?

A. The house is laid out so that when you open the door, you can see all the way into the kitchen.

Q. Do you know why Captain Rowe would know that the bedroom is upstairs?

MJ: She just answered you --

WIT: Because -- yes -- because you can see all of the bottom floor just from looking in -- you can look in my front window and see from the living back to the kitchen.

Questions continued by the civilian counsel:

Q. Does the kitchen have a door?
A. Um -- it's always open, but you can shut it.

Q. Does the kitchen have a door?
A. Yes.

Q. Was the kitchen door closed?
A. No, it was -- it's always open.

Q. And it remained open throughout?
A. Um -- it remained open except for when Rowe shut it after I went into the kitchen.

Q. So he went behind you and shut it?
A. Yes. He came in and talked to me and was -- well, yelling at me in the kitchen, and then he -- um -- came back out of the kitchen -- told me to stay in the kitchen -- um -- I couldn't hear what he was saying, but he was talking to Jeremy or somebody out there.

Q. Jeremy is not in the house at this point.
A. Which point are we at?

Q. The point when he's telling you to go into the kitchen.
A. That's correct.

Q. So did you immediately go to the kitchen?
A. Yes.

Q. You made no protest?
A. I was just really upset.

Q. Okay. You made no protest?
A. I was yelling back at him that I didn't know what he was talking about and that I couldn't remember anything that happened. He seemed -- appeared to still be drunk.

Q. Okay. You made no protest about going back into the kitchen -- or
A. I think I --

Q. -- going into the kitchen?
A. -- protested at his general presence in my house. It was -- I don't think anybody wants somebody to come into their house and scream at them.

Q. All right. So why did you leave the living room and say, "Get out of my house"? Why didn't you say that?

A. Because I was afraid of him, and where was I going to go?

Q. Why don't you reach for your cell phone and call the police?

A. I still didn't even know what had happened the night prior, and I -- and part of me wanted to know.

Q. Why didn't you call your husband?

A. Because I was scared because I didn't know what had happened.

Q. What could have happened?

A. I don't know.

Q. I mean, you said: "I didn't know what happened. I was scared." What could have happened that scared you? What were you afraid of?

A. I don't know; the door to my house was open, and I woke up in my underwear. I had no memory of the night before. I don't know what -- I don't know what could have happened.

Q. You had no problem confronting Gillespie, a few weeks before, and striking him and basically making him shut-up.

A. Yeah. The last time I used force before that, I was investigated and --

Q. There was --

A. -- going to get NJP'd.

Q. At this point, you're in your own house; right?

A. Yeah.

Q. Right. You're an athlete; right?

A. Yes.

Q. You're a fairly strong person; correct?

A. Yes.

Q. In fact, you went to UC Irvine on a scholarship and were recruited to the Naval Academy based on your athletic and physical prowess; correct?

A. Yes.

Q. How tall are you, ma'am?

A. Five, nine.

Q. And how much do you weigh?

A. Like, 155.

Q. You went into the kitchen; and what did you do when you walked into the kitchen?

A. I -- um -- put clothes on; PT clothes from my little laundry area.

Q. Okay. So he's yelling at you; right?

A. Yes.

Q. You're scared, you said?

A. Yes.

Q. You walk into the kitchen, go back to the laundry room, and get some clothes?

A. Yes.

Q. And then what do you do?

A. My dog was -- like, terrified so I was holding my dog.

Q. Which dog?

A. I only had one dog at the time --

Q. Okay. Where was your dog?

A. She was -- at this time -- at this point, she was in the kitchen.

MJ: What kind of dog was it?

WIT: She's -- like, a little 20-pound whip-it [sic] Jack Russell Terrier.

Questions continued by the civilian counsel:

Q. Okay. Before that, the dog was outside?

A. I don't know where the dog was. Rowe said that she was

outside, but -- we have -- like, a little gate -- a little -- um -- enclosed area in our front yard.

Q. Okay. Jack Russell Terriers are fairly protective animals; correct?

A. Yes.

Q. And although they're not large, they are one of the smartest breeds, as I understand; is that correct?

A. Yes.

Q. And they imprint their owners --

TC: Sir, I'm not sure I understand the relevance of the fact that a dog --

MJ: I -- well, I'm going to allow it.

TC: Yes, sir.

MJ: Overruled.

Questions continued by the civilian counsel:

Q. Correct.

A. I'm sorry. What was the question?

Q. Your dog knows who you are and senses when you're afraid or when you are comfortable?

A. Yes.

Q. At no time did your dog attack or try to bite Captain Rowe?

A. My dog was terrified.

Q. At no time did your dog attack or bite Captain Rowe.

A. She's a rescue; she gets scared. She doesn't attack people.

Q. Okay. At no time did your dog go after Jeremy; correct?

A. That's correct.

Q. So you said Rowe walked upstairs?

A. Um -- he told me to go upstairs.

Q. Well, we're in the kitchen right now.
A. No, that -- Okay. If we're in the kitchen area, he didn't tell me to go upstairs yet.

Q. Okay. Let me get everybody that's in the kitchen. Are you in the kitchen by yourself?
A. Um -- with my dog.

Q. Okay. Where is Rowe; do you know?
A. He is out talking to Jeremy.

Q. Out where?
A. In the living room.

Q. Okay. And the door is open?
A. No, the door is shut.

Q. Well, who shut it? Because you said he shut it after he left the kitchen after speaking to you, so who shut the door?
A. Rowe shut the door.

Q. So he sent you into the question and went and shut the door?
A. He was in the kitchen with me, and he said -- he said that he didn't want to see his Marine if Jeremy finds him in the house. So he was in there with me -- yelling at me -- like, he threw a pot or something. And I was just holding Collette [ph], and then -- um --

Q. The pot fell with a crash on the floor?
A. I don't know where the pot went.

Q. Well, you said he threw a pot.
A. Or -- is a pan -- it was a pan.

Q. A pan made of metal?
A. Yes.

Q. What kind of kitchen floor do you have?
A. It's -- um -- like, linoleum.

Q. Linoleum?
A. I think so.

Q. When the pot fell on the floor, did it make a noise?

A. Yes.

Q. Was that noise loud?

A. I mean -- yeah. Rowe's screaming was loud; it was loud.

Q. Okay. So it stands to reason then, based on how loud Rowe was, when he was screaming at you, and the crash of the pan on the floor that whoever was upstairs --

TC: Objection. Speculation, sir.

CC: -- may have heard it.

MJ: I --

WIT: If there was anybody upstairs, then they could --

MJ: Ma'am. I would --

WIT: -- it's possible that they could have heard it. They would have definitely heard Rowe yelling.

CC: Okay. So he was loud enough --

MJ: It calls for speculation. I'm sustaining the objection.

You made your point on loud.

CC: I'm asking her opinion, Your Honor, based on how loud he was. She knows her own house.

MJ: I'll allow your opinion testimony under that last argument.

Questions continued by the civilian counsel:

Q. When Rowe left the kitchen and shut the door behind him, how long do you believe you remained in the kitchen?

A. Very briefly.

Q. How long?

A. Um -- maybe 15 seconds.

Q. Okay. So what happened next?
A. Um -- then he opened the doors and Jeremy was gone; I didn't know where Jeremy was.

Q. Let me make sure I understand.
A. Uh-hum.

Q. Rowe was in the kitchen with you --
A. No, I'm out in the -- he was never --

Q. Hold on. Hold on, just so I don't get my facts wrong. Rowe comes into the kitchen with you; right? He follows you in after you go in?
A. Uh-hum.

Q. And he's yelling and screaming and throws a pan on the floor?
A. Uh-hum.

Q. Right?
A. Yep.

Q. And he walks out; he shuts the door behind him. Did I understand that correctly?
A. Yes.

Q. And 15 seconds later he is back in?
A. He just opened the door -- um -- and I was holding my dog, and then he was yelling and she -- like, jumped out of my -- um -- arms and --

Q. What was he yelling then?
A. That Jeremy had found the body bearer, and that everything that he had heard was true; and that I was just like Suzanne, and --

Q. Okay. Let's stop for a minute.
A. Uh-hum.

Q. Rowe walks into the kitchen behind you; he's yelling and screaming --
A. Uh-hum.

CC: -- then he goes outside; he's there for 15 seconds.

The civilian counsel pauses.

Questions continued by the civilian counsel:

Q. That's been 15 seconds. In that time, you're saying Jeremy -- he went and had a talk with Jeremy; Jeremy went upstairs, found the body bearer, came back, reporter to Rowe; and then he came back in --

A. No.

Q. -- after 15 seconds and told you he found a body bearer?

A. No, when Jeremy was -- when Rowe was in the kitchen yelling, he said that Jeremy was checking; that's what --

Q. How did Jeremy know to go check? He was with --

A. I don't know --

Q. -- the entire time.

A. I have no idea. When he was in the kitchen with me, he told me that Jeremy was searching the house to see if he could find him; and that Rowe didn't want to get seen by the body bearer --

Q. Let's get this straight. At no time, between the second --

A. Uh-hum.

Q. -- you just testified. He walks into your front door and begins to yell and scream --

A. Uh-hum.

Q. -- until the time he leaves the kitchen --

A. Uh-hum.

Q. Is he with Jeremy, because we didn't see Jeremy.

A. I don't -- I didn't see Jeremy until after I --

Q. If the door is open -- if the kitchen door is open and you don't see Jeremy. And he walks out and 15 -- he shuts the door, 15 seconds later he is back in --

A. He might have talked --

Q. Correct?
A. He might have talked to him while I was getting my --

Q. Correct?
A. -- PT gear on.

Q. Okay. You said he was in the kitchen behind you. He walked into the kitchen behind you --
A. Yes.

Q. -- and then, he left for 15 seconds, shut the door, and came back in; right?
A. Approximately, 15 seconds.

Q. Okay. And it's your testimony today that while Jeremy wasn't in the house [sic] when you walked into the kitchen; correct?
A. Um -- yes.

Q. And you could not see Jeremy from the kitchen when walked into the kitchen; correct?
A. That's correct.

Q. And when you went into the kitchen, you immediately went to the laundry room to get the clothes that you put on --
A. Uh-hum.

Q. -- and Rowe was behind you at that time because he was yelling and screaming, and that's when he sends the pan to the floor. That's what you testified to --
A. Yes.

Q. Correct?
A. Um -- it all happened really fast. I don't know --

Q. I understand it is fast; it is fast. And then, he walks out, shuts the door behind him, and 15 seconds later he's back in. In that time, Jeremy has checked the house, found the body bearer, reported to Rowe, and Rowe was back into the kitchen talking to you.
A. There's only -- it's a small house, you could -- you could easily jog upstairs and do whatever -- and have a brief conversation.

Q. Let's do that. So 15 seconds --

A. Okay.

Q. He walks out; he goes to find Jeremy because Jeremy has got to be outside. He says, "Jeremy --

A. I told you --

Q. -- go check the house right away --

A. -- I told you that while I was changing, he could have already been there; I don't know.

Q. Okay. Well, he walks out and he sees Jeremy inside the house. Do you know why Jeremy would walk into this house?

A. [*Nonverbal response*]

TC: That calls for speculation, sir.

MJ: She said she didn't know. There was a shaking of the head.

Questions continued by the civilian counsel:

Q. So for some reason or another Jeremy is inside the house, Rowe says, "I want you to check the entire house; I think there's a Marine here, and then report back to me." And so, Jeremy goes upstairs, he sees the body bearer -- who he has never seen before, probably; right? Do you know if he knows the body bearer?

A. I have no idea.

Q. Okay. And so, you don't know if Rowe went upstairs, do you?

A. No, I don't.

Q. Because he told you he didn't want to see who it was?

A. Yeah. He said he didn't want to run into him.

Q. His -- one of his Marines?

A. Yes.

Q. Okay. So Jeremy apparently recognizes this Marine -- based on what you learned later -- and tells Rowe, and Rowe comes in and says, "You've got a body bearer inside your house?"

A. After the 15 seconds, Rowe opened them back up -- the

kitchen doors -- and he said -- um -- he said that -- he went on -- started going on his rant.

Q. And what was the rant about?

A. About that Jeremy had found some guy.

Q. Who's the guy? Did he tell you?

A. I don't -- no -- he said that it was one of his body bearers.

Q. So Jeremy reported to him that it was one of his body bearers?

A. I don't --

Q. You wouldn't know. But he told you that Jeremy told him it was one of the body bearers?

A. Yes.

Q. Okay. Um -- Rowe reported to you that he found one of the body bearers?

A. He -- Rowe reported to me that -- um -- Jeremy had found someone --

Q. I'm sorry. Did you say "someone" or the "body bearer"?

A. Um -- Rowe reported to Jeremy that he found a body bearer.

Q. Okay. So based on that, either Rowe saw one of the body bearers or Jeremy knew one of the body bearers when he came back and told Rowe; right?

A. I don't know -- when he initially came in, he had made the accusation that I had walked home with one of them.

Q. Well, you did.

A. I don't -- I have no idea; I do not remember.

Q. Okay. Well, let's -- I want to take it one step at a time, because I don't want to lose sight of where we are at. He told you that Jeremy told him that he found one of the body bearers, and he also to you that he didn't want whoever it was to see him because he believed that it was one of his Marines?

A. Yes.

Q. Okay. And so, now he is back in the kitchen on a rant?
A. No, he just opened the kitchen doors and I came out, and I was just holding Colette; and then he just kept --

Q. He opened the kitchen door and you walked out?
A. Yes, he opened the kitchen door and I walked out.

Q. Okay. So when he opened the kitchen door -- does the kitchen door open in or out? Does it open in to the kitchen or out --
A. I don't remember --

Q. -- from the kitchen?
A. -- I don't know.

Q. You live in the house.
A. Yeah, I know. I told you that the doors always remain open.

Q. Okay. When he opened the door, because it was closed --
A. Uh-hum.

Q. Did the door open in or out?
A. I don't remember.

Q. Okay. The door opens the same every time, unless you moved.
A. I told you that we've never closed the door.

Q. So your testimony today is you don't know if your kitchen door opens in or out?
A. That's correct.

Q. Okay. So he opens the door, where is he standing when he opens the door?
A. Um -- he's -- he backs away and moved towards -- he starts talking about how my keys are in the door and how I shouldn't be allowed to have a dog because my dog was out the front door.

Q. What are you wearing right now?
A. PT gear.

Q. Green on green?
A. Just -- like, whatever -- shorts and a tank-top.

Q. Okay. That's the rant he went on?
A. I mean, he said a lot of things. He said that -- um --

Q. Tell me everything he said.
A. He said that he was going to humiliate me in front of the command. He said that I was going to -- he was going to tell my husband; he said that -- he said that everything that anybody said was true, and that --

Q. Okay. Let me make sure I capture this. He comes back -- now the kitchen door is open; right? And you stepped out from the kitchen; correct?
A. Yes.

Q. And now he's telling you all these mean and nasty things; right?
A. Yes.

Q. And now somebody is walking down the stairs and outside out your front door, you would see that person?
A. He said that Jeremy -- um -- took him out of there; that's another thing that he said. He said --

Q. Okay. So in the 15 seconds, you run into the kitchen, whoever was upstairs left with Jeremy -- or Jeremy got him out?
A. He said that Jeremy went up there and told him to leave and never discuss -- never talk to anybody about it.

Q. Okay. But my point is: In that time during the kitchen is when this person would have left?
A. Yes.

Q. So whatever rant was taking place at this time would not have been heard by this person who was inside your house?
A. Yes.

Q. Okay. And we're speculating, but do you believe there was anyone else inside your house at that time?
A. No.

Q. Okay. And this is the point when he is saying what? "I'm going to tell you husband"?
A. He said, "I'm going to humiliate you to the command." Um

-- "I have all these connections -- he was talking about all his connections and his power on the command deck.

