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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

**APPEAL FROM PICKENS COUNTY  
Court of Common Pleas**

**The Honorable Perry H. Gravely  
Circuit Court Judge**

**Appellate Case No.: 2022-001332**

Andrew Pampu, .....Appellant-Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan..... Respondents-Appellants.

**RECORD ON APPEAL  
VOLUME V**

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1 witness on behalf of the Plaintiff, testified as  
2 follows:

3 DIRECT EXAMINATION

4 BY MS. LAU:

5 Q. Good morning, Mr. Gahagan.

6 A. Good morning, Ms. Lau.

7 Q. You were a freshman at Clemson University in  
8 the fall of 2015?

9 A. That is correct.

10 Q. You were dating Ms. Wingo in the fall of 2015?

11 A. I was physically involved with Ms. Wingo, but I  
12 was not a boyfriend and girlfriend with Ms. Wingo.

13 Q. Were you also dating Lauren Frudrewsy at that  
14 time?

15 A. Intermittently for a very brief time, yes.

16 Q. Did Ms. Wingo know you were also dating  
17 Ms. Frudrewsy in the fall of 2015?

18 A. To my knowledge at the time, no.

19 Q. You were physical at times with Ms. Wingo in  
20 the fall of 2015, right?

21 A. Correct.

22 Q. Despite the fact that you were physically  
23 intimate with Ms. Wingo and had a physical  
24 relationship with her -- withdrawn. Despite the  
25 fact that you were physically intimate with

1 Ms. Wingo, you considered your relationship with  
2 Erin to be more of a best friend relationship?

3 A. Yes, I did.

4 Q. And your relationship with Ms. Wingo was not  
5 exclusive to only you and her, right?

6 A. It was not.

7 Q. So you would not have been mad if she had  
8 kissed another man during the fall of 2015?

9 A. No, ma'am.

10 Q. Had sex with another man in the fall of 2015?

11 A. No, ma'am.

12 Q. There were multiple people on Clemson's campus  
13 during the 2015/2016 school year who knew that Erin  
14 was your best friend, right?

15 A. That is correct.

16 Q. Rob Hellbog, a fellow Clemson student, he  
17 would've known this, right?

18 A. Yes.

19 Q. Jami Hafner, also a fellow Clemson student,  
20 knew that you considered Erin to be your best  
21 friend?

22 A. Yes, ma'am.

23 Q. Haley Sinclair also knew that this relationship  
24 was with Erin -- withdrawn. Haley Sinclair also  
25 knew that you considered Erin your best friend

1 during the fall of 2015, right?

2 A. I would say. Yes.

3 Q. Cameron Caramatie, also a fellow student at  
4 Clemson, he would've known this, right?

5 A. Yes, ma'am.

6 Q. There were also people who were not Clemson  
7 students who knew that Erin was your best friend  
8 during this time period, correct?

9 A. Yes, ma'am.

10 Q. Your high school friend Lou Capuchy would have  
11 known that, correct?

12 A. That is correct. Yes.

13 Q. And your high school friend Nick Troutwine  
14 would've also known that?

15 A. Yes, ma'am. That is correct.

16 Q. Your parents would've known that Erin you  
17 considered to be your best friend during that time,  
18 correct?

19 A. Yes, ma'am. That is correct.

20 Q. And your siblings also would've known that  
21 fact?

22 A. I can't say that for certain.

23 Q. Do you recall giving a deposition in this case  
24 on October 19, 2020?

25 A. Yes, ma'am, I do.

1 Q. And at that deposition, you were sworn to  
2 provide testimony under oath just like you have been  
3 sworn to give testimony under oath in this trial?

4 A. Yes, ma'am.

5 MS. LAU: May I approach?

6 THE COURT: You may.

7 BY MS. LAU:

8 Q. And is that a copy of your deposition  
9 transcript from October 19, 2020?

10 A. Yes, ma'am, it is.

11 Q. Can you please turn to page 23?

12 A. (Complying.)

13 Q. And on line 1 I asked you, "How about off  
14 campus -- off Clemson's campus, who understood that  
15 Erin Wingo was your best friend in the fall of  
16 2015?" And what did you respond with?

17 A. I responded with, "That would be my high school  
18 friends, Lou Capuchy, Nick Troutwine, as well as  
19 members of my family, including my mother, father,  
20 and two brothers, and members of Erin Wingo's family  
21 as well."

22 Q. Does that refresh your memory as to your  
23 siblings knowing that Ms. Wingo was your best friend  
24 during that time?

25 A. Yes, ma'am. It does. Thank you.

1 Q. And Ms. Wingo's family also would've known  
2 this, correct?

3 A. Yes, ma'am. That is correct.

4 Q. Ms. Wingo testified in this case that in  
5 September of 2015, she and Drew had kissed. Do you  
6 recall that testimony?

7 MR. MOORE: Your Honor, she's pitting witnesses  
8 at this point in time. I understand that she's  
9 going to ask him questions regarding his memory or  
10 his knowledge as to what's going on, not what other  
11 witnesses are going to say.

12 MS. LAU: I'll rephrase.

13 BY MS. LAU:

14 Q. Mr. Gahagan, are you aware of a time when  
15 Ms. Wingo and Mr. Pampu had kissed in the -- in  
16 September of 2015?

17 A. Yes, ma'am, I am.

18 Q. Were you furious about that when you found out?

19 A. I was not, no.

20 Q. Are you aware that Ms. Wingo testified that you  
21 were?

22 MR. MOORE: Your Honor, same objection.

23 THE COURT: You can just rephrase your  
24 question.

25 BY MS. LAU:

1 Q. Are you aware that Ms. Wingo had said you were  
2 furious?

3 MR. MOORE: Same issue, Your Honor. She's  
4 pitting witnesses.

5 MS. LAU: I'm asking him whether he's aware of  
6 any statements that were made by a party defendant  
7 here.

8 THE COURT: You can ask him if he's aware of  
9 it, but not aware of statements already made at this  
10 trial.

11 BY MS. LAU:

12 Q. Are you aware of Ms. Wingo's impressions of  
13 your -- of your -- of your understanding of that  
14 encounter?

15 A. Yes, ma'am, I am.

16 Q. Was she wrong?

17 A. Yes. And I believe that she's already stated  
18 that she was probably exaggerating at the time.

19 MS. LAU: I would ask to strike that last part  
20 of the testimony.

21 THE COURT: I couldn't hear it. Make sure you  
22 speak up.

23 THE WITNESS: I'm sorry.

24 THE COURT: Make sure you speak up loud. I  
25 didn't hear it.

1 MS. LAU: He's testifying to her impressions on  
2 what she testified in this trial.

3 THE COURT: Well, that's in response to the  
4 question. Yeah, I'm going to overrule.

5 MR. GRANTLAND: She's just asked him that.

6 THE COURT: All right. I'm going to overrule.

7 BY MS. LAU:

8 Q. You first saw Ms. Wingo -- withdrawn. There  
9 was a party that was scheduled to take place at the  
10 Compound on October 24, 2015, right?

11 A. Yes, ma'am. There was.

12 Q. And you first saw Ms. Wingo at the party at the  
13 Compound some time after 10:30 p.m. that night?

14 A. I do not recall the exact time, but that does  
15 sound right.

16 Q. You said that does sound right?

17 A. Correct.

18 Q. When you first saw Ms. Wingo at the party at  
19 the Compound, you saw her walking around unassisted,  
20 correct?

21 A. I saw her walking towards me, yes, in the front  
22 house.

23 Q. And she was unassisted, correct?

24 A. Yes, ma'am. That is correct.

25 Q. And she was walking alone, correct?

1 A. Yes, ma'am. That is correct.

2 Q. When you first saw Ms. Wingo at the party, you  
3 did not see her stumbling, right?

4 A. I did not see her stumbling.

5 Q. Or vomiting?

6 A. No, ma'am, I did not.

7 Q. Or slurring her words?

8 A. We did have a short conversation and it was in  
9 a loud room in the front house where music was  
10 playing. I can't say for certain if she was  
11 slurring or not because the conversation was not  
12 exactly clear.

13 Q. You don't recall her slurring, do you?

14 A. I do not recall her slurring, no.

15 Q. You and Ms. Wingo eventually parted ways,  
16 correct?

17 A. Are you referring to that night?

18 Q. At that moment where -- where she had met you  
19 at the Compound, you eventually parted ways,  
20 correct?

21 A. Yes, ma'am. That is correct.

22 Q. And when she met you at the Compound, you were  
23 in the front house?

24 A. Yes. That is correct.

25 Q. You weren't looking at her when she walked

1 away, did you?