Q. Okay. What is so humiliating?

A. Because it -- it looks like that I -- I have no idea what had happened. And I thought that something might have happened, and I didn't want --

Q. Okay. Well, what? I mean, you say, "F-you, man. I don't know what you're talking about." You don't have any problem dropping the F-bomb; right? You've dropped it at the Article 32 hearing in the past, on the stand. So -- right? Right?

A. I prefer not to use it.

Q. Well, you've used it on multiple occasions at that hearing; correct?

A. I don't remember.

TC: That's argumentative, sir.

Questions continued by the civilian counsel:

Q. Did you ask him, "What is humiliating? What are you talking about?"

A. Yes, I did.

Q. And what did he say?

A. He just said that -- he just talked about how -- I didn't --

Q. Right.

A. -- he said that I had no credibility anyways because I had slapped a Marine, and I was done. Nobody believed me and that I should've listened to him a long ago because --

Q. Well, let's stop there for a minute. You already told me that you had enough credibility even though there was video tape of you assaulting a Marine standing a parade that that Marine went to NJP based on what you said; right?

A. It wasn't based off of what I said.

Q. Well, they didn't capture any other thing in that video about him saying, "slut" or anything else like that; right? Correct?

A. He had previous history of sexually --

Q. But he didn't go --

A. -- assaulting another female Marine.

Q. He did not go to NJP for assaulting another Marine; he went to NJP for being disrespectful to an officer; correct?

A. There were other --

Q. He went to NJP for being disrespectful to an officer.

A. -- there were other witnesses that corroborated that he said disparaging remarks.

Q. He went to NJP for being disrespectful to you; correct?

A. Yes.

Q. Okay. And on the video that was captured -- nothing in that video works in your favor; right?

A. Except for the group of smiling Marines mocking me.

Q. Okay. So you -- there was enough credibility belonging to you Lieutenant Klay that supported a Marine going to NJP who had been assaulted while standing at parade rest; correct?

A. That's incorrect.

Q. He didn't go to NJP for being disrespectful to you?

A. He did go to NJP, but it wasn't based off of my --

Q. All right.

A. -- statement.

Q. So he says, "You have no credibility," he was going to humiliate you, and I'm still wondering, Lieutenant Klay -- I'm sorry, Mrs. Klay -- ma'am?

A. I'm sorry. I wasn't listening.

MJ: There was no question there. You need to give her a question.

Questions continued by the civilian counsel:

- Q. Ma'am, I'm still wondering what your state of mind is at the time that you believe he has enough leverage to humiliate you and make you appear to be not credible, if you had no memory of doing anything wrong.
- A. Because -- I told you, they're already rumors based off the things that my boss was doing, and they would think -- and I was very upset by that. I was -- and Rowe knew that I was; that's why I -- one of the reasons I slapped Gillespie was because I was so sick of hearing those comments. So Rowe knew that bothered me.
- Q. So it's not what happened that day, it's what Captain Rowe already knew about you; right?
- A. No.
- Q. Well, I'm trying to figure out your state of mind on that day as to what happens. I -- you've testified that Rowe had a lot of information about you and your weaknesses when it comes to the rumors that were going on. But I'm trying to find out, that day -- that day, your state of mind. What do you believe that you are guilty of that Rowe would have this power over you?
- A. I just didn't want to be humiliated anymore.
- Q. With what? I mean, I can stand up here and say "Mrs. Klay forced me to do something because she was going to humiliate me." But then you would say, "Well, what is it that she was going to humiliate you about?" You have every right to ask that question and to know it. And I'm asking you: What did he have on you at that time?
- A. He was just very powerful and very persuasive, and --
- Q. But he's always been powerful and persuasive, and he's always known about the rumors; and so he had that power over you the entire time of your relationship; right? Correct?
- A. Yes.
- Q. Right. So is it fair to say that this alleged assault and this force that he used had nothing to do with what was going on that day?
- A. You're asking me if the force that he used had nothing to do with that?

Q. You said that he threatened --

A. He did.

Q. I said "force" and I shouldn't have said force -- he threatened you?

A. Yes, he threatened me with death threats and with humiliation threats.

Q. Okay. You took the death threats seriously?

A. Yes, I did.

Q. Okay. Did you decide to call the police?

A. No.

Q. Why not?

A. Because I didn't want -- I just didn't want to remember any of it.

Q. It's pretty terrifying; I'm sure.

A. Yes, it was.

Q. To have threatened you with death if you report; right?

A. Yes.

Q. That's a pretty horrible thing.

A. Yup.

Q. Yet, you continued to contact him over a number of months, and you testified today that you've called over those months.

A. When Rowe denied he was and when he was --

Q. When --

A. -- being sober --

Q. Let me --

A. -- he was remorseful. And nobody from the Barracks was talking to me, so I needed help.

Q. Well, what -- I mean, I don't understand something. I spent 22 years in the Marine Corps, and many days I went home from work, spent it alone by myself, and nobody called you [sic]. Why do you feel that people have to

- call you when you are sitting at home by yourself?
- A. I don't feel that they have to call me; I just -- um -- it was -- I was having a really hard time because of other things that were going on at the Barracks with my boss, and I really --
- Q. Being an officer in the Marine Corps is a pretty lonely place because most of the time you're by yourself and nobody calls you; you're just on your own. When you were a Motor-T Officer, you didn't -- you weren't supposed to hang out with your Marines; right?
- A. The situation with my boss was stranger than fiction; I did not know what to do.
- Q. Is it your testimony that because nobody called you at the Barracks that you felt compelled to become friends with Captain Rowe?
- A. No, that's not what I -- that's not what I'm testifying.
- Q. And you just said that he was remorseful, did you mean that after he became remorseful, that you no longer took the death threat seriously?
- A. Yeah. I thought he was -- he said it was the lowest day of his life.
- Q. My question was --
- A. He said --
- Q. -- did you not take the death threat seriously anymore?
- A. I didn't know what to think; I really didn't.
- Q. So you still considered it a serious death threat?
- A. You know what, if he was going to do the death at that point, I didn't even think it would be a bad thing.
- Q. That weekend when you went away with your husband, you sent him a picture of you, in a text message, in a bikini.
- A. No, I didn't.

Q. Yes, you did.
A. No, I didn't. I didn't even go -- I didn't even wear a bikini; I didn't -- it's not like I went to the beach. I was --

Q. It was August, so it was warm.
A. Yeah. But you could -- I didn't even --

Q. You went to the beach that weekend?
A. I -- it was my parent -- my husband's parent's house in West Hampton, and I didn't even wear a bathing suit. I stayed inside the entire -- and his whole entire family was --

MJ: Ma'am --

WIT: -- very concerned --

MJ: Ma'am --

WIT: about --

MJ: Ma'am --

WIT: -- why I was so --

MJ: Ma'am --

WIT: -- depressed.

MJ: As I counseled you earlier, wait for the question.

Questions continued by the civilian counsel:

Q. The picture was of you and some family members, and your dog was in the picture. You were in a blue bikini; do you recall that?

A. No, I don't even have a picture of it.

MJ: Ma'am, you may not have it anymore, but --

WIT: No, I don't. I don't even have a blue bikini.

MJ: All right.

WIT: I didn't even wear my bathing suit that weekend. You can ask my husband about how I was that weekend.

Questions continued by the civilian counsel:

Q. When you came out of the kitchen, you began to ask Captain Rowe to make sure that he talked to whatever Marine that was up there to ensure that he doesn't open his mouth --

A. That is not true.

Q. You began to open up your mouth before I even finished the question. Did you know what was coming?

A. No, I just -- it sounded -- you said I asked Rowe something; I didn't ask Rowe anything.

Q. So you said nothing?

A. No, I didn't.

Q. Well, are you sure you said nothing?

A. I didn't say nothing, but it's just -- I was just very upset.

Q. Well, this is my -- this is what's important to me. I began to ask you a question about you asking Rowe to interfere with this Marine to ensure he doesn't speak, and I saw you shaking your head before I got halfway through the question. Do you recall that?

A. Yes, the --

Q. Okay. Let me stop there. Did you know that I was going to ask that question, and that's --

A. No.

Q. -- why you began to shake your head?

A. No.

Q. Okay. You asked no more questions of Rowe that day -- you asked no questions of Rowe?

A. I -- I did ask him questions later that day. I asked -- you know, I asked him why --

Q. That's -- I'm sorry.

A. -- did it happen.

Q. At that moment, did you ask him any questions?
A. I don't remember; I don't think so. It was -- he was still angry; he was still telling me -- he was still yelling at me. I wasn't asking him --

Q. What was he yelling?
A. What was he yelling?

Q. Yes.
A. The same things -- I repeat -- I already said that he was going to --

Q. -- that he was going to tell you husband and the command, and embarrass and humiliate you?
A. That I was just the slut that everybody thought I was, and all those rumors are true, and -- but he had gone out of his way to help me and all I did was humiliate him.

Q. Okay. And at no point did you ask him, "What are you talking about?"
A. I continually asked him; I didn't know what he was talking about.

Q. So you did ask him some questions?
A. I just said I didn't know what happened.

Q. Okay. And what happens next? How long does that interaction take -- last for?
A. I don't know -- like, ten seconds; I don't know.

Q. Okay. What happens next?
A. Um -- then, after he said -- um -- something about one of his threats, he just -- he said -- he said to get down on my -- "get down on your knees," and he said to suck his dick.

Q. This was in the living room?
A. Yes.

Q. What was he wearing?
A. I don't remember -- civilian clothes.

Q. To the best of your ability, tell me what you think he was wearing.
A. Pants.

Q. Long pants?
A. Um -- I think so.

Q. Did he have a belt on?
A. I don't remember.

Q. Did he have a shirt on?
A. Yes.

Q. Was his shirt tucked in or out?
A. Um -- probably tucked in.

Q. Okay. Did he have shoes on?
A. Yes.

Q. Who removed his pants?
A. He did.

Q. Did he take his pants completely off?
A. No.

Q. What did he do?
A. He just dropped them.

Q. So he unbuckled or unbuttoned his pants and dropped them where?
A. To the ground.

Q. Okay. So he still had his shoes on?
A. Yes.

Q. What were you doing in the meantime?
A. I did what he said.

Q. You got on your knees?
A. Yes.

Q. Did you get on all fours?
A. No.

Q. You just got on your knees?

A. Yes.

Q. How far away was he from you when you got on your knees?

A. Pretty far -- like, maybe a foot.

Q. Okay. And you remained there?

A. He moved over and stuck his penis in my mouth.

Q. Okay. So -- just so I can understand this --

A. He shuffled his feet.

Q. You're on your -- he's on -- you're on your knees like this?

Counsel demonstrated to the witness.

CC: Ma'am, you need to look at me.

Defense counsel kneeled on the floor; the witness refused to look.

Can we take a break, Your Honor, to allow Miss Klay to --

WIT: I'm --

CC: -- regain her composure?

WIT: I'm fine.

CC: Are you sure?

WIT: Can we, please, just press on?

MJ: We'll go for a little bit longer.

Questions continued by the civilian counsel:

Q. Ma'am, I'm on my knees. Is this how you got on your knees? Please look, you need to.

MJ: She's got peripheral vision. She nodded in an affirmative response.

Questions continued by the civilian counsel:

Q. Okay. So kneeled on my knees, but I was fully upright. My knees were bent as a 45 degree angle, but I was fully upright; correct?

A. Yes.

Q. Okay. And then, you said that he shuffled with his pants down around his ankles?

A. He didn't move very far.

Q. Okay. But about a foot?

A. Not even a foot.

Q. Okay. So he stayed in place?

A. Yes.

Q. All right. Please stand up -- not you.

CC: Captain Shinn. I'm going to ask you -- I brought Captain Shinn up here.

Questions continued by the civilian counsel:

Q. Please place us in the same distance that you and Captain Rowe were in when this took place. What it about this far?

A. I'm sorry. I'm supposed to be him, and you're supposed to be Rowe?

Q. It doesn't matter. Just place us in the distance. I'm going to be you; does that make it easier? And he'll be Rowe. So if you could position us where you would have been and where he would have been.

A. So if you could stand there; so you're me.

Q. Right.

A. You're facing him. And if you're on your knees --

Q. Well, before I get on my knees, how far apart were you before you got on your knees and how were you oriented?

A. I don't -- I don't know; I don't remember the exact orientation.

Q. Okay. So you were facing him, maybe?
A. I was facing him while he was yelling.

Q. Okay. So he says, "Get on your knees."

CC: You say that to me.

DC: Get on your knees.

Questions continued by the civilian counsel:

Q. And then, you get on your knees? But how far away were you? Is this the distance? Closer?

A. I don't remember. I was kind of off to the side.

Q. What, stand sideways?

A. No, it's kind of off to the side a little bit. Like, I wasn't directly in front of him.

MJ: A little off-centered; is what she is saying.

WIT: Like, you were more towards me and he was a little bit farther --

Questions continued by the civilian counsel:

Q. Like that far?

A. No -- well, not far. I mean, he was still closer, but you were -- like --

MJ: You were off-center, Mr. Faraj. Moved towards her, but don't change the distance.

CC: I'm sorry. Okay.

Questions continued by the civilian counsel:

Q. It was like this?

A. More like that, but I don't remember exactly.

Q. Okay. So my shoulders -- my right shoulder -- if I were to draw a line from the left shoulder to my right shoulder, it would intersect Captain Shinn's chest. And we are about two feet apart?

TC: Sir, that's --

Questions continued by the civilian counsel:

Q. Correct?

A. I guess, so.

Q. So he says "Get on your knees;" right?

A. Yes.

Q. And you get on your knees?

A. I'm facing the other way.

Q. Okay. So you actually turned around to get on your knees; right?

A. I don't know; I was facing towards him.

Q. What, you were this way?

A. Um -- you were like how my hand was -- you moved facing him.

Q. Would it be better for you to get up and just demonstrate for us --

MJ: No. We are not going to do that. What she said was you're going to be facing -- move to your left, Mr. Faraj. Turn and face your co-counsel.

About like that?

WIT: [*Nonverbal response*].

MJ: The distance remains the same, but Mr. Faraj's right shoulder is basically on line with the co-counsel's -- also his right should.

TC: The witness nodded an affirmative response in motion to the judge's question.

Questions continued by the civilian counsel:

Q. Okay. So when you put me in that position earlier, was I incorrect?

MJ: That looks, generally, what she described; you just used the center-mass of his tie clasp.

CC: Got it. Okay.

Questions continued by the civilian counsel:

Q. So he said, "Get on your knees," and what do you do? You get on your knees at that point?

A. Yes.

Q. Okay.

CC: I've just done the same thing.

Questions continued by the civilian counsel:

Q. And, at that point, is when he takes his pants down and shuffles over?

CC: Reverse positions with me, Captain Shinn.

The defense counsel did as directed.

Questions continued by the civilian counsel:

Q. So he takes his pants down and shuffles over to you?

A. Not that far; he was much -- he was closer.

Q. Okay. Well, I asked you if it was two feet --

A. Before he dropped his pants, he moved a lot closer to me.

Q. Okay. And then he drops his pants. So you didn't have to do any movement or he didn't have to move after he dropped his pants?

A. I didn't have to do any movement.

Q. But he had to shuffle; right?

A. I don't -- I just know he moved towards me. I don't know if it was shuffling or he moved and then dropped his pants; I don't remember exactly --

Q. Okay. Was he wearing underwear?

A. I don't remember -- I don't know, he dropped whatever he was wearing.

Q. Okay. And -- you know him to be impotent. So, at this point, is he -- is Captain Rowe aroused or is --
A. No.

Q. Okay. Is this the point when he -- well, what happens next?
A. He sticks his penis in my mouth.

Q. Okay. So the -- he grabs his penis by his hand and moves it to your mouth?
A. Yes.

Q. Okay. Do you open up your mouth?
A. He put -- put it into my mouth.

Q. Okay. Was your mouth open or closed?
A. It was closed; he forced it open.

Q. So he grabbed your face and forced it open?
A. He just pushed it into my mouth.

Q. Okay. His penis was flaccid?
A. Uh-hum. Yes.

Q. He wasn't -- he wasn't rigid?
A. He was not rigid.

CC: Please stand up. I'm sorry.

The defense counsel did as directed.

Questions continued by the civilian counsel:

Q. So he grabbed his penis, walked -- must have walked even closer; right? Because he wasn't aroused?
A. I don't know.

Q. Did you lean forward?
A. No.

Q. Okay so you -- did you lean back?
A. No.

Q. You just stayed in place?
A. Yes.

Q. But, he didn't use his hands to force your mouth open?
A. He used his hand to move his penis to my mouth.

Q. Okay. He moved his penis to your mouth, but you said your mouth was closed and he forced it open. Did he force it open with his other hand?
A. He said, "Suck my dick."

Q. Okay. And you did; right?
A. [Nonverbal response].

Q. Right?

MJ: The witness shook her head, "no, she did not."

Questions continued by the civilian counsel:

A. I mean, I don't -- I didn't -- I did not willingly do it.

Q. Okay. You know what fellatio is; right?
A. No.

Q. Do you know what oral sex is?
A. Yes.

Q. You have testified previously that you thought people were ignorant and you were a much more articulate and better writer and you've gone to the Naval Academy. You're telling me right now you don't understand what fellatio is?

TC: It's argumentative, sir.

MJ: Sustained. She answered the question. She doesn't know what that particular term means.

Questions continued by the civilian counsel:

Q. When you testified at the Article 32, you agreed that you had engaged in fellatio and cunnilingus on Captain Rowe. Do you recall us going through that today?
A. Yes.

Q. Today, you didn't tell me, "I didn't understand what that means," you just said, "I don't remember saying it."

A. I did not perform --

Q. I asked you about what we talked about earlier today --

A. What's your --

Q. -- right?

A. -- question?

Q. Today, I asked you about testimony at the Article 32 where you agreed that you engaged in fellatio and cunnilingus and other sexual touching with Captain Rowe --

A. Uh-hum.

Q. And your testimony today was you did not remember saying that at the Article 32, and that it did not happen. At no time today did you say, "I don't even know what that means;" correct? Correct?

A. There were like --

Q. Correct?

A. -- statements in there.

CC: Correct?

MJ: There were four sexual acts described in the question. Did you not recognize what those acts were, based on the terms that were used?

WIT: When he said that at the Article 32, I did not know what he was talking about.

CC: Okay --

WIT: I do not use -- I do not know the scientific sexual language.

CC: That's okay. We'll move on.

Questions continued by the civilian counsel:

- Q. I'm saying today, you did not tell me that you didn't understand those terms?
- A. I didn't -- I do not know what -- I still don't even know what cunnilingus is.
- Q. My question to you is, ma'am, it's simple. Today, you did not raise an objection as to your ability to understand those words earlier today; right?
- A. Correct.
- Q. Okay. Captain Rowe yelled at you; said he humiliated him [sic]; said he was going to destroy your reputation in the command; and then he said, "Get on your knees," and walked over to you and forced his penis into his mouth [sic]; correct?
- A. No.
- Q. What did I not get right?
- A. Just your choice of words. He -- he threatened to humiliate me and to discredit me and he dropped his pants -- I don't know which order he dropped his pants and which order he moved towards me.
- Q. That's fine. I don't care about the order. But that's -- we've already -- so he threatened to humiliate you; threatened to tell the command about you; then, he dropped his pants and --
- A. He also threatened to kill me.
- Q. Okay. I'm sorry. I just don't remember everything you said, but it's on the record. But those are the things that happened?
- A. Yes.
- Q. Then he said, "Get on your knees" -- actually, I think you testified that he said -- he told Jeremy that he was going to show him something or is that later? I don't want to confuse things.
- A. Um -- he -- after the two seconds -- or whatever it was -- that he put his penis in my mouth, he said that he wanted to show Jeremy.
- Q. Okay. So his penis is in your mouth for about two seconds, then he says "I'm going to show Jeremy"?
- A. He says, "Never mind, go upstairs --"

Q. Well, stop.
A. Uh-hum.

Q. You're on your knees?
A. Uh-hum.

Q. His penis is in your mouth for two seconds?
A. Uh-hum.

Q. Okay. Is he holding his flaccid penis the entire time it is in your mouth?
A. Yes, his hand is on it the whole time that it's -- like, there.

Q. Okay. And he never -- his hand never releases his penis while it's in your mouth?
A. It's not in there very long, and no.

Q. And it never -- he never gets hard from that?
A. No.

Q. What happens next?
A. Um -- he said, "Never mind," and want to -- said something about showing Jeremy what a slut I was and --

Q. He said it while you were still in the kneeling position and he was standing --
A. He said it twice; he said it before I went upstairs and he said it again while I was upstairs.

Q. I'm sorry. I want to take it one step at a time. You're still on your knees --
A. Uh-hum.

Q. And you said he said, "I want to show Jeremy"?
A. He said, "Never mind; go upstairs, I'm going to show Jeremy what a slut you are."

Q. Okay. Great. So what does he do after that?
A. Um -- he follows me upstairs and yells for Jeremy.

Q. So he -- he's still standing there?
A. No, he just followed me upstairs.

Q. Okay. So you're on your knees?
A. Uh-hum.

Q. You got up and walked upstairs?
A. Yes.

Q. Okay. Did you do anything else before going upstairs?
A. Nope.

Q. Did you say anything before you went upstairs?
A. Um -- I had told him, before he put his penis -- was in my mouth, that I --

Q. After that.
A. I told him, before he put his penis in my mouth -- "No;" when he said, "Suck my dick," I said, "No."

Q. Um -- when he told you to go upstairs, did you say anything else after that?
A. I think I was pretty much just -- um -- crying.

Q. Okay. Was Jeremy in the room at this time?
A. No.

Q. When you made it upstairs, was Jeremy upstairs?
A. No, he was outside or something.

Q. Okay. So, again, I want to go back to the 15 seconds you were in the kitchen. It stands to reason then -- or do you know -- whether Jeremy came in the house and then left in those 15 seconds?
A. I think Jeremy was trying to leave; he was trying to get Rowe to leave.

Q. Okay. I'm talking about when you were in the kitchen. Well, let me ask you this question: We've already established that you never saw Jeremy.
A. I did see Jeremy.

Q. When?
A. When we were upstairs.

Q. Before that. When you were in the kitchen -- when you came out of the kitchen, Jeremy wasn't around?

A. No, I don't know where he was.

Q. Okay. And so, when he said, "Never mind; go upstairs;" Jeremy was still not in the room?

A. That's correct. And then, he called him in.

Q. Hold on. You got up and walked upstairs?

A. Yes.

Q. All right. What did Rowe do at that point?

A. He yelled for Jeremy and --

Q. -- come down stairs?

A. -- while he was moving upstairs.

Q. So he's right behind you?

A. Yes.

Q. On the stairs?

A. Yes.

Q. Okay. And he yelled for Jeremy?

A. Uh-hum.

Q. What did he say?

A. He said, "Jeremy, come here."

Q. Say it in the same -- as best you can -- the same voice that he said it.

A. I mean, he said exactly what I just said.

Q. "Jeremy, come here"?

A. He said it loud and -- loud and aggressively.

Q. Okay. So it was a loud and aggressive tone?

A. Uh-hum.

Q. Do you believe that it was loud enough that it could be heard outside?

A. If Jeremy was just standing right outside, then yes.

Q. Okay. So he follows you upstairs?
A. Yes.

Q. Are you looking behind you?
A. I just move upstairs.

Q. You just move to the bedroom?
A. It's a short stairwell.

Q. Okay. How many steps?
A. Um -- like, 10.

Q. Okay. Where is -- is your bedroom at the top of your stairs?
A. Yes.

Q. Is there any kind of hallway?
A. No, it's just the two bedrooms -- those two bedrooms.

Q. Two doors to the bedrooms?
A. No, there's just a bedroom on the immediate right and a bedroom on the immediate left. They have -- um --

Q. Do they have doors?
A. -- there's not really a hallway. It's like a townhome in the city.

Q. Okay. Which bedroom did you choose?
A. I went into my bedroom.

Q. Okay.
A. The bedroom is not really a -- like -- it's like -- has a big closet and dust.

Q. Well, when he said, "Go upstairs," why didn't you just go to the top of the stairs and stand there? Because you were directed to go upstairs; he didn't direct you to go to the bedroom; right?
A. I don't know -- it's just where I was.

Q. How did you know that he meant the bedroom?
A. I don't know.

Q. Because you've been there with him before?
A. No, I've haven't.

Q. Well, why did you go to the bedroom? I mean, he didn't say "Get in bed." He didn't say, "I'm going to do anything to you;" He just said, "Never mind; go upstairs;" right?

A. My impression was that --

Q. He said, "Never mind; go upstairs."

A. -- he was -- my impression was that he was going to do whatever he wanted to anyways.

Q. He said, "Never mind; go upstairs;" right?

A. Yes.

Q. Okay. You are now terrified of him: Death threats, humiliation; what is going through your mind that would lead you to believe that he wants to have sex with you?

A. I think he just --

Q. You've never had sex with him before.

A. He said he wants to show Jeremy what a slut I am. I don't know what Rowe wants to do. He said he did very --

like, things you could go to jail for he was younger. I mean, I think he knows what he is --

Q. He told you right there and then that he wanted to -- he had done things in jail?

A. No --

Q. -- or he said that before?

A. -- he told before that he didn't have a dad and that his mom worked in a jail. And that, he did things when he was younger that he could go to jail for, and that's part of the reason he was paranoid -- was because he had always -- he didn't have Facebook or anything because he thought people could come and find him.

Q. He said that -- all that to you that day or before?

A. No, he said that to me previously.

Q. Okay. But I'm talking, right now, about his statement --

A. Uh-hum.

Q. "Never mind; go upstairs;" you testified to that; right?

A. Yeah.

- Q. Okay. Why does Ariana Klay, who has never had sex with Rowe, assume that he wants to have sex with her? And why go to the bedroom, why not stop upstairs and said, "Get out of my house," again or something?
- A. Because I just wanted him to do whatever he was going to do and leave.
- Q. You wanted him to do whatever he was going to do?
- A. I didn't want him to; I just knew he was not going to leave until he left.
- Q. Well, how did you know? No one leaves until they leave; right? I mean -- okay. So you get into the bedroom; why did you go to the bedroom? Why didn't you turn around and say, "Look, Jim -- or Captain Rowe, I don't know what you're doing; I don't know what you're talking about, but this has gone far enough. You really need to leave and we can talk about it at another time. You're drunk"? I mean, you know how to reason with people; right?
- A. I didn't feel like he was somebody that could be reasoned with.
- Q. You -- he had been your mentor for months and months and months; you'd gone --
- A. I talked to -- I had hung out with him on three occasions in the last four months; I would not say that we had some kind of strong --
- Q. You testified that there were a number of -- you testified that you told your husband about how much he helped you and how far you've come along. You've testified that you had gone on this trip and you talked for a long time about alcohol and professionalism and what you need to do at the Barracks --
- A. Uh-hum.
- Q. -- and how you should stay away from Suzanne Brick; this is your testimony?
- A. Yes.
- Q. So you've had conversations with this man; you trusted him?
- A. Yeah.

Q. In fact, you told him that you trusted him when you called him on that telephone call that was recorded by NCIS. Do you recall that?

A. Um -- I don't, but I believe you.

Q. Nonetheless, you trusted him. Why didn't you just try to reason with him?

A. Because he's not reasonable when he's drunk. I've had arguments with him when he was drunk.

Q. How did you know he was drunk?

A. He just was acting that way.

Q. Okay. So why did you go to the bedroom?

A. I don't know.

Q. What happened when you got to the bedroom?

A. He said, "Take off your clothes and get on your hands and knees."

Q. All right. And you did do that?

A. Yes.

Q. And at no time did you protest?

A. Downstairs, I told him --

Q. Upstairs, at no time, did you protest?

A. I don't remember what I said upstairs. I know I said "No" before he tried to have Jeremy do his thing.

Q. And when you got on your hands and knees, where were you on the bed?

A. Um -- like, I would say on the foot-side.

Q. You were on the edge of the bed?

A. On the foot-side.

Q. What does the "foot-side" mean?

A. Where -- like, a person's feet would be if they were laying down.

MJ: Opposite the headboard, you mean?

WIT: Opposite of the headboard.

Questions continued by the civilian counsel:

Q. Okay. So you were on your hands and knees; where were your knees oriented when you were on that bed -- I'm sorry. Where were your feet oriented when you were on that bed?

A. They were facing the -- um -- doorway.

Q. Okay. So your head would have been towards the headboard?

A. My head was towards the window on the side.

Q. Okay. Are the windows on the side of your bedroom or towards the headboard?

A. They are on the side of my bedroom.

Q. Okay. So your foot would have been towards -- I mean, your head would have been toward the windows?

A. Yes.

Q. And your feet would have been --

A. -- towards the doorway entry.

Q. Okay. I see. So your bed is going -- sort of sideways in your bedroom?

A. Um -- yeah.

Q. Okay. Where was he?

A. He was -- um -- facing me from the doorway.

Q. Okay. So he -- was he standing in the doorway?

A. No.

Q. Where was he?

A. He was -- putting himself in me.

Q. Ma'am, I'm going to ask you a diagram of your bedroom and the orientation of your bed on there. Can you please do that on this yellow sheet, and we'll get it marked.

The witness did as directed.

CC: Thank you, ma'am.

The witness has done as directed.

Can I get this marked as the next defense exhibit, I believe it is F.

The document was proffered to the court reporter.

CC: At this time, Your Honor, I ask that we moved Defense Exhibit E, for identification, into evidence and have the words "for identification" deleted.

TC: No objection, sir.

MJ: Are you moving for E and F?

CC: Yes, Your Honor.

MJ: Any objection to E, which is the --

TC: No objection to either, sir.

MJ: Defense Exhibits E and F are admitted into evidence, the words "for identification" are stricken.

CC: I've retrieved Defense Exhibit F from the military judge.

MJ: If you're going to use that, Mr. Faraj, use the ELMO.

CC: I will, Your Honor.

The civilian counsel did as directed.

Questions continued by the civilian counsel:

Q. Ma'am, I'm looking at Defense Exhibit F, do you see that?

A. Uh-hum -- yes.

Q. What are the two boxes with X's inside of them that are just North of the bed?

A. That's the window.

Q. Okay. And you wrote down "Jeremy" and you wrote down "Rowe" in there --

A. Uh-hum.

Q. Is that the location of those two men?
A. Um -- that's the location of the men when they were both doing the assault at the same time.

Q. Okay. And is the stick figure the place where you're located?
A. Yes.

Q. All right. So you walk up the stairs, Rowe says -- when you get to the top of the stairs you walk into the bedroom?
A. Uh-hum.

Q. When you walk into the bedroom Rowe says, "Take off your clothes"?
A. Yes.

Q. And what else does he say?
A. He kept yelling for -- he kept yelling for Jeremy to come upstairs.

Q. Okay. And while he's yelling, you took off your clothes?
A. Yes.

Q. Did he yell at you anymore or did he just yell at Jeremy?
A. Um -- I don't -- I don't think they -- I think he was just yelling for Jeremy.

Q. Okay. And so, you get upstairs; he tells you to take off your clothes, you take off your clothes; and then you get on your -- the bed on your hands and knees again?
A. Yeah.

Q. On your hands and knees?
A. I said, "No," to him, and then I just did it.

Q. And he told you to get on your hands and knees?
A. Uh-hum.

Q. Okay. So you get on your hands and knees -- he said, "Get on your hands and knees," you said, "No"?
A. Yes.

Q. And you just did it. Where you on the bed when he said, "Get on your hands and knees"?

A. No, I was just standing there.

Q. Okay. Why didn't you get on your hands and knees on the floor? Why did you get on the bed?

A. I don't know. I don't know.

Q. Why did you face -- why did you turn away from Rowe? I mean, your threat is now behind you --

A. Uh-hum.

Q. Jeremy is not upstairs yet.

A. Uh-hum.

Q. Most human-beings don't turn away from a threat unless they get rough; right?

TC: Objection, sir. That's argumentative.