2 A. Not for the entire time, no.

3 Q. Well, not at all, right?

4 A. I do not recall that. Do you have prior  
5 testimony that could refresh my memory?

6 Q. Will you please look at page 56 of your  
7 deposition testimony October 19, 2020?

8 A. (Complying.)

9 Q. And I asked you on line 24. Please let me know  
10 when you get there.

11 A. Yes, ma'am.

12 Q. I asked you on line 24, "Okay. When she walked  
13 away from you, was she unable to walk?" What did  
14 you say on the next page?

15 A. I said, "I can't say for certain because I  
16 wasn't looking at her as she walked away."

17 Q. You weren't concerned about Ms. Wingo when she  
18 walked away, right?

19 A. No, I was not.

20 Q. You did not tell anyone at the party that you  
21 believed Erin was too drunk?

22 A. No, I did not.

23 Q. Ms. Wingo contacted you by text message on  
24 October 25, 2015, at around 7:58 a.m.?

25 A. Yes, ma'am, she did.

1 Q. Then she sent you a series of messages, and  
2 then contacted you again at 10:48 a.m.?

3 A. Yes, ma'am. That is correct.

4 Q. And you responded to Ms. Wingo's messages at  
5 10:55 a.m. that same day. Do you recall that?

6 A. Yes, ma'am, I do.

7 Q. Do you recall what you said?

8 A. Can you refer to my testimony where that is?

9 MS. LAU: Your Honor, may I approach?

10 THE COURT: You may.

11 MS. LAU: It's Plaintiff's 5.

12 THE WITNESS: Thank you.

13 BY MS. LAU:

14 Q. Do you see the -- are those messages between  
15 you and Ms. Wingo from the morning of October 25th?

16 A. Yes, ma'am, they are.

17 Q. And do you see the first message on the page on  
18 the top?

19 A. Yes, ma'am, I do.

20 Q. And if you do the conversion from UTC time to  
21 eastern standard time, does that appear to be at  
22 8:18 a.m. -- or I'm sorry -- 8:00 a.m.?

23 A. Yes, ma'am. 7:58.

24 Q. 7:58. Thank you. And what does she say there?

25 A. She says, "What, period, happened, period."

1 Q. Then when you go to the second page -- well,  
2 actually -- sorry. Go back to the first page. You  
3 don't respond at all to her messages on the first  
4 page, do you? Can you refer to the exhibit, please?  
5 Do you see a response from you at -- at any time on  
6 that first page?

7 A. No, ma'am. And I believe that is because I was  
8 not awake yet.

9 Q. Okay. Now can you flip to the second page for  
10 me, please?

11 A. (Complying.)

12 Q. When do you finally respond to Ms. Wingo?

13 A. I respond to Ms. Wingo at 2:55 UTC, so 10:55  
14 eastern standard.

15 Q. And what did you say?

16 A. I say, "Not the time to say I love you. I'm  
17 going to the Compound to clean now. We will talk  
18 when I get back."

19 Q. Thank you. In the messages that Ms. Wingo sent  
20 you on the morning of October 25th, did she ever say  
21 that she was raped?

22 A. She does not say that in those messages, no.

23 Q. Or sexually assaulted?

24 A. She does not.

25 Q. Or that something bad happened to her the night

1 before?

2 A. She does not say that, no.

3 Q. Later in the afternoon ---

4 THE COURT: Don't get right up next to the  
5 microphone.

6 THE WITNESS: I'm sorry.

7 THE COURT: That's fine. It was just making  
8 noise.

9 BY MS. LAU:

10 Q. Later that day in the afternoon, you saw  
11 Ms. Wingo in person, right?

12 A. Yes, ma'am, I did.

13 Q. Was that around 5:00 or 5:30 p.m.?

14 A. Approximately, yes.

15 Q. And you met Ms. Wingo in her dorm room at  
16 Manning Hall, correct?

17 A. Yes, ma'am, I did.

18 Q. When you arrived at Ms. Wingo's room, you  
19 showed her the GroupMe message sent my Mr. Stoddart  
20 to the entire pledge brother fraternity chat,  
21 correct?

22 A. Yes, ma'am, I did.

23 Q. And in response, Ms. Wingo did not say that  
24 Mr. Pampu raped her, right?

25 A. I do not recall every detail of that

1 conversation. Do you have the testimony that would  
2 be able to refresh my memory?