MJ: I'll --

TC: I think it's also improper -- I don't even know where to go with the objection for that type of question, sir.

MJ: You've got argumentative and speculation, I believe, is the two objections.

I'm going to sustain it, unless you can lay a foundation for her opinion or not.

Questions continued by the civilian counsel:

Q. Ma'am, is it fair to say that if you're threatened, you would either run or turn and face your threat to try and deal with it?

A. No. If I --

Q. What would you do, you get on your hands and knees?

TC: Objection, sir. I really believe this is outside of her specific comments.

MJ: Sustained. Move along.

CC: I'm sorry.

MJ: Sustained. Let's move along.

Questions continued by the civilian counsel:

Q. Why did you turn your back to him? Because you've been in that sexual position with him before; is that true?

A. No, it's not.

Q. In that bed?

A. No, that's absolutely not true.

Q. So he is upstairs yelling for Jeremy -- I'm assuming he took off some of his clothes; and that's Rowe I'm referring to; correct?

A. I didn't watch what he did.

Q. Okay. Because you were turned away with your back to him?

A. Yes.

Q. Okay. Were you on the edge of the bed or on the center of the bed?

A. Um -- I don't know. I guess --

Q. Were your legs on the edge of the bed, your feet?

A. I don't -- I don't know.

Q. Okay. What happened next?

A. Jeremy kept yelling for Rowe to -- he was saying, "I don't even know who you are anymore. Come on, let's go."

Q. How do you know it was Jeremy?

A. Because I could hear his voice and --

Q. So you've known -- you know Jeremy's voice?

A. I don't know Jeremy's voice; I assumed that's who was with him because that's who he was yelling for.

Q. And because you met him the night before at the -- at Center House when you pulled out a bottle of Scotch or some other liquor out of your purse --

A. Uh-hum.

Q. -- and began to have a chat with Jeremy; do you remember that?

A. No, I don't.

Q. You don't remember doing that at Center House?

A. I remember drinking a ton at Center House; I don't remember --

Q. I'm sorry.

A. I said I remember drinking a great deal at Center House.

Q. You don't remember meeting Jeremy and Maigan Rowe and talking to them that night at Center House?

A. I don't.

Q. And then, asking them to come out to the bars with you; you don't remember that?

A. [Nonverbal response].

Q. And then, meeting the Agoulniks' and leaving with a friend of the Agoulniks; you don't remember that?

A. No, I don't.

Q. And Rowe chasing you down and having a conversation with you and saying -- and then, you saying to him, "Whatever you have to say to me, Maigan can hear"?

A. I don't remember any of that.

Q. And then, he left and you texted him excessively that night; you don't remember that either?

A. Nope.

Q. Okay. So were back to the bedroom, does Jeremy finally come upstairs?

A. Um -- yes, Jeremy came upstairs.

Q. Was -- were you and Captain Rowe engaged in any kind of sexual touching by this point?

A. No. I mean, he was -- he'd pushed his -- like, penis into me, but there was no -- besides him doing that and him holding onto my back there was nothing.

Q. Okay. Was he rigid?

A. I don't even remember.

Q. Okay. So did he get on the bed or did he do it from standing on the floor?

A. I don't remember. I mean, I wasn't facing him; I don't know.

Q. I know. But did he have to get on the bed or did he -- was he close enough that he could reach you from the floor?

A. He was not on the bed.

Q. Okay. Did you crawl away from him on the bed? Did you just sort of walk away on the bed?

A. I just -- like, lowered my body on the bed, and he pulled it back up.

Q. Okay. Did you try to crawl away or get off the bed from the other side?

A. No.

Q. All right. At some point Jeremy made it upstairs?

A. It was shortly thereafter Jeremy was yelling for Rowe to leave. He kept saying -- kept saying: "Come on, Jim; let's go." And he was like: "I don't even know who are anymore, man; I don't even know." And Rowe said: "Come on, Jeremy, Ariana is going to show you what a slut she is." And he told him --

Q. Is Jeremy upstairs at this point?

A. Yes.

Q. Okay.

A. He's -- like, standing there.

Q. He was standing in front of you?

A. No, he was standing -- I don't know where he was, but I could hear his voice. His voice sounded like he was in the room.

Q. Okay. And then he eventually came to be at the location that you marked on the exhibit?

A. Yes.

Q. Okay.

A. Rowe told him --

Q. And you are sure that Captain Rowe's penis entered your vagina?

A. Yes.

Q. Okay. Now, just a few week before --

A. Uh-hum.

Q. -- you had come under suspicion that this man may have been sleeping with a woman you know has herpes; right?

A. Yes.

Q. And so, here he is engaged in sexual intercourse with you -- you did not go get yourself checked out that day?

A. No.

Q. You did not get yourself checked out the next day or any day for that matter; correct?

A. Um -- I did get checked out for that actually.

Q. When?

A. Um -- in March.

Q. Okay. Fully -- September, October, November, December, January, February, March -- eight months after. You engaged in sexual intercourse with your husband during that period?

A. Very sparingly and --

Q. And so whatever he may have had that could've been passed to you, you could have passed to your husband?

A. I don't think I could have possibly dealt with that additional thing.

Q. He did not use a condom. And if he did, you wouldn't know if he did or not; right?

A. Right.

Q. Ma,am, you've had education on sexually transmitted diseases; correct?

A. Yes.

Q. Many courses in the Marine Corps, and I'm sure at the Naval Academy; right?

A. Yes.

Q. And you have referred to whatever Miss Brick allegedly has as a disgusting disease; correct?

A. I don't know if Rowe had sex with her or not.

Q. I'm asking you about what your state of mind is with respect to whatever Miss Brick has; right?

A. Yeah. It was really repulsive.

Q. Right.

A. I mean --

Q. It's a disgusting disease. And you have never, according to you, had sex with Rowe; right --

A. Yes.

Q. -- before that day; right?

A. Correct.

Q. And so, whether he's had sex with Brick or not, really is of no relevance, you'd want to know if he passed something to you; right?

A. I didn't even think of -- I wasn't even in a frame of mind to even think about that.

Q. You didn't think -- you weren't concerned that this man, who raped you, might have passed you HIV, herpes, something? You just went on for eight months without a checkup?

A. I didn't really want to go get a checkup.

Q. Okay. When Jeremy moved up to you, did he actually put his penis into your mouth?

A. Yes.

Q. You opened up your mouth for him?

A. Rowe told me to, once again, "Suck his dick."

Q. Okay. And you complied?

A. Um -- not willingly.

Q. Did he have to force your mouth open?

A. He just moved his -- um -- he did the same thing Rowe did with his hand, with his penis.

Q. So he forced his penis into your mouth?
A. No, I opened my mouth when he pushed it to my penis [sic], but it was forced.

Q. You said "penis," but you meant -- I think, your mouth; right?
A. Yeah.

Q. How long was he inside your mouth?
A. Extremely briefly, because he came -- like, instantly; and Rowe made fun of him for that.

Q. What do you mean by "instantly," give me a time.
A. Like -- like -- literally, like the second it touched my mouth.

Q. Rowe made fun of him, so it was kind of a funny moment?
A. It was not funny at all.

Q. Well, how did he make fun of him? What did he say?
A. He said, "Dude, that is so pathetic."

Q. What did Jeremy say?
A. He just said, "Let's get out of here."

Q. What did you say?
A. Nothing.

Q. Did you laugh?
A. No.

Q. Did you have your tank-top on from down stairs?
A. Um -- no.

Q. You took off your tank-top?
A. He told me to take off all my clothes.

Q. Okay. Did Captain Rowe ejaculate?
A. I just remember that Jeremy left, and then Rowe said that he was not done with me yet.

Q. Did he ejaculate?
A. I don't know for sure that he did; I just know he finished shortly thereafter and left.

Q. What did you do after they left?

A. I just laid there.

Q. They walked down stairs?

A. I guess so; I don't know remember -- I mean, they had to have walked downstairs.

Q. Okay. And you don't recall following them down --

CC: Stand up, Captain Shinn, please.

The defense counsel did as directed.

CC: Assistant defense counsel has come forward to the well.

Please turn around.

Questions continued by the civilian counsel:

Q. You don't remember going downstairs and telling him not to leave; "stay, stay" and holding him this way?

A. No.

CC: I've asked Captain Shinn to turn around, and I've wrapped my hands around his -- sort of, back and front to put him in a hold to demonstrate for Mrs. Klay for the purpose of my question.

Captain Shinn, thank you. You may resume your seat.

Questions continued by the civilian counsel:

Q. You don't remember doing that?

A. I -- no, I didn't do that.

Q. What did you do?

A. I laid there and wished that it could all go away.

Q. Okay. When did you get out of bed?

A. I don't know -- like, I think I just laid there. I don't know; I have no idea.

Q. Did you fall asleep?

A. No, I didn't.

Q. You began to call Rowe and to find out where Quinn was?

A. Some point later -- a few hours later probably.

Q. Well, "probably" or --

A. I mean, it was 7 a.m. I definitely couldn't sleep.

Q. What did you do? You just laid in bed for a while?

A. Just didn't even know what to do.

Q. Okay. What did you do after you got out of bed?

A. Um -- I don't remember. And I -- don't -- I do not remember -- besides Jeremy and Rowe coming by for -- like, five minutes -- I don't remember anything -- besides --

Q. Working back, because you told me --

A. I do remember talking to my husband briefly too.

Q. You asked them to come by the house, Jeremy and Rowe?

A. I didn't ask them to come by; he said that they were going to come by and that he was very remorseful. I think he had sobered up, because when I talked to him, he was very -- very melancholy. And said that: "I had reached my low point that needed to be reached so I could recover from alcoholism." He said that's what that was.

Q. Well, you reached your low point because you woke up in bed with another enlisted Marine.

A. I didn't wake up in bed with an enlisted Marine.

Q. Are you sure about that?

A. Yes, I'm sure.

Q. If you had woken up in bed with an enlisted Marine, both you and that Marine could get in trouble; correct?

TC: Objection. Calls for speculation.

MJ: I'll allow it based on her professional experience over the career of a few years.

Questions continued by the civilian counsel:

- Q. If you had woken up in bed with an enlisted Marine, depending on what happened, both you and that Marine could get in trouble; correct?
- A. Um -- yeah.
- Q. It stands to reason then that if a Marine would admit to being in bed with an officer, that Marine could face punishment; correct?
- A. Um -- unless it's -- you know, one of Rowe's protected Marines or something.
- Q. How long were you in bed before you got out of bed?
- A. You mean, when Rowe was yelling?
- Q. No, after Rowe had left.
- A. I told you I don't remember. I mean, maybe -- I don't know. I don't remember.
- Q. What did you do immediately after you finally left the bed?
- A. I logged onto the internet, and I researched how many sleeping pills it would take to die.
- Q. Okay. You didn't go to the bathroom to wash?
- A. I went to the bathroom to throw up because I was --
- Q. I know. But you didn't go to the bathroom to wash; right?
- A. I don't even know what -- I --
- Q. You did not go to the bathroom to wash? You got out of bed and you got on the internet?
- A. I don't remember when I took a shower that day. I was very depressed and didn't really want to do anything.
- MJ: Do you want to take a recess now?
- CC: Ten-minutes, and government --
- MJ: Make it 15, five after.

Court is in recess.

Instructions remain the same; do not discuss your testimony with anyone.

The court-martial was recessed at 1750, 13 December 2011.

The court-martial was called to order at 1822, 13 December 2011.

The military judge stated that the court came to order and that all parties present when the court last recessed were again present.

Questions continued by the civilian counsel:

Q. At a dinner with the Agoulniks, after August 28th, after the alleged assault on August 28th, you communicated to the Agoulniks that you were grossed out by Suzanne Brick?

A. Yes.

Q. You also thought it was gross and shocking that in metropolitan D.C. where the women outnumber the men, all these guys who were senior to you were having sex with her at the Barracks; correct?

A. Yes.

Q. You also said, "I looked up to Rowe"?

A. At the time?

Q. I don't know. Did you?

A. I have no idea.

Q. Okay. You continued to look up to Rowe however even after -- well, no. At the dinner, they communicated to you that the Agoulniks thought that Brick and Rowe were having a sexual relationship and you said, "I looked up to Rowe," and it goes throughout the idea of him engaging in a sexual relationship with Brick; do you recall that?

A. Sure. Yes.

Q. Okay. That was after the alleged rape?

A. Yes.

Q. You continued to look up to him even after the rape?

A. No; I didn't look up to him after the rape.

Q. Do you remember testifying at the Article 32 that you looked up to him even after the rape?

A. I appreciated his help because he was helping me on my alcohol stuff where he was --

Q. Okay. That was after the rape?

A. Yeah. I wouldn't say, "I looked up to him."

Q. Okay. Would it refresh your memory if you took a look at your testimony from the Article 32 hearing?

A. I'm just going to say "Yes." Sure. No. Great.

MJ: You don't recall your testimony at the Article 32; is that correct?

WIT: Yes, sir.

Questions continued by the civilian counsel:

Q. Would it refresh your recollection if you took a look at it so you can --

A. Can I just believe you?

CC: Well, you can answer my question. Isn't it true that at the Article 32, you testified, to my question, that you looked up to the man that raped you?

TC: I just ask that the defense counsel --

MJ: Why don't you just properly refresh her? Refresh her recollection properly. If she does recall, then [inaudible].

Questions continued by the civilian counsel:

Q. Ma'am, I'm handing you Defense Exhibit A, and I'm flipping to Page 139 at the very bottom. At the very bottom of the question, I asked you, "So, you were looking up to the man that raped you?"

A. I don't see it. I don't see it.

Q. 139?

A. Yes.

Q. Okay. You answered to one of them.

A. It says, "So, you were looking up to the man that raped you?" I said, "To one of them."

Q. Right.

A. I don't know what that means.

Q. Okay. That's fine. I'll take that. Is it fair to say that you weren't looking up to Jeremy Owens?

A. No.

Q. Okay. You believe two men raped you, Jeremy Owens and Rowe?

A. Yes.

Q. Is it fair to say then that one of them would be Jim Rowe?

A. Yes.

Q. Okay. Now, you consistently testified that there was no sexual relationship between you and him. Would you agree that there was sexual tension between you and him?

A. No. We discussed sexual issues. I guess, it depends on how you describe -- what's your definition of "sexual tension"?

Q. Well, what's your definition of "sexual tension"?

A. My definition of "sexual tension" is any kind of conversation related to sex.

Q. Okay. Do you recollect testifying at the Article 32 that there was sexual tension between you and Captain Rowe?

A. Yes.

Q. That answer came from you when I only asked you about a sexual relationship. You said, "No, but there was sexual tension." Do you recall that?

A. Sexual tension means, like, discussion of sexual -- like how he said he was impotent.

Q. That's sexual tension?

A. In my definition as I told you, sexual tension is even, like, discussion of sexual matters.

Q. Really?

A. Yes. That's why I gave you my definition.

CC: Okay.

MJ: That's her definition. Move along.

Questions continued by the civilian counsel:

Q. Now, because you never had a sexual relationship with Captain Rowe; right --

A. Yes.

Q. -- it's also fair to say that there was no impact on you performing your duties as a result of any relationship you had with Captain Rowe?

A. I'm not sure what you mean.

Q. There was no relationship between you and Captain Rowe, sexual relationship?

A. There was no sexual relationship.

CC: Okay. It's also fair to say that because there was no sexual relationship, there was no misuse of any government equipment or resources or facilities in a sexual relationship; correct?

The trial counsel rose from his seat.