3 Q. Well, you wouldn't have remembered her using  
4 the word "rape"?

5 A. I do not recall that being explicitly stated by  
6 her, no.

7 Q. Or that she was sexually assaulted?

8 A. No, ma'am. I do not recall that.

9 Q. Or that something bad happened to her the night  
10 before with Mr. Pampu?

11 A. I do not recall that, no.

12 Q. Well, that's something you would've recalled,  
13 right, if he -- if she said that she was raped?

14 A. I would assume so, yes.

15 Q. You consider rape a crime, right?

16 A. Yes, ma'am, I do.

17 Q. You told Erin on October 26th, that Monday,  
18 that she was pretty much raped by definition, right?

19 A. Yes, ma'am. I did say that.

20 Q. Give me one moment.

21 A. No problem.

22 MS. LAU: Sorry, Your Honor. There's a lot of  
23 text messages.

24 THE COURT: That's fine.

25 MS. LAU: I'm going to mark this exhibit as

1 Plaintiff's 9. Showing this to defense counsel.  
2 May I approach?

3 THE COURT: You may.

4 THE WITNESS: Thank you.

5 BY MS. LAU:

6 Q. Okay. What is this document, Mr. Gahagan?

7 A. These are text messages between me and Erin.

8 Q. True and accurate copy?

9 A. Yes, ma'am, it is.

10 THE COURT: Any objection to this?

11 MR. MOORE: No, sir.

12 MR. GRANTLAND: Your Honor, subject to at least  
13 one redaction.

14 THE COURT: All right. Y'all talk first.

15 (Counsel conferred.)

16 THE COURT: All right. This is exhibit?

17 MS. LAU: Plaintiff's 9 and we move to enter it  
18 into evidence.

19 THE COURT: Entered without objection, subject  
20 to redactions.

21 MS. LAU: Thank you.

22 (Plaintiff's Exhibit No. 9 was received into  
23 evidence, subject to redactions.)

24 BY MS. LAU:

25 Q. Mr. Gahagan, can you go down to the last

1 message on that page? And this is a message from  
2 you on October 26, 2015. And once you do the  
3 conversion, it's 2:20 p.m.

4 A. Yes, ma'am. That's correct.

5 Q. Please read out to the jury what you said to  
6 Erin.

7 A. I said, "That's nowhere near your fault. I  
8 don't want to go to extremes, but you were pretty  
9 much raped by definition."

10 Q. Then you told Erin on October 27th, the next  
11 day, you did not think Drew had committed a crime,  
12 right?

13 A. I did say that. Yes.

14 MS. LAU: I'd like to mark this next document  
15 as Plaintiff's 10. Just going to get copies for  
16 defense counsel. May I approach?

17 THE COURT: Yes, you may. Hold on. Are y'all  
18 good on this one? Let them read it.

19 MR. MOORE: No objection.

20 MR. GRANTLAND: No objection.

21 THE COURT: Okay. No objection.

22 MS. LAU: We move to enter Plaintiff's 10 into  
23 evidence.

24 THE COURT: All right. In without objection or  
25 redactions.

1           (Plaintiff's Exhibit No. 10 was received into  
2 evidence.)

3 BY MS. LAU:

4 Q.    Mr. Gahagan, what's this document?

5 A.    These are text messages between me and Erin.

6 Q.    True and accurate copy?

7 A.    Yes, ma'am, it is.

8 Q.    Can you go down to the third message on this  
9 exhibit.  It's a message from you on 10/27/2015 when  
10 you do the conversion at 9 -- 9:03 p.m.

11 A.    I think you said the 27th or the 28th.

12 Q.    It would've been the other -- the day before,  
13 right?  Because it says timestamp 10/20/2015 at  
14 12:03 a.m. UTC.  It would've been four hours before,  
15 so 8:00 -- eight o'clock -- 8:03 p.m. on the 27th?

16 A.    Yes, ma'am.  I see that message.

17 Q.    And please read out to the jury what you say  
18 there?

19 A.    "Hearing his side of the story definitely made  
20 me feel like he's not a criminal, but he still did  
21 make an extreme unforgivable mistake."

22 Q.    Later that -- withdrawn.  But you told Erin on  
23 October 27 -- sorry.  Withdrawn.  Later the evening  
24 of November 7, 2015, you told Ms. Wingo you wanted  
25 her to press criminal charges against, Mr. Pampu,

1 right?

2 A. I did state this. Yes.

3 MS. LAU: Showing what's been previously marked  
4 as Plaintiff's 8. May I approach?

5 THE COURT: You may.

6 BY MS. LAU:

7 Q. These are messages between you and Ms. Wingo?

8 A. Yes, ma'am. They are.

9 Q. Can you look down at the fifth message down  
10 from the top. That's a message from you to  
11 Ms. Wingo, 10:05 p.m., on November 7th?

12 A. Yes, ma'am, it is.

13 Q. Can you read to the jury what you said?

14 A. In this message I say, "Also, I want you to  
15 press criminal charges on Drew. I was slightly  
16 protecting him since it would indirectly fuck me  
17 over, but I think it's necessary."

18 Q. You were still friends with Mr. Pampu two weeks  
19 after the sexual encounter, even though you thought  
20 he raped your best friend, right?

21 A. Yes, ma'am. I was still pledging at that time.

22 Q. In fact, you changed Mr. Pampu's contact  
23 information to Bobby Cuomo in your cell phone  
24 contacts so that you could hide the fact that you  
25 remain in contact with him while you were spending

1 time with Ms. Wingo following their encounter,  
2 right?

3 A. Yes, ma'am, I did. That was because I was  
4 stuck in the middle between them and I didn't know  
5 what to do.

6 Q. When Erin wanted to go to a party at the  
7 Compound on October 31st, one week after her sexual  
8 encounter with Mr. Pampu, you refused to drive her  
9 there, right?

10 A. That is correct.

11 Q. You did not understand why Ms. Wingo wanted to  
12 go back to the Compound after what had happened a  
13 week prior, even though you were still in  
14 communication with Mr. Pampu?

15 A. Yes.

16 Q. Brendan Swinehart was a fellow Clemson student  
17 and member of Phi Delta Theta's pledge class,  
18 correct?

19 A. Yes, ma'am. That is correct.

20 Q. On October 26, 2015, you told Mr. Swinehart  
21 that Drew raped Erin, right?

22 A. Yes, ma'am, I did.

23 Q. You told him that Mr. Pampu raped one of your  
24 best friends?

25 A. Yes. Do you have the text messages that will

1 refresh my memory to see exactly what I said?

2 Q. You don't remember what you said to  
3 Mr. Swinehart independently?

4 A. Verbatim, no.

5 Q. Can you please go to your deposition  
6 transcript, page 132?

7 A. (Complying.)

8 Q. Line 4 I asked you, "Okay. Who is Brendan  
9 Swinehart again?" And you say?

10 A. I say, "Brendan Swinehart is another member of  
11 my pledge class while I was at Phi Delta Theta."

12 Q. And I asked, "Did you tell Brendan that Drew  
13 raped one of your best friends?" And you say?

14 A. "Yes, ma'am."

15 Q. You also told Mr. Swinehart that Ms. Wingo,  
16 while at the Compound, was blackout drunk and  
17 couldn't handle herself and that Mr. Pampu took  
18 advantage of her?

19 A. Yes, ma'am. I do recall saying that.

20 MS. LAU: Marking this document as Plaintiff's  
21 11.

22 MR. MOORE: No objection.

23 MR. GRANTLAND: There's no objection.

24 THE COURT: All right. And that's Exhibit 11?

25 MS. LAU: May I approach?

1 THE COURT: What exhibit number?

2 MS. LAU: Plaintiff's 11.

3 THE COURT: You may. In without objection.

4 (Plaintiff's Exhibit No. 11 was received into  
5 evidence.)

6 THE WITNESS: Thank you.

7 BY MS. LAU:

8 Q. Mr. Gahagan, what is this document?

9 A. These are text messages between me and Brendan  
10 Swinehart.

11 Q. True and accurate copy?

12 A. Yes, ma'am, it is.

13 Q. Turn to the second page of that document. It's  
14 a message from you on October 26, 2015, 8:05 p.m.  
15 UTC, would've been 4:00 p.m. eastern standard time,  
16 4:05?

17 A. Yes, ma'am. I see that.

18 Q. Please read out to the jury what you stated to  
19 Mr. Swinehart.

20 A. I said, "I saw her at the Compound. She was  
21 blackout drunk and couldn't handle herself and Drew  
22 took advantage of it."