MJ: I'm going to allow it. Overruled.

WIT: I'm sorry? I don't understand the question.

MJ: Answer the question. These are "Yes" or "No" questions.

WIT: I'm sorry, sir. I don't understand the question.

Questions continued by the civilian counsel:

Q. Because there was no sexual relationship -- because there was no sexual relationship --

A. Uh-hum.

Q. You looked confused, so I repeated it.

A. Yes.

Q. Do you understand what I'm saying?

A. No, I don't.

Q. Because there was no sexual relationship, there was also no misuse of government resources or equipment or facilities; right, in a sexual relationship?

A. I don't see how a sexual relationship --

MJ: It's a "Yes" or "No" question.

WIT: No. I don't know what you are talking about.

MJ: That's not the question.

WIT: He is asking me --

Questions continued by the civilian counsel:

Q. You never had sex in a government facility; correct?

A. Yes, that's correct.

Q. You never used government resources to engage in sex, to facilitate sex; correct?

A. Yes.

Q. You never used government equipment to facilitate a sexual relationship; correct?

A. Correct.

Q. You were never ordered; and to your knowledge, he was never ordered to discontinue having a sexual relationship that persisted; correct?

A. Correct.

Q. Because there was not sexual relationship between you and him, we can also assume that there was no negative impact on the unit as a result of a sexual relationship; right?

A. Coming from there was no negative impact on the unit?
Yes.

Q. As a result of a sexual relationship between you and Rowe because there wasn't one?

A. Yes.

Q. You were not in his chain of command?

A. I was in the same command as him.

Q. Yes. You weren't in his chain of command?

A. He was not in my reporting command.

Q. Right. He had no authority over you?
A. He did have authority over me. He was a senior officer in my command.

Q. Okay. You were not part of Bravo Company?
A. That's true, but he --

Q. He was the Commander of Bravo Company?
A. Yes.

Q. Okay. He never forced you to have sex with him as a result of his authority over you?
A. I mean, him being a senior officer, he had authority over me.

Q. Okay. I'm saying, "You never engaged in consensual sexual relationship --"
A. He didn't threaten his rank. He did not use --

Q. Great. Your husband is not in his chain of command either?
A. No.

Q. He is not in your husband's chain of command?
A. Yes.

Q. At some point during the -- as you testified to -- relationship between you and Captain Rowe, your marriage was on the rocks, meaning you and your husband were contemplating a divorce at some point; right?
A. I never contemplated a divorce. There were two occasions where Ben did when I was drinking.

Q. That's the night of the D.C. Pageant?
A. No.

Q. What was that fight over?
A. I don't even remember, but something related to my drinking.

Q. Okay. Him contemplating divorce occurred -- the first time it occurred was in November of 2009 at the Ball where he became upset at you for you being drunk at the Ball; correct?
A. And hanging out with Suzanne which he strictly forbids.

Q. Okay. That continued until sometime -- the tension in the relationship between you and your husband continued until --

A. No. I would say that it got better. I mean, there were a lot --

Q. When did it get better?

A. It got better a month after the Ball. In December, it got better again.

Q. December of 2009?

A. Yeah.

Q. When did it go bad again or if at all?

A. I don't remember exact times. I mean, it was like -- it would be really good for like -- usually when I would quit drinking for a couple of weeks, and everything would be really great. Then I would drink again; he would -- it was kind of a cycle.

Q. Okay. You testified extensively that the reason you didn't find solace with your husband is because you didn't have a very good relationship?

A. I still love my husband, and I loved him then.

Q. I'm not talking about love. I'm talking about that the relationship wasn't going very well.

A. There were times when it was not good because it was the first year of our marriage. I was unhappy with my job, and I was struggling with alcohol. Yes; there was contention.

Q. Now, the first year you were married was actually in 2008, not 2009 though you testified earlier in 2008?

A. It depends on whether you are talking about the Justice of the Peace or our family wedding?

Q. When were you officially married?

A. Our Justice of the Peace was in Spring of 2008.

Q. That's an official marriage?

A. Yeah, but our family wedding -- well, it depends. Official marriage to our family was on the 4th of July of 2009.

Q. You collected BAH after the Spring of 2008?

A. We got married so that we could --

Q. You collected BAH after the --

A. That's not why I was doing it.

CC: I know.

MJ: Mr. Faraj, I'm very familiar with this concept that she is talking about. Did you tell your family about the Justice of the Peace?

WIT: My family but not his.

MJ: I'm very familiar with this concept. Move along.

Questions continued by the civilian counsel:

Q. Finally, because there wasn't a sexual relationship, neither you or he ever wasted government time, official government time, engaged in any sexual act; right?

A. Yes.

Q. Now, you stated earlier today that the trip to West Virginia happened because he wanted to go, and he took you there, and you didn't want to go there?

A. I have never gambled ever in my life.

Q. I understand. That was your testimony earlier today?

A. Yes.

Q. You actually didn't even know where you were going, I think I remember you saying; right?

A. He mentioned something about wanting to go to one of his casinos. I didn't know where that would be.

Q. It could never have been your idea that you wanted to go to West Virginia?

A. I would not want to go on a trip to go watch someone gamble.

Q. You did not want to go to West Virginia to look into adopting another dog and you wanted him to --

A. That was the one positive thing that I saw about it.

Q. Wait a minute. You do agree then?

A. I would not go to a casino to -- no.

Q. Hold on.

A. I do not agree with that, no.

Q. Before that trip to West Virginia, one of the reasons that you wanted to go to West Virginia is for the purpose of looking for a dog to adopt?

A. No.

Q. All right. Do you recall testifying at the Article 32?

A. Yes, I do.

Q. Do you remember talking about that very issue, that you went to West Virginia?

A. Yes.

Q. You do recall testifying about that?

A. Yeah.

Q. That you knew you were going to West Virginia?

A. No, I don't.

CC: Okay. I'm going to call your attention to Defense Exhibit A again, Page 30, very bottom, last question and answer on that page. Will you please read those to yourself? When you are done, look up to me. Page 30.

WIT: I'm not asking --

Questions continued by the civilian counsel:

Q. Did you read the question and answer?

A. Yes. I did.

Q. Okay.

A. It doesn't say that I was planning on going with him. It just said, "What would be a reason to why you would do that?"

Q. You knew you were going to West Virginia?

A. No, I didn't.

Q. "We were going to go out there for one day because he gambles. I don't gamble." You knew you were going to West Virginia?

A. When we were on the way there. I didn't know that we were going to go to West Virginia. He had mentioned something about a casino. I didn't know if it was the one he went to during the daytime.

Q. Okay. You are also referring to dogs, greyhounds?

A. That was the --

Q. Those are located in West Virginia and you knew that?

A. What he said when he brought up that we -- no, that's not true. That's not true. I didn't know greyhounds were at -- I have no idea which casinos they were at.

Q. We are not talking about casinos. His purpose is to go to a casino. Your purpose is to look to see if you can adopt another dog. I'm not saying --

A. That wasn't why I went out there with him. There was no plan to go out there. I didn't know we were going to West Virginia.

Q. There was no plan, but you did admit that you were going to go out there for one day --

A. When he said, I was like, "Oh, where are we going?" He had mentioned that, he mentioned that it was something that I would like because I think he knew I had a distaste for spending more than a couple of hours in that kind of a place.

Q. Okay. Based on that testimony, then he would have had to tell you that it would be in West Virginia?

A. On the way there.

Q. Got it. Did you say, "Wait. I don't want to go that far"?

A. I'm sorry?

Q. Did you say, "I don't want to go that far"?

A. No. I didn't say anything. I just said -- I didn't really say anything.

Q. During our breaks, have you been talking to your husband about your testimony here today?
A. I didn't talk about my testimony. I just said that I was really upset and that it was taking a really long time.

Q. Did you say anything else to your husband?
A. I talked about my job tomorrow, and I talked about logistics with him missing work.

Q. Your husband became upset?
A. Yeah. He said, "He is torturing you. That's really wrong."

Q. Who is "he"?
A. He is my husband.

Q. Who is "he"? Me? I'm torturing you?
A. Yes.

CC: Okay. What does he think I'm asking you?

TC: Objection, sir, relevance, hearsay, and speculation.

MJ: You can have the answer if he takes the stand. You can have --

WIT: I didn't tell him --

MJ: Ma'am.

WIT: Sir?

MJ: Stop. Move on.

Questions continued by the civilian counsel:

Q. It's your testimony that you said nothing about your testimony here today to your husband?
A. No, I didn't. That's correct.

Q. Nothing at all?
A. Yes.

Q. Okay. I need a couple of minutes to review my notes, Your Honor. I apologize.

I may have already asked this, so I apologize if I'm repeating myself. When you called Corporal Hill, how did you know to ask about Quinn?

A. Because Rowe had mentioned his name. He said that he was like the Oger-looking Marine or something. I don't know. I just put it together that it was Quinn.

Q. Okay. Do you know how Rowe would have found out that it was Quinn?

A. When he came into the door, he said that -- what's his name -- Gunny Duboy had said that he had seen me leaving with Quinn, I think.

Q. Okay. You deduced then that it was Quinn that was in your house?

A. I didn't know what was going on. I didn't know if anybody was actually there, if it was Quinn. I don't know.

Q. Well, that's what I'm getting to, and I'm sorry. If you could explain to me, was it his statement that Duboy said, "Someone saw you walk with Quinn"?

A. No. When Rowe came into the door initially to my home, when he was yelling on the morning of the 28th, he said something along the lines of "Quinn was gone from formation." He told me that he was going to inspect it, or something about the Body Bearer being in my house.

Q. Okay. Your testimony is that he also told you that he doesn't want to know who is upstairs, or he doesn't want to see who is upstairs?

A. He didn't want to see him. He did not want to see the Marine.

Q. Okay. When you spoke to Hill, you said, "Something happened at my house, and I need to know if Quinn heard something," or words to the effect?

A. Yeah. I asked him -- yeah.

CC: Okay. What did he tell you?

TC: Objection. It calls for hearsay.

MJ: Who are we talking about?

CC: Hill.

TC: Calls for hearsay, sir.

CC: It goes through a state of mind and what she did afterwards.

MJ: Overruled.

WIT: He said -- he gave me his information, his number. I sent him a text and asked him something about -- I don't remember what it was.

Questions continued by the civilian counsel:

Q. Hill complied with your request for Quinn's number?

A. Yeah.

Q. Okay. You acted on that?

A. Uh-hum.

Q. You testified on direct that before he began to be investigated by NCIS, he called you to ask you about NCIS investigations?

A. Yes.

Q. How did he know that there was an NCIS investigation?

A. He had heard from somebody.

Q. From whom?

A. One of his other Company Grades in Bravo Company had to go over to NCIS. I don't remember who, and he was asking why. I think it was Captain Agoulnik because he had to go get interviewed for being a potential witness on Major Warren's incident, so Rowe got --

Q. You told Rowe that you reported Warren and --

A. I didn't tell Rowe anything really.

Q. At one point, you asked Captain Rowe to become a witness to the alleged misconduct by Suzanne Brick; correct?

A. Incorrect.

Q. You never asked him to provide a statement about Suzanne Brick?

A. No, I did not ask him. I told him that Major Barkley was contacting him.

Q. Okay.

A. Because he asked me to tell him anytime someone -- he said, "Let me know if anybody is going to interview me for these investigations." I told him, "Major Barkley is going to be interviewing you." When I told Major Barkley --

Q. You became upset when he told Major Barkley, "I don't know anything about Suzanne Brick besides --

A. I didn't --

Q. Let me finish -- besides what she told me."

A. No, that's not true at all. I didn't really care. There was already so much evidence against Suzanne that it didn't even matter.

Q. You did not become upset at Captain Rowe?

A. No, I didn't care. I thought it was his thing to stay out of it.

Q. On the day of the alleged assault, did you call anyone else besides Hill and Quinn?

A. Ben, my husband, and then I talked to Ben's brother.

Q. Did you call Gunny Duboy to ask where Quinn was because he was over at your house?

A. No. I don't remember talking to Gunny Duboy, but I might have talked to him. I don't remember.

Q. You are not sure?

A. If I was looking for Quinn, then I might have contacted Gunny Duboy before Hill to try to find out what was going on because --

Q. You would have told Gunny Duboy that he was at your house and that you needed to talk to him?

A. I'm sorry?

- Q. You would have told Gunny Duboy that Quinn was at your house and that you needed to talk to him?
- A. I wouldn't have told him that. I just would have said -- I was really vague when I talked to both him and Hill because I didn't know what had happened, and I didn't want them to assume something that happened that didn't.
- Q. Okay. Do you have a recollection of maybe having a conversation with Duboy?
- A. Yeah. I remember talking to Gunny Duboy in the next two-day period. I don't know if it was that day or the next day. It was within maybe three days.
- Q. Okay. Why would you need to talk to him within the next three days?
- A. Because I wanted to know the truth about whether Quinn was in my house or not.
- Q. Okay. You had spoken to Quinn that day; right, the same day?
- A. I don't even remember what Quinn said if -- I think he just said that he didn't want to be involved. He didn't answer one way or the other. So, I don't know.
- CC: Okay. I believe I'm done, Your Honor, but let me check with my co-counsel before I step aside.
- I've completed my cross, Your Honor, but I've got a bunch of exhibits here some of which are originals that I need to return to the court reporter. Do you expect that we are going to continue tonight or --
- MJ: You can leave them up there. If the government is not going to touch them, we can sort that out after we excused the witness.
- CC: Okay.
- MJ: Let's see how far we get before I call it a day.

REDIRECT EXAMINATION

Questions by the trial counsel:

TC: Okay. Mrs. Klay, I'm going to try and keep this fairly brief; okay? There were a few points where you looked like you wanted to say more. You looked like you wanted to explain something. One of the ones that really kind of jumped out for me was, I guess, every time Mr. Faraj started talking about something you said at the Article 32 hearing as opposed to what you said here today, you looked as though you wanted to kind of explain. I don't want to go through each one. Generally, could you explain to the military judge why there are those discrepancies there and sort of what your state of mind was during that Article 32?

CC: It calls for a narrative. It's vague.

MJ: It's general. I think it was already elicited by her. If it goes too far, I'm going to stop you. At this point, I'm not saying it calls for that because I believe I have already heard this from her in the middle of your examination. You may proceed.

WIT: Yes, sir. Prior to the Article 32, I was very upset. I had some other things going on. My husband was not in town. I did not sleep the night prior. My psychiatrist prescribed all these medications for me, which I am not taking any right now, and I slept last night. I was not in a good state of mind. At times, I just gave answers that -- I just shouted out answers to him that -- to try to move along. Some of them were not accurate. I hope that I could clarify them today.

Questions continued by the trial counsel:

Q. Now, one of the things also that I think Mr. Faraj asked you an awful lot about is: He went back and forth on whether or not you went home or stayed in a hotel on the night of the Miss D.C. Pageant. Could you tell the military judge what was going on the night of the Miss D.C. Pageant?

A. Yes, sir. The Miss D.C. Pageant, I was a liaison to have some Marines go there. Captain Rowe's Marines were escorting the girls. Afterwards, there was -- everyone went across to the bars and my friend, who coordinates the pageant, was there. I left in a cab with Rowe, but Rowe went back to the Barracks and I went back home.

Rowe said that he saw Captain Dwyer [ph] that night when he was sleeping. Some of the things in the Article 32 just didn't make any sense to me.

Q. Well, I guess, one of the things -- did you stay in a hotel with Captain Rowe that night?

A. No.

Q. When you gave this statement about "Well, I could have gone home or what not, but I didn't," what was it that you were trying to convey?

A. I was trying to say that if -- there were times when I was at the Barracks and they encouraged if officers drank too much, they said, "Sleep in your quarters or the Center House." There was a time when I stayed at the Center House because my husband said that if I came home and I had been drinking that he would divorce me. I was just rationalizing if that was the scenario to why I wasn't talking about that specific evening.

Q. I think also Mr. Faraj kind of seized on this distinction between you saying that you wanted to be sexually desirable to Captain Rowe or you wanted to be attractive or what not. Could you kind of explain what you meant there as far as wanting to be attractive for --

A. Nobody wants to be, you know, ugly. I think I did want to excel at everything. I wanted to excel in athletics. I wanted to excel as a Marine. I wanted to excel in every endeavor. You can objectively measure most things, but looks you can't really. I would say that since that everybody thought so highly of him, if he thought I was attractive, that would be flattering to me. I didn't want him to see me as sexually desirable. I didn't want anybody to see me as sexually desirable except for Ben. I think it's not bad if people think a person is generally ascetically okay looking.

Q. I think this kind of ducktails with the next thing I want to ask you about. As far as whether or not you were jealous of Captain Rowe with Suzanne or whatnot, what did you feel? What was your reaction when you saw Captain Rowe giving Suzanne a --

A. I mean, Rowe was the first person to acknowledge to me that he knew that stuff was going on. When he --

- Q. You say, "that stuff." What stuff?
- A. Her sexual relationships with the other officers. When he knew that it had been going on for a while, I just found so much -- I really liked that he was not involved in that scene because I felt like everyone was. He gave me advice on how to get away from that kind of stuff. He kind of knew that she was a bad boss. When he was part of it, it was, like, this person that I looked up to was participating in it. It made feel like everyone was involved in my boss. She had this crazy web of protection.
- Q. Now, I guess, there was some -- you talked about this kind of relationship where he would provide you advice and things like that, in a lot of ways, act like as a mentor. Seeing this man that you saw as kind of a professional mentor, what was your response from that context?
- A. What do you mean? I'm sorry? Response because --
- Q. You talked generally about this person that you thought was above it. I guess, I'm looking for maybe something more specific or personal. If he was someone that you saw as a mentor --
- A. He just seemed to have insight into -- he knew what bothered me. When he was telling me to practice drill, he could tell that I was having a hard time there. The fact that he just actually did -- even if he said, you know, "I'm not going to talk to you in front of anybody." I figured, "Okay. He just hates female Marines, but either way, maybe singles me out as special because he has insight."

The insight he gave to me was stuff that I felt was helpful. It was like, "Don't drink." He was like, "If you don't for the next three weeks, I'll talk to you again and I'll give you some more advice. If I see you drinking, you're cut off." I would actually not drink or go to the gym the hours that he said. When he seemed like he had approval, then that was positive to me. I guess, I wanted to have some leader that I respected there. Even though he was an alcoholic, during his sobriety, he was very professional and not into a lot of the weird scenes going on.

Q. Again, Mr. Faraj asked you about this. When there was some discussion at Captain Agoulnik's house about Captain Rowe and rumors about him having a relationship with Suzanne and then you began to cry --

A. It wasn't about --

Q. What was it about?

A. I think it was just everything that happened at the Barracks. I couldn't even begin to explain to anyone what was going on. It was just so much stuff. It was just the humiliation that I felt while being there. I just felt like everybody was corrupt.

Q. You said right there that you felt like everyone was corrupt. You said both on direct and cross-examination that you felt that sort of contributed to the Command's response to things?

A. Yeah. I don't think everyone was. There was enough people in high-powered positions -- I don't think Major Anderson was and some other people. I think there was so much going on that it was impossible not to be subject to it.

Q. I was going to push on a little bit from there. As far as your understanding of the response to the incident involving Corporal Gillespie, how has that impacted? At least from your perspective, how did that impact you?

A. How did that impact the assault?

Q. No. What you talked about as far as Command Climate and things like that. From your perspective, how did that impact the response?

A. Because I had reported these things -- by this point, Ben's family knew what was going on and the atmosphere with my boss and everything. Ben's boss --

CC: Objection, all based on hearsay.

WIT: Regardless of --

MJ: Hold on. Sustained.

TC: Yes, sir.

MJ: Move on.

TC: I'll move on. I will talk to you a little bit more about this incident with Gillespie though. Mr. Faraj talked about pretty much what was on the video recording. You indicated that there was more that took place before that. Could you --

CC: Objection. I wasn't allowed to go into it.

MJ: It's already been covered, I believe, as to what was said. If that's what you're asking about, she testified to what was said. You were allowed to go into it. Of course, you brought it out in a narrative question.

TC: I think it was an incomplete -- I do really think that it was an incomplete presentation, sir.

MJ: Renew your objection after one question because I have --

CC: I would like to remind the military judge that on foundation, I did not want to go into the specifics. I went into how it was handled at the Command. I could not go into the details.

MJ: It was limited to foundation. That was all that I was going to consider towards --

TC: I'll move on then, sir.

Questions continued by the trial counsel:

Q. What Marines at 8th & I did you contact after you left?

A. At which time because there were --

Q. I guess, Mr. Faraj was asking several times, but you had no reason to contact Marines after you left 8th & I.

A. I e-mailed Lance Corporal Tinsley to let her know -- I said, "I apologize for my failure in leadership." This is by the point that she was pregnant, after that thing with Captain Gallagher. I said, "I apologize for my failure in my part, and I'm so sorry that you have to be in that environment you're in. If you want to -- I have spoken to Colonel Anderson -- I can get you a position over here."

MJ: The question was which Marines?

WIT: Tinsley. When one of the other Marines who was about to PCS, I just texted him, like, "Good luck with everything." That was it for the Marines in the Protocol shop.

Questions continued by the trial counsel:

Q. Okay.

A. I did call the office one time because someone had told me -- someone at Henderson Hall said that Master Sergeant Hunter -- when people asked where I was -- was telling people that I was fired. When people were like, "Why is Lieutenant Klay not here anymore," he was like, "She was fired." It was untrue, so I called and asked Master Sergeant to please not relay that information that way. That's when she sent the e-mail.

Q. I think it actually came out already. The military judge stepped in, but I was going to ask what your purpose was for contacting those three Marines. I think that came out during the course of that answer.

A. Uh-hum. Other than that, there is a Lieutenant now that I'm friends with, but she wasn't there during all that other stuff.

Q. Mr. Faraj also talked about you going to 8th & I in June. Why that June?

A. I felt like for a while right after -- I have never not worked out in my life. Right after this stuff happened was the first time I just didn't work out. After going through that program over there, I felt like I wasn't going to let it disrupt my life, and I was going to keep working out even if I did feel a little bit uncomfortable after it happened. I wasn't going to let it phase me. That was something I actually talked about in-depth with my therapist that I started seeing. The therapist -- how hard it was that we had bought a house a block from 8th & I, and now it bothered me to be out in the streets. If I went to the stores and saw that nothing happened, then everything would be fine.

So, I continued to go to the gym in the evening hours when there wasn't really anybody there or on a Sunday afternoon. I didn't go during regular work hours. Even when I started, it was, like, a couple months after

everything happened. I would just go once in a while. If I ever worked out during the day, it was always at Henderson Hall while I was still in the Marine Corps.

Q. I guess after there was this Military Protective Order put in place at 8th & I to stop you from going on Post.
A. I --

Q. I haven't gotten to a question yet. How many times did you actually go into the gym after that?
A. I never went to the gym after the MPO or on base or anything.

Q. There was a situation with --
A. That happened -- while the MPO was in effect, I did not -- that was, like, June through August 15th. So, late August, the MPO was no longer in effect. I e-mailed the MCCDC JAG, and he said, "No. It's no longer in effect. You are no longer on active duty." My husband was a reservist, so I just went to the gym. That's when seven Guard Marines came to the gym to escort me out and showed me the logbook entry that said, you know, per Colonel Montanus, that's the standing SOP, that Lieutenant Klay is not allowed on base.

I was very upset because it's in my own neighborhood and I walk my dogs past the Guard Marines almost every day. I thought that was humiliating that he issued this order to, like, a hundred something Marines based on the fact that junior Marines said that I spoke negatively about a senior officer.

Q. I think that's -- now, Mr. Faraj talked to you about meeting with Maigan Rowe. How is it that meeting with Maigan Rowe was set up?
A. Rowe said that one thing he was going to do to help me was that he was going to -- I did tell him that I -- it was right after [inaudible] that I told him that I felt suicidal. He told me not to do it. He said that he would send Maigan to make sure I was okay. I just complied with it, I guess. I don't remember how he arranged for her to come over.

Q. Okay. I think you've gone there. Who made the first steps? Who took the first steps as far as having Maigan Rowe come to your house?

A. I didn't --

CC: Objection, calls for speculation.

MJ: Can you rephrase your question?

Questions continued by the trial counsel:

Q. Did you make the first steps as far as having Maigan Rowe come to your house?

A. I really don't remember. Rowe initiated contact. I don't know if he sent me her information, or if he sent it to Maigan. I don't remember, but I didn't have Maigan's information. He sent it.

Q. Was that because you requested it from him?

A. No. I had no desire for her to come over.

Q. Why didn't you give his name or any details about the 28th to law enforcement until January?

A. I thought it was too embarrassing to speak about it. I didn't want to go through the process. I didn't feel like that there was -- I didn't feel like there was enough evidence. Rowe was still contacting me. I was still talking to him. He seemed remorseful. He said that he was going to get therapy when he went to Oklahoma.

He was the only person that seemed to be interested in my recovery besides my husband, and he was a recovering alcoholic himself. Actually, I don't know what stage he was in. He knew all about the 12-step process, and this is what I did all day long. He would talk me through it. He would say things like, "Part of the 12 steps is that you have to forgive everyone. You have to stop giving all of this information about Suzanne and everybody."

CC: Objection, narrative and unresponsive to the question.

WIT: I'm sorry? Did I not answer the question?

MJ: You did, but you just took off with three or four reasons. Anything else?

TC: I was actually going to ask a few questions related to that, sir.

Questions continued by the trial counsel:

Q. You mentioned about him going to Oklahoma. Was that a PCS move?

A. Yes.

Q. Okay. When was that?

A. Late October, I think.

Q. From 28 August until he left at the end of October -- let me backtrack a little bit. You testified both on direct and to Mr. Faraj's cross-examination that you were afraid of the accused. You were intimidated by him and things like that. I guess, what I am getting at is: Did that continue from that time period or from 28 August until --

A. I would say it was worse because I felt like he had more control over -- he was the only person who knew about that incident. Even though he told me that it was something that just had to happen so I could get better, I just kind of -- I didn't even know what to do. I knew how capable he was of doing something harmful.

There were already so many bad things going on in my life anyways. I couldn't handle anything else. I couldn't handle another investigation. I felt like if I had reported it, then General Flynn or somebody -- I just wanted to take my NJP and go and not deal with another investigation. By January I just --

Q. Mr. Faraj asked you a number of questions about, I guess, things like waste of government time and resources and things like that resulting from what took place with Captain Rowe. Now, he phrased it in terms of a sexual relationship before the 28th of August. What I want to ask you is: You testified about taking some of these driving trips whether it was to southern points of Virginia or driving out to West Virginia. I guess, my question is: Were those on weekdays? Were those on weekends?

A. One of them was on a workday, the one down to Virginia.

Q. Do you remember which day of the week?

A. It was a day where he didn't really have anything to do, I guess.

Q. Okay. Did you have anything to do?

A. Suzanne was never really in the office outside of Parade Season, so not really. I already had done my work for the day.

Q. Was it an authorized liberty period?

A. No. I think it's typical for officers at 8th & I to just kind of leave -- outside the Parade Season -- during the day. MCI Marines get off at like 2 o'clock.

TC: Now, Mr. Faraj also asked about sort of your ability to do your job and things like that. How was that impacted after 28 August?

CC: Objection, relevance.

MJ: Overruled. You may answer the question.

WIT: I would say that it affected it badly.

Questions continued by the trial counsel:

Q. Could you describe, I guess, why and how? You said it impacted badly, so it had a negative impact on your ability to perform your functions as a Protocol Officer?

A. I didn't perform my functions as a Protocol Officer. I referred myself to alcohol rehab. I didn't come back to work after that.

Q. Okay. I guess, at the time, you were still billeted as the Protocol Officer?

A. Yes.

Q. Okay. It impacted your -- that's what I'm asking you. Is that one way it impacted your ability to perform your functions as a Protocol Officer?

A. I guess so because I left.

Q. Okay. What about after that?

A. I had requested to transfer as well. I was no longer the Protocol Officer after I got back. I came back and went to Henderson Hall.

Q. Now, you also talked about contacting Corporal Quinn and Corporal Hill or Lance Corporal Hill?

A. I don't know what rank he is.

Q. Okay. Hill. When you are asking so and so, "Was he in my house" or when trying to ascertain these kinds of things, what were some their responses to you?

A. Hill seemed kind of confused. What's his name? Quinn was just like, "Don't talk to me." Gunny Duboy, I think, had ordered him not to talk to anybody about it or something.

Q. I'm trying to get a little more -- as far as Corporal Quinn was concerned, what was his kind of -- you said, "Just don't talk to me." You actually extended your right hand out kind of like a pushing motion, I guess, indicating get away from me kind of thing.

A. I don't remember what his reaction was, but it was just mean. Whatever his reaction was, I asked him for some information: If he was there; if he remembers; or something. He just gave me a mean response. I was just asking him to tell the truth of where he was and what happened. I was upset because it was one of Rowe's Marines, and I knew that there was a good chance he would be influenced by that chain.

Q. You said that he was mean. I guess, that's what I'm looking for. Was his demeanor uncomfortable; was it disrespectful?

A. It was not in person. It was through e-mail, so I don't know.

TC: Okay. A moment, Your Honor. I'm done, sir.

MJ: Within the scope of that?

CC: I do, Your Honor.

RECROSS-EXAMINATION

Questions by the civilian counsel:

CC: Essentially, because you were tired and because you were on some sort of medication, everything that you testified about at the Article 32 that was damaging to your reputation or beneficial to Captain Rowe's --

TC: Sir, *[inaudible]* question already --

MJ: You need to tighten up.

WIT: No.

MJ: Actually, since there was an objection, I didn't get to hear the rest of the question.

CC: Everything that you said at the 32 about a relationship of a sexual nature, about going to hotels and staying with Captain Rowe, anything that's beneficial to Captain Rowe in his trial, we should disregard?

TC: Objection, sir.

MJ: There are too many compounds in there. Take each one individually.

TC: Your Honor, the government also objects to this particular phraseology as harmful to the witness or beneficial to the accused.

MJ: I'll decide whether --

TC: Yes, sir. That's part of the defense counsel's question, sir. That's the argumentative piece.

CC: That's speaking objections. I'm not sure what *[inaudible]*, Your Honor.

MJ: Which rule are you stating?

TC: Argumentative, sir.

MJ: Ask you questions individually, then we can take it from there. You listed questions which tends to create problems.

Questions continued by the civilian counsel:

Q. Because you had not slept and because you were apparently on some sort of medication at the Article 32 hearing, we should now not believe what you testified at the 32 hearing with respect to being sexually desirable to Captain Rowe; correct?

A. No.

Q. We shouldn't believe what you said at the Article 32 about you staying in a hotel room in D.C. with Captain Rowe; correct?

A. Yes.

Q. We should not believe that you wanted to make yourself sexually desirable to Captain Rowe; correct?

A. Yes.

Q. We should not believe that you engaged in oral sex with Captain Rowe; correct?

A. Yes.

Q. We should not believe that there was sexual touching of the breast or groin areas between you and Captain Rowe; correct?

A. Yes.

Q. We should not believe that you had been naked with Captain Rowe and he had been naked with you; correct?

A. Yes.

Q. Would you not agree that all of those things would tend to cast doubt on your truthfulness; correct?

A. Yes.

Q. Today, we should not believe those; correct?

A. No.

CC: Is there anything in your Article 32 testimony that you can think of that you now want to withdraw or we shouldn't believe because it is helpful.

TC: I'm not sure where I would go with this objection, but I know there is one there.