23 Q. Can you also read on the first page that second  
24 message? You sent that on October 26, 2015, 7:54  
25 p.m. UTC time, so 3:54 p.m. eastern time.

1 A. Yes, ma'am.

2 Q. Please read for the jury what you stated to  
3 Mr. Swinehart.

4 A. "Don't know if you saw the shit in the GroupMe,  
5 but Saturday Drew legit raped one of my friends  
6 here. And the fact that I catch shit for saying  
7 anything about we need to respect girls is a serious  
8 problem. I don't see any reason why I would want to  
9 be associated with these kids anymore."

10 Q. You previously testified you did not see  
11 Ms. Wingo stumbling, unsteady on her feet, slurring  
12 her words, or vomiting at the Compound, right?

13 A. Yes, ma'am. That's correct.

14 Q. In fact, you did not see Ms. Wingo blackout  
15 drunk and unable to handle herself at the Compound,  
16 right?

17 A. Yes, ma'am. That is correct. My text to  
18 Brendan Swinehart regarding seeing her blackout  
19 drunk was an opinion that I formed multiple days  
20 after the incident after seeing her the day after.

21 Q. But that's not what you said in your text  
22 message, does it? Does it say that this is an  
23 impression you made after a few days later?

24 A. It does not explicitly state that, but they are  
25 listed as separate sentences and statements.

1 Q. Mr. Cameron Caramatie was a fellow Clemson  
2 student who lived in your dorm freshman year, right?

3 A. Yes, ma'am, he was.

4 Q. And Mr. Caramatie knew who Mr. Pampu was?

5 A. To the best of my knowledge, yes.

6 Q. On October 26, 2015, you told him Mr. Caramatie  
7 Mr. Pampu raped Ms. Wingo, right?

8 A. Yes, ma'am, I did.

9 MS. LAU: Marking this document as Plaintiff's  
10 12.

11 MR. GRANTLAND: No objection.

12 MR. MOORE: No objection.

13 THE COURT: All right. Twelve in without  
14 objection.

15 (Plaintiff's Exhibit No. 12 was received into  
16 evidence.)

17 MS. LAU: May I approach?

18 THE COURT: You may.

19 THE WITNESS: Thank you.

20 BY MS. LAU:

21 Q. What is this document, Mr. Gahagan?

22 A. These are text messages between me and Cameron  
23 Caramatie.

24 Q. And his name was saved in your contacts as  
25 Cameron Texas?

1 A. Yes, ma'am. That is correct. Because he was  
2 from Texas and it was easy to remember him when I  
3 first met him.

4 Q. Can you take a look at the second message down  
5 from the top. It's a message from you to  
6 Mr. Caramatie on October 26th at 8:47 p.m. UTC.  
7 That would've been 4:47 p.m. eastern standard time,  
8 right?

9 A. Yes, ma'am.

10 Q. Please read for the jury what you stated to  
11 Mr. Caramatie.

12 A. I said, "Reason I have for telling you this is  
13 that Drew raped Erin and Saturday -- on Saturday,  
14 and I just about had it with everyone in my pledge  
15 class."

16 Q. You told Lou Capuchy on October 26th, that same  
17 day, that one of your pledge brothers raped  
18 Ms. Wingo?

19 A. Yes, ma'am, I did.

20 Q. You had no firsthand proof of any of the events  
21 that occurred between Ms. Wingo and Mr. Pampu on  
22 October 24, 2015, did you?

23 A. No, ma'am. I was not there.

24 Q. On November 12, 2015, you even told Mr. Pampu  
25 you know he would not -- he would never rape

1 Ms. Wingo, right?

2 A. I did state that. Yes.

3 Q. You said to Mr. Pampu, even though you  
4 believed -- withdrawn. You said to Mr. Pampu, even  
5 though you believed that he actually had raped  
6 Ms. Wingo, right?

7 A. I'm sorry. Could you point me to a specific  
8 text message that you are referring to?

9 Q. You don't remember making that statement to  
10 Mr. Pampu?

11 A. I ---

12 Q. I'm just asking you what you believed at that  
13 time when you made that statement to Mr. Pampu that  
14 you did not believe he raped Mr. Wingo?

15 A. Can you repeat and clarify one more time?

16 Q. So a moment ago I asked you, "Do you remember  
17 you told Mr. Pampu on November 12, 2015, you knew he  
18 would never rape Ms. Wingo?"

19 A. If I texted that, then, yes, that is what I  
20 said.

21 Q. You don't know if you texted that to him or  
22 said that at any point?

23 A. That is why I would like the text messages  
24 because I do not personally recall.

25 MS. LAU: Just a moment. Marking Plaintiff's

1 15. Never mind. We're not going to mark this.  
2 This is just to refresh his memory.

3 MS. PORTER: Can we mark it for identification  
4 purposes only?

5 MS. LAU: Sure.

6 MS. PORTER: Just to keep the record clean.

7 MS. LAU: Mark it for identification purposes  
8 only, Plaintiff's 13. May I approach?

9 THE COURT: You may.

10 THE WITNESS: Thank you.

11 BY MS. LAU:

12 Q. Can you read that message to yourself that you  
13 sent on November 12, 2015, at 6:07 p.m. UTC, which  
14 would've been 2:07 p.m. UTC. Read it to yourself,  
15 please.

16 A. (Complying.) I have read it.

17 Q. Okay. Does that refresh your memory as to what  
18 you told Mr. Pampu, that you told him you know he  
19 would never rape Ms. Wingo?

20 A. Yes. I do state that in these text messages.

21 Q. But you said that to Mr. Wingo -- I'm sorry --  
22 Mr. Pampu even though you believed that he did  
23 actually rape Ms. Wingo, right?

24 A. Yes. Because this -- this text message took  
25 place at the time whenever some investigation had

1 started, and I was stuck in between Drew and Erin  
2 and I -- I did not know what to do in this case.

3 MS. LAU: This -- this -- I'm sorry. Ask to  
4 strike that. I -- I wasn't asking for a...

5 MR. GRANTLAND: Your Honor, that was responsive  
6 to the question.

7 MS. LAU: That was not responsive. It was what  
8 he prior -- what he testified to prior in his  
9 deposition and what's in that text message.

10 THE COURT: All right. Just re-ask the  
11 question then.

12 BY MS. LAU:

13 Q. I'm just asking as to whether you had stated  
14 that statement to Mr. Pampu that you knew he would  
15 never rape Ms. Wingo, and this was during a time  
16 when you actually believed that she did. You had  
17 stated otherwise, correct? It's a "yes" or "no"  
18 answer.

19 A. Correct.

20 Q. Thank you. In January of 2017, you texted  
21 Ms. Wingo's therapist that Mr. Pampu was innocent,  
22 right?

23 A. I did text that. Yes.

24 Q. You also texted Ms. Wingo's therapist that  
25 Ms. Wingo lied about the nature of her sexual

1 encounter with Mr. Pampu, right?

2 A. I did text this. Can you please show me the  
3 text messages to refresh my memory of the entire  
4 conversation?

5 Q. But you do recall texting that Ms. Wingo lied  
6 about the nature of her sexual encounter?

7 MR. MOORE: Your Honor, may we have a sidebar  
8 on this?

9 THE COURT: Yes.

10 (Sidebar discussion.)

11 THE COURT: Ladies and gentlemen, I'm going to  
12 ask that you step out for minute, and do not discuss  
13 the case. We'll bring you right back in when we're  
14 finished.

15 (At 9:48 a.m., jury exited the courtroom.)

16 THE COURT: All right. Go over your question.

17 MS. LAU: What's my question?

18 THE COURT: Yes.

19 MS. LAU: Whether he told Ms. Wingo's therapist  
20 that Ms. Wingo had lied, and that whether he told  
21 Ms. Wingo's therapist that Mr. Pampu was innocent.

22 MR. MOORE: And the context of these texts  
23 are -- is this: He gets in a fight with Erin. He  
24 then texts Drew and said that -- that Erin had lied  
25 during the hearing. The hearing is the Title IX

1 hearing, which you said we can't get into. So she's  
2 avoiding that particular issue by just cutting out  
3 that portion of his statement. He then responds to  
4 the counselor saying that basically the same thing.  
5 "I told Drew that we had lied during the course of  
6 the hearing."

7 Now, if we want to get into the course of the  
8 hearing, that's fine. But my understanding, you're  
9 wanting to avoid that. And yet she can't -- I don't  
10 believe she can go into the statement without  
11 opening the door of going into that hearing.