MJ: Unclear. It's an improper question. You already listed a number of ones that should not be believed. You have affirmative responses for those. Your first one, she said, "No." Could you restate that question?

CC: I remember and I can go back to that. Do you want me to clarify that first question?

MJ: Sure.

CC: Ma'am, again, the first question I asked you in that series, and I may have been confusing was: We should not believe that you stayed in a hotel room with Captain Rowe; correct?

MJ: That was the third one in the list.

CC: I forgot my first question.

MJ: Actually, there were two before it. Sexually desirable and you had one more in front it, which she said it was true.

CC: Is it true that we should not believe the Article 32 testimony about wanting to be sexually desirable to Captain Rowe; correct?

MJ: She answered that one.

CC: I'm sorry, but what is the question that we are confused about.

MJ: It was the first one.

CC: I don't remember what it was.

Now, I want you to refer to your testimony again on Page 108 of Defense Exhibit A.

Forgive me. I'm handing the exhibit to the witness.

Questions continued by the civilian counsel:

Q. I'm going to begin at Question 4 from the bottom with the words "All right." Do you see that, ma'am?

A. Uh-hum.

Q. The question is, "All right. You participated in the Miss D.C. Pageant?" Your response is, "Uh-hum." You used "Uh-hum" when it's a "Yes"; correct?

A. Yes.

Q. Now, I said, "Do you remember staying in a hotel in D.C. with Captain Rowe that night of the Miss D.C. Pageant or perhaps the night after?" You said, "No. I did forget about that, but yes." I said, "I know. You stayed together; right?" You said, "There was no sex." Then I asked you, "Again, I asked you about that before. How many times did you stay together?" You said, "You know, only those two times." Then you said, "I didn't remember." Did I read that correctly?

A. Yes.

CC: Thank you. I'll retrieve the exhibit.

Questions continued by the civilian counsel:

Q. You were under oath at the Article 32 hearing; correct?

A. Yes.

Q. Now, what part of you being tired and whatever medication you were on caused you to misunderstand that question?

A. I was not listening to your questions.

Q. You came back to me with "Yes. I remember now"; right?

A. I didn't even know what I was talking about.

Q. Okay. How do we know anything you're talking about today?

A. I slept and I prepared.

Q. Got it.

A. I don't take any medications.

- Q. Why did you leave in a cab with Captain Rowe?
A. I don't know. I don't remember. I don't. It was just him, Captain Weringer [ph], Gunny Duboy, Sonya, and me. It was only five of us.
- Q. The question of you being jealous. I just want the sequence right. At the Agoulnik dinner, you are informed that there is a rumor about Rowe sleeping with Brick and you began to cry; correct?
A. It's not the first time I heard the rumor, and I didn't cry immediately after.
- Q. Correct?
A. No. No, it's not correct.
- Q. When did you start crying?
A. I don't remember.
- Q. How do you know it wasn't immediately after --
A. I don't remember.
- Q. -- if you don't remember?
A. Well, there were three other people at the dinner. So, I don't know. Maybe you want to [inaudible].
- CC: Okay. Or maybe you just don't want to remember?
- TC: Your Honor, objection, counsel commenting on the evidence.
- MJ: Sustained.

Questions continued by the civilian counsel:

- Q. You answered a bunch of questions from Captain Combe about Captain Rowe telling you that if you go to the gym and you stop drinking, I'll talk to you. Why was it so important for you to talk to this man? Your relationship was good as you testified when your husband found out.
A. Because the dynamics that he knew about the Barracks were very helpful for me to understand.
- Q. What are the dynamics that he got you to understand?
A. Just which officers were sleeping with Suzanne.

Q. Why does that matter?
A. Because the ones that would -- all of the ones that were with her would do anything to protect her and not have it known.

Q. Why do you have to worry about who is protecting her?
You have a billet in the office; correct?
A. Because Major Jones, who is one of the --

Q. You have a billet in the office; right?
A. Yes. It affected my professional work environment a lot.

Q. Really? What was the professional work environment that was affected?
A. If I could finish answering the first part? He --

CC: Who?

MJ: Let her answer the question. It was not a "Yes" or "No," Mr. Faraj.

WIT: He asked me --

Questions continued by the civilian counsel:

Q. Who is "he"?
A. Captain Rowe was Colonel Smith's favorite Marine.

Q. How do you know that?
A. He told me, and it seemed that way.

Q. Okay.
A. They would do shots together until 4 in the morning after parades and stuff. Captain Rowe said that, you know, he had been at the Barracks for a long time, so he had seen a lot happen with the officers. I felt like he was able to pull me from the direction that I was kind of doing to be in there. Also, I felt like his advice on who to talk to and how to get out of there sounded sound. He built a timeline to get Major Jones to support my request to deploy.

Q. Okay. When did you get that advice? Let me back up.
A. Yes.

Q. You stated everything that you just said about a minute or so. When did you get all of that advice?
A. All of that advice that he said? It was over the few times that I talked to him.

Q. Okay. Your objective was to get out of the Barracks? He was going to advise you on that?
A. I just wanted to be in a place where I would be respected, in an environment where I could be challenged, and appreciated for the work I did.

Q. You wanted to be in Suzanne Brick's place?
A. No, I didn't.

Q. You didn't want to be the Protocol Officer?
A. I didn't want to be working for her.

Q. I said, "You wanted to be in her place. You wanted to take her position."
A. Not at all.

Q. You didn't want to replace her?
A. Not really. The job is very focused on -- Special Events doesn't take a rocket scientist to get it. It's kind of neat because you meet a lot of famous people and interact with high-profile officers, but it's not very mentally challenging.

Q. Just to be clear. You were never the Protocol Officer? She was the Protocol Officer?
A. It says "Protocol Officer" in my Fitness Report, and that was where I was tasked.

Q. You were never the Protocol Officer?
A. Well, my --

Q. Who was the Protocol Officer at the Barracks?
A. She was the Protocol Director.

Q. You were the Protocol Officer?
A. That's what it says in my Fit Rep.

Q. Okay. When you testified to a question about leaving the Barracks after August 28th, you already knew you were going to Henderson Hall at that time?

A. I don't remember. I just remember requesting to go to Henderson Hall as soon as possible. That was specifically put in my --

Q. You were sent to Henderson Hall?

A. I requested and I got sent there; I don't know.

Q. Okay.

A. I know my request happened before. I don't even know if there was ever even a "sent."

Q. If you made a request, it was before August 28th?

A. Major --

Q. If you made a request, it was before August 28th?

A. Lieutenant Colonel Filson told me -- relayed to me that the reason he said -- "Yeah; we are going to honor your request to Henderson Hall because that's going to be a much better environment for you to recover from your alcoholism."

Q. Okay. That request was before August 28th?

A. Yeah. I did request to leave 8th & I well before August 28th several times.

Q. Marines at 8th & I work irregular hours many times?

A. It really varies on the billet. You can be in the band or you can be at MCI or you can be on guard.

Q. Let's focus.

A. Okay.

Q. The Marching Companies work irregular hours? For example, they work late on Fridays; right?

A. I guess, it depends.

Q. During Parade Season?

A. During Parade Season, everybody works late on Fridays.

Q. Okay. It's not a set schedule; right?

A. Depends on your billet.

Q. Okay. There are some flexibility for officers to come and go, but there are some schedules or some events that they definitely have to be at; correct?

A. Yes.

Q. In fact, often times, you had to work on weekends because of events; right?

A. I guess, it depends on the billet.

Q. I said, "You."

A. I would say once or twice a month; yeah.

Q. Captain Rowe sometimes had to work on weekends?

A. I have no idea what his work schedule was.

Q. Okay. As the Protocol Officer, you didn't know when the Marching Companies had to be somewhere?

A. No. We had nothing to do -- the operations of the Barracks were completely outside the Protocol shop. Protocol shop setup the social events for the Generals and their wives, some social functions, and the parades. We didn't have anything to do with the funerals.

Q. That's fine. When you went to the Barracks, you initially began at MCI; correct?

A. They sent me down there for --

Q. You went to MCI?

A. -- like two days.

Q. You went to MCI?

A. Yes.

Q. You didn't immediately go to Protocol?

A. Um-uhm.

Q. You were unhappy with that assignment?

A. Yeah, because everyone left at 2 p.m. and there was no work to do.

Q. You wanted to go to --

A. Yes. I told Lieutenant Colonel Hanger that I would prefer to have a more challenging billet.

Q. You testified on redirect that you contacted two Marines, Lance Corporal Tinsley and another Marine, Brick, I think you said? No. Who is the other Marine that you contacted?

A. I think it was either Sunder [ph] or Hensley before he PCS'd, I think.

Q. Who?

A. It was either Lance Corporal Sunder or Hensley. One of them PCS'd.

Q. Okay. You testified that you contacted Tinsley to assist her because you thought she needed some sort of assistance; correct?

A. I apologized to her and offered her assistance.

Q. Okay. Tinsley -- well, let me ask you it this way. After you sent that message or that e-mail, Brick contacted you by e-mail and said, "Stay away from my Marines"; right?

A. I don't know if it was after that. I just know that she sent me some e-mail. It was obvious to me why she did that. She also ordered all the Marines to -- she told me it was her fault.

Q. Ma'am, listen to my question.

A. Okay.

Q. You contacted Tinsley and Suzanne Brick sent you an e-mail saying, "Your communication to my Marines is disruptive." That's the e-mail you received; right?

A. Yes.

Q. Thank you. It stands to reason that Tinsley probably told her that you contacted her and you were being disruptive?

A. That's completely false because I talked to Tinsley, and Tinsley said that --

CC: I'm going to object. This is hearsay.

The trial counsel rose from his seat.

MJ: He is standing up for your sake as well. I'll disregard the last.

Questions continued by the civilian counsel:

Q. You actually contacted 14 people at the Barracks after you had left, and you were told to stop contacting people; right?

A. Who was I told to stop contacting? Are you talking about Suzanne Brick?

Q. You were ordered by Lieutenant Colonel Hudspeth to stop contacting people?

A. Yeah. Lieutenant Colonel Hudspeth gave me an order -- she said that she couldn't find any evidence to prove that I was sexually harassed, and I provided her names. She threatened to counsel me for interfering with an investigation.

Q. You didn't just contact two people; you contacted 14 people?

A. Yes. Initially, when you were talking about Protocol shop, I had contacted two people.

Q. I apologize if I was unclear. In addition to the Marines at the Protocol shop, you contacted 14 people at the Barracks after you left?

A. Yes.

Q. That's after you were counseled, not just by Lieutenant Colonel Hudspeth?

A. No. That's incorrect.

Q. You never understood that you were not supposed to contact people under investigation?

A. Yes. They never said that I was supposed to not contact --

Q. Do you understand that you are not supposed to contact anyone during an investigation?

A. All I did was I asked Lance Corporal --

Q. Do you understand that you are not supposed to --

A. I asked a Marine to provide me the names of Marines that called me a "slut" because she couldn't find anyone.

MJ: Ma'am, the question was -- please repeat again. It is a "Yes" or "No" question. Do you recall the question.

WIT: No. I was not directed not to talk to anyone.

Questions continued by the civilian counsel:

Q. Do you understand that you are not supposed to contact people who are part of an investigation?

A. Yes.

Q. Great. Yet you did anyway?

A. I contacted Marines that were not part of the investigation.

Q. Lieutenant Colonel Hudspeth was conducting an investigation; correct?

A. Yes.

Q. You contacted 14 people that were either being interviewed, going to be interviewed, or were interviewed in her investigation, or possible interviews in her investigation?

A. Lieutenant Colonel Hudspeth told me who she interviewed and said that she could not find any evidence to say that any Marines ever said that I was a slut, so I called the few Marines that I knew could corroborate that. They provided names. I provided the names to her, and she counseled me for interfering with an investigation.

Q. Okay. Did she ask you for assistance?

A. Colonel Montanus actually told me --

Q. Did she ask for assistance?

A. Colonel Montanus asked me for assistance. He said, "If you can provide names, then we can hold people accountable." I did as I was directed. I was trying to find names.

Q. Did Colonel Hudspeth ask you for assistance?

A. No.

Q. Did you say, "I understand, ma'am. Here is a list of people that have spoken to me and have told me -- you already knew those names that you called --

A. I didn't know that --

Q. Let me finish.

A. Okay.

Q. You just testified that you contacted people that would know. So, did you provide a list of those names and said, "Ma'am, I believe these people can help you in your investigation"? Did you do that?

A. No. Those names were not in the initial list. I didn't know their names; I had to find out their names.

Q. You conducted your own investigation?

A. No. I just asked Lance Corporal Sumerton what the names of the Marines that used to call me a "slut" were. He listed them off for me.

Q. You contacted 14 people, not just Sumerton?

A. I also e-mailed -- yeah. I think you don't understand the sequence or the chronology of what happened. When I was appealing the investigation for Shinkle, in the EO manual, it says that you can -- if you had additional statements that you would like to provide -- so I sent out e-mails to get additional statements.

CC: You had conducted or you had overseen over a couple hundred investigations in the course of your career as an adjutant?

TC: Objection. He is misstating the evidence, sir.

CC: She testified couple hundred investigation.

WIT: I said, like, 65.

MJ: Stop, ma'am. Mr. Faraj, I gave you latitude in cross; but anything further, I don't see how it matches up with the charge sheet at this point.

Questions continued by the civilian counsel:

CC: You testified on redirect that --

MJ: Can you make it link to the charge sheet? What are you offering this line of testimony for because I'm not seeing it?

CC: It goes to the witness' creditability.

MJ: We went down this road. You can ask a few more questions in the area, but please, move along.

Questions continued by the civilian counsel:

Q. You had a gym at Henderson Hall; isn't that true?

A. Yes and that's the gym I mostly used

Q. There are plenty of gyms around the D.C. area that you can go to; correct?

A. I don't know. I have not done a survey of the military --

Q. I'm not talking military gyms; I'm talking private gyms around the D.C. area; right?

A. Mostly *[inaudible]* now anyways.

Q. Okay. The gym that you go to at 8th & I is the one that the Body Bearers go to?

A. All the Marines go there.

Q. Okay. There is another gym three blocks away; you could have gone there?

A. Are you talking about the Annex?

Q. Yeah.

A. That's where I went when the Guard Marines escorted me out. That's where I was. I did work out there.

Q. Okay. Let's talk about the MPO a little bit. You said that you didn't go the entire time during the MPO; right?

A. Yes.

Q. Why would you ever want to go back to a gym at 8th & I?

A. I didn't want to be unwelcomed in any part of my community.

Q. This is the community of Marines that you say who called you a "slut" and all sorts of nasty and ugly names; right?

A. Yeah. They also walk along the streets on 8th Street.

Q. I understand.
A. I still walk on 8th Street to go to work.

Q. Sure. You have to walk there to get to work and get back home, but you don't have to go to that gym; right?
A. It's easily accessible. It's in my neighborhood and there --

Q. That's where those terrible Marines are who call you names?
A. The Marines are out on 8th Street too.

CC: I have no further questions, Your Honor.

TC: No, sir.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. Ma'am, do you have a car?
A. Yes.

Q. Did you have a car back in August of last year?
A. Yes.

Q. During your interactions with Captain Rowe that you described in these drives, did he pick you up at your house?
A. One time he met me at a Metro Stop. The other two times he picked me up at my house. He didn't go into my house; he just picked me up.

Q. Why did he pick you up at the Metro Stop?
A. I don't know what he was doing. It was what he wanted to do. I have no idea why.

Q. Do you recall which trip that was?
A. I think it was the one he drove to West Virginia.

Q. That's the one with the gambling?
A. Uh-hum.

Q. There is only one West Virginia trip?
A. Yes.

- Q. The trip down south, that's the one with the pig and the DUI?
- A. Yes, sir.
- Q. You drew us a diagram referencing Defense Exhibit F. Do you recall the yellow sheet of paper that you drew, the bigger one?
- A. Yes, sir.
- Q. What size of bed do you have in your bedroom?
- A. It's a full. It's a small [inaudible]. It was built in 1855. It's one of those tiny ones, and the rooms are small too.
- Q. Smaller than a queen?
- A. Yes, sir.
- Q. How would you describe Captain Rowe's liberty attire normally?
- A. In the Virginia drive, he wore a hat -- very, very casual, like, shorts and a T-shirt type stuff. I would say around the Barracks, he would wear a collared shirt and khakis.
- Q. TBS liberty attire?
- A. TBS liberty attire, but on his drive, he just wore a T-shirt and hat type thing.
- Q. Post 28 August, do you recall what type of liberty attire you had on?
- A. I probably wore a penciled skirt and a blouse. That's what I always wear.
- Q. That was you. How about him? Stop. Before you go to him, that type of outfit would be what you would wear if you went out on a Friday or Saturday night?
- A. That's what I wear to work now. That's what I would wear on a Friday evening. I thought it was conservative but nicer than you would wear going to a golf range or something like that.
- Q. Do you carry your keys in a purse or do you keep it on you when you are out on a Friday night?
- A. I carry my keys in my purse.

Q. Don't carry the big purse on a Friday night?
A. Yes, sir. I carry the big purse.

Q. On a Friday night too?
A. Yes.

Q. When you go out on a Friday night, do you keep your house locked?
A. Yes, sir. I don't go out anymore to be clear.

Q. Back then in August, same thing?
A. Yes, sir.

Q. How often did Captain Rowe talk about Indiana and his friends and family back home?
A. A lot.

Q. Who did he talk about?
A. He talked mostly about his mom. He said he didn't ever have a dad, and his mom works in a jail. He said that he knows that he has kind of personally messed it up. Everything he does, he needs to make money because he sends checks home to his mom. He talked about his life in Indiana before he went to the Marine Corps. He enlisted in the Marine Corps, and then, I guess, his life got better.

Q. Did he talk about any of his friends back there?
A. He had mentioned Damar [ph] one other time. He said Damar was some guy that took care of things for him.

Q. He mentioned this in one of those four trips that you took together?
A. It was the trip to Virginia that he mentioned Damar.

Q. Did he say what he meant by "taking of things"?
A. No. He kind of described him, like, kind of a thug-type way.

Q. Did he say "thug" or is that the implication you took from what he was describing?
A. That's just my term to describe how I felt he presented his childhood.

Q. Any other friends?

A. He talked about a girlfriend that he used to have that's Hispanic. He thinks there is a baby out there somewhere that has blue eyes that's Hispanic. He would talk about that when he had been drinking. When he was drinking at his house, he would say that there was a maid that he had something with, like, performed sexual things on him.

Q. When did this conversation take place?

A. Just over the phone when he was at his house.

Q. To you?

A. Yes.

Q. How often did he call you from his house?

A. I probably talked to him two times while he was at his house. He was drinking by himself. He said when he was growing up that he was involved in a bad crowd.

Q. You mentioned that you started at the Barracks at MCI?

A. For a couple of days.

Q. You would have stayed there if not for you asking to be reassigned?

A. No. When I checked in -- literally, my orders that were sent to me from the monitor was that I was a hot-fill PCS. They were PSC'ing me as soon as possible to fill this hot-fill for the Protocol billet specifically. When I got there and when I checked in, they said that they were going to send me -- when I was interviewed by the XO when I checked in, he said that he was planning on putting me down in Protocol, but he wanted to have a few days to gage how mine and Ms. Brick's personalities would match.

Then he said that Protocol had a problem and that he wanted to bring me in to help. I went to MCI Company, and I did tell them at the time that I would definitely be interested in switching. The officer that showed me around had told me that MCI is where Staff NCOs go to die. He said that everyone is out of there by 2 p.m. and there is not a lot of work to do. I really didn't want to be over there.

Q. This is my description. The XO just said you need to prep the ground before you moved into Protocol?

A. Yeah. He wanted to make sure that our personalities would match. I guess, it seemed like what he wanted to do.

Q. At some point, you asked to get out of Protocol?

A. Within two weeks, I asked Lieutenant Colonel Hanger if I could be switched to CMC Protocol. By December, Vice Admiral Herald [ph] put in, by name, his request for me to be his aide.

Q. With regards to CMC Protocol, how did you ask to go to CMC Protocol?

A. I said --

Q. Was it a verbal or written request?

A. It was a verbal request. I have e-mails for the Afghanistan, which I guess they provided to you anyways. My husband can testify to it because I talked to him about --

Q. That's okay.

A. Okay.

Q. Now, when you spoke to the NCIS Agent, [inaudible]?

A. Uh-hum.

Q. Did you change the way you talked to him?

A. No, not really. Normally, when he would say something offensive, I would defend myself. I didn't want to defend myself because I felt like if I did, then he would be suspicious.

Q. The way you talked to him, how you called each other, that's consistent with the way you talked to each other in the car and outside.

A. Yes, sir.

Q. When you drove south with Captain Rowe and any other situations, who paid for the drinks?

A. I paid for my own; he paid for his own.

Q. Did you pay cash or credit card?
A. I honestly don't remember. He seemed like he always paid cash for everything.

Q. Who paid for gas?
A. I would. It was, like, half and half. I used my credit card sometimes.

Q. You each paid your own way?
A. Yes.

Q. You don't recall who paid for the hotel, either one?
A. No, sir.

Q. When he is with you, did he ever appear to be talking to his wife on the phone on any of these drives?
A. Not that I can remember.

Q. To your knowledge, was she living in the Capital Region?
A. Yes, sir. He said that she was, but he said that she travelled for business a lot, I guess.

Q. You don't know what she does?
A. She does something with Human Resources because that's why -- when I met her, she was saying that she could help me with -- I guess she helps hire for government jobs, which I said not to go into that direction anyways.

Q. I know Mr. Faraj spent some time on this. At the 32, you mentioned something about -- you answered other minor incidents of making-out type stuff.
A. I never [inaudible] making out, anything.

Q. With Captain Rowe?
A. Yes, sir.

Q. Okay. On the D.C. Pageant night, you listed a few other Marines and the Captain.
A. Captain Wanagarez [ph] was there, and Gunny Duboy was there.

Q. Okay. Did any of them share the cab on the ride back?
A. No. Gunny Duboy wanted to stay because he had a crush on Sonya, my friend. Captain Wanagarez was really, really, really hammered and kind of in his own world. I don't

know where he is at now, but he used to live in that area of D.C. where the event was at anyways.

Q. On this night --

A. My home is right by the Barracks, so we came back.

Q. How would you describe your level, if any, of intoxication?

A. I had been drinking a lot that night.

Q. If you are able to answer the question, are there periods of that night that you do not recall?

A. It's hard to say at this point. I didn't really think a lot about these individual nights. I can remember the assault well because that's what I think about. I don't know. I don't remember.

Q. When you are out on this Friday night on the 28th and in the past -- if this is consistent -- do you usually leave the bars about closing time?

A. Prior to that, no. By the Summer of 2010, yes.

Q. What time is closing time in D.C. back then?

A. Like 3 a.m.

Q. On that night in question, you don't remember how you got home; is that right?

A. Yes, sir.

Q. Is it fair to say that you were extremely intoxicated?

A. Friday night was -- August 28th, the night before, I had been drinking even far more than normal. I would say that my drinking had increased that summer. Friday night was the most I drank in any one night.

Q. You had been drinking the night before that as well, 27th?

A. No because -- I'm sorry. Friday night was the 27th, if I'm saying it right. So no, I had not been drinking the night before that.

Q. Right, not Thursday night. Other than the night in question, it's your testimony that you never saw Captain Rowe naked?

A. No, sir. I saw him masturbating on that night.

Q. Was he above or below the covers?
A. He was above.

Q. Was there any light on in the room?
A. Just the TV. He was clothed; he just dropped his pants or whatever.

Q. Again, what was on the TV if you recall?
A. It was a porn.

Q. You mentioned that when you woke up on the couch and he was yelling at you, again if you know, you stated that you had humiliated him. He mentioned the Marines as well. He also mentioned his wife according to your testimony. Do you have any knowledge as to why he included his wife when you embarrassed him?
A. I think that he still did love his wife. I think that was important to him. It sounded to me like his relationship with her was damaged because of the alcohol, not because of anything else.

Q. In the morning in the question, he added his wife for those reasons. That's just your opinion?
A. Yes, sir. I don't know why.

Q. Okay. You don't know why. You do recall adding the wife to the list of --
A. Yes, sir.

Q. To your knowledge, did he see you get dressed in the kitchen?
A. I don't know that he did. I think he was doing something with Jeremy. I did it very quickly.

Q. You moved, in your underwear, to the kitchen because that's where he told you to go. You're getting dressed, and then he comes into the kitchen?
A. Yes. He came into the kitchen and shut the doors.

Q. Okay. There is a period of time that you are in there together and then he leaves and then calls you out 15 seconds afterwards?
A. Approximately.

Q. Have you texted him since 28 August?

A. Yeah. I would guess that I have at some point just because during the first three weeks when I was still talking to him, when I would learn something about a rehab process, I would ask him. He told me one of the requirements of the program was that I go to 100 AA meetings for 100 days. He recommended that I go to this one in -- he had some information about alcohol recovery stuff that I was communicating with him about.

Q. On these drives down to Virginia and out to West Virginia, what did you two talk about in the car, if any?

A. We did talk. I would say that I'm not super comfortable in silence so there was talk the entire time. We talked lots of different things. He predominantly talked about -- as soon as we got outside the city, he would talk about his life growing up, his family, and things back home. I would say that's the number one thing that he would talk about besides the alcoholism and his struggles at the Barracks.

We would talk about -- it was mostly him talking. I would say that he directed the conversations, and I would comment something about work and he would give his input. Generally speaking, I remember after the assault, he asked me how to pronounce my name and I told him. He said that he didn't know how to pronounce my name and that he was sorry and that he was a better person now. I don't think he knew anything about me. The conversation was directed towards him, but we did talk about people at the Barracks and things that had happened -- like, he had a friend, Snyder, that had fallen out of the Presidential Inauguration or something. He got fired and was sent to Quantico, so he talked about that a lot.

Q. He asked you how to pronounce your first name?

A. Yes, sir. When I first met and when I initially interacted with him, I would still salute him and call him "Sir" when I would see him around. He told me that was weird and not to do it. He never acknowledged in public that he knew me.

- Q. You said that he PCS'd in October of 2010. What did you share about the August incident prior --
- A. I shared that with -- I spent every single day for seven weeks over at Malcomb Grove with all these -- with about eight other service members from different services that had various addiction recovery problems. Some of them were just addiction to pain killers. There was one officer, one Staff NCO, and the rest were enlisted. They kept saying that I was crying everyday because of my withdrawal, but it was going past three weeks and they were like, "Why are you so upset?" I just talked to them all about my drinking, and I just went through the whole story.
- Q. This is in October that you started to release this information?
- A. It was in October in some point.
- Q. Information that you haven't told anyone?
- A. I had not told anybody any details about it at all, but I said that there was an assault. I just didn't say any information. Anna Burton was the first person that tried to get information about it.
- Q. Who is Anna Burton?
- A. When I went and referred myself to the alcohol rehabilitation program, you had to fill out this sheet. They sent me to go talk to her because of what I wrote in the sheet.
- MJ: Counsel, questions in light of mine?
- TC: No, Your Honor.
- MJ: Mr. Faraj?
- CC: Very briefly, Your Honor.

REXCROSS-EXAMINATION

Questions by the civilian counsel:

Q. This disclosure to your therapy group, that's not captured in your record that you provided; correct?

A. It should be on the notes. There were medical professionals in the room, so there was one lady.

Q. Have you seen anything? Have you seen that captured anywhere?

A. Yes. It's in my medical papers.

Q. Those medical papers describe what?

A. It describes that I discussed the sexual assault.

Q. One sexual assault and one sexual harassment; right?

A. No. I don't know exactly what they wrote in their notes. They have ones that they have to lock away, so you would have to --

Q. I'm just saying what you saw. I'm just asking you what you have seen?

A. From what I have seen, they made a referral immediately for me to go talk to Ms. Piacquadio after that. There was a Dr. Morganstein.

Q. You saw those two people on a regular basis?

A. I started seeing them on a regular basis after I discussed it with the group.

Q. You and I already agreed that on 3 November 2010, you only reported one sex assault and one sexual harassment incident; correct?

A. Yes.

Q. You reported to NCIS in early January; correct?

A. Yes, sometime in January.

Q. On December 22 of 2010, to your therapist, Ms. Piacquadio or Dr. Morganstein, you only say that there is an investigation into things in your former Command; right?

A. I said a lot more than that to them.

Q. My point is: The only time you are talking about investigation -- the only time you are making any allegations on December 22nd, 2010 is when it has to do with things at your old command? You don't say anything about Captain Rowe at that interview either?

A. That's incorrect. I started talking about Captain Rowe the day I started talking to Dr. Morganstein and Ms. Piacquadio. I used Rowe's name when I talked to the group. That's incorrect.

Q. Okay. You said that you have seen these medical records?

A. Yes.

Q. You have seen his name in there?

A. I haven't seen his name in there.

Q. Okay.

A. They talk about the -- it talks about the assault. I know Ms. Piacquadio has files that --

Q. We have already established that we've talked about one assault; right?

A. Yes. The assault that I talked to Ms. Piacquadio was the one with Captain Rowe and Jeremy.

Q. You talked about one assault. You didn't disclose specific information?

A. I did disclose specific information.

Q. When was that?

A. To my group.

Q. When? When?

A. October.

Q. October. Let's go back to October. The specific information you disclosed was what?

A. I don't think those are all in my medical records. The file from Malcomb Grove is much bigger than that.

Q. Okay. Well, I don't have that. I'm just referring to the medical record with Ms. Piacquadio and Dr. Morganstein.

A. I sent everything to Dr. Greiger.

Q. Okay. Would you agree with me that Ms. Piacquadio and Dr. Morganstein captured the things that you told them when you told them?

A. I don't know what they captured. I briefly looked through it. I know that they could be interviewed. I saw her for almost a year.

Q. I know after January, you began to disclose --

A. No. I disclosed before January. It was in October.

Q. Let me remind you of your testimony earlier that you agreed with me that you told Ms. Piacquadio everything, but you did not disclose the assault that you are now alleging.

A. Everything that I can discuss within an hour -- you can't disclose. When I say "everything," everything is a very vague term.

Q. I'm talking about earlier today. In a previous testimony, you said that you trusted Ms. Piacquadio and you told her everything; do you recall that?

A. Yes.

Q. Do you still feel that way?

A. Yes, and I told you the parameters of everything.

Q. I established from you earlier today that on 3 November, you had not reported but one sexual assault; right?

A. I don't think you have the right paperwork because that's not correct.

Q. Okay. That's fine. We can sort this out in the records. You did agree with me earlier today that you had not disclosed Captain Rowe's alleged assault to Ms. Piacquadio in October or November?

A. That is false. I did disclose. I talked in detail about the assault to Ms. Piacquadio. I said one assault. I agree with you about the one assault, but I talked to her about Captain Rowe, not Major Warren.

MJ: *[Inaudible]*. It's asked and answered. Please continue.

Questions continued by the trial counsel:

Q. When did you talk to her about Captain Rowe?

A. As soon as I saw her in October.

MJ: She has been consistent on that.

CC: My apologies, Your Honor, but it's not consistent because at the Article 32, she said that she had not talked to her.

MJ: That why you admitted this, but she has been consistent today.

CC: Very well.

MJ: On the sexual assault and the alleged incident and the sexual harassment.

CC: I have no further questions.

MJ: Government?

TC: No, sir.

MJ: I don't have any additional questions.

The witness was warned and departed the courtroom.

The military judge summarized the order of events for 14 December 2011.

The court-martial recessed at 2021, 13 December 2011.

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