12 MS. LAU: May I respond?

13 THE COURT: Well, I mean, let her respond  
14 first. I also said that we couldn't go into the  
15 hearing, but any statements made in connection with  
16 the hearing were impeachable.

17 MR. MOORE: It would go into this. That opens  
18 the door to question what he said during the course  
19 of the hearing and what Erin said during the course  
20 of the hearing.

21 THE COURT: Well, I mean, they're previous  
22 statements made by these people, correct?

23 MS. LAU: Yes.

24 MR. MOORE: This is after the hearing has  
25 already occurred.

1 THE COURT: All right.

2 MR. MOORE: And they get into a fight, and he  
3 is basically mad at Erin so he said, okay, you lied  
4 during the course of the hearing.

5 Okay. If we're going to go -- if they're going  
6 to try to use that to say they lied in the course of  
7 the hearing, then we have a right to then  
8 cross-examine with regard to what was actually said  
9 during the course of the hearing to see whether  
10 there was actually a lie or not.

11 THE COURT: I think we can draw -- I mean, I  
12 don't have a problem with any previous statements.  
13 I just don't want it to be indicated that this was a  
14 hearing -- these are the testimony hearing and this  
15 was the findings of this hearing.

16 MR. MOORE: That's exactly what's being said  
17 here, he lied during the course of the Title IX  
18 hearing.

19 THE COURT: I'm going to let her ask if he --  
20 if he previously said, "I lied in statements to ---"

21 MR. MOORE: Are you going to allow us then to  
22 follow through and say it was in reference to the  
23 Title IX hearing?

24 THE COURT: Not in reference to the Title IX  
25 hearing, but in reference -- you can still get in

1 the statements.

2 MS. PORTER: Your Honor, it's the rule of  
3 completeness. It takes it out of context.

4 THE COURT: Well, I can't help the fact that we  
5 can't apply this Clemson hearing to this, I mean,  
6 you know, so...

7 MR. MOORE: But that's what it does, it draws  
8 into it.

9 THE COURT: You can still get in the  
10 statements, but you just can't -- like I said, I'm  
11 not getting the hearing itself or any findings of  
12 the hearing.

13 MR. MOORE: So when we cross-examine --  
14 when I -- when I ask him, you know, what was said  
15 during the hearing, I'm not going to say Title IX  
16 necessarily, but I can have him read ---

17 THE COURT: How about the previous reports --  
18 well...

19 MR. MOORE: No. Same thing. It's the ---

20 MS. LAU: I'm not planning on using the  
21 statement hearing. I mean, it -- it doesn't matter  
22 where he lied, he lied. That's what he says he did.  
23 He could've lied at the grocery store. The fact is,  
24 he said he lied. I'm not going to say, "You lied at  
25 the previous hearing." I mean, those parts are

1 going to be redacted. We understand the rules, Your  
2 Honor.

3 MR. MOORE: No. Judge, I think that -- that  
4 violates the rule of completeness. If she's going  
5 to ask about these texts, then we get the right to  
6 ask about under what circumstances these statements  
7 were made. She's having -- trying to have her cake  
8 and eat it too.

9 MS. LAU: I don't think so, Your Honor. I  
10 think that it's -- it doesn't matter where he lied.  
11 That's the point is that he said he lied.

12 THE COURT: Let me take five minutes. I'm  
13 going to think about this without looking at y'all.

14 MR. MOORE: Okay.

15 THE COURT: All right. You can step down, but  
16 you're in my witness bubble, which means you can't  
17 discuss anything about your testimony.

18 (From 9:53 to 10:04 a.m., brief recess.)

19 THE COURT: In chambers, I discussed the  
20 current topic and clarified my previous rulings.  
21 And it is, as I -- as I mentioned that any prior  
22 statements, including those in the Title IX hearing,  
23 can be used for impeachment purposes or for  
24 cross-examination, and there can be a reference to a  
25 hearing at Clemson. Again, my main ruling was that

1 the policy procedures investigation done by Clemson  
2 and the findings by the Title IX panel are not  
3 admissible. But as far as any statements made,  
4 that's, I guess, fair game for everybody. Well,  
5 subject to our normal rules and procedures of  
6 evidence. So does that clarify everything at least  
7 for now?

8 MS. PORTER: Clear as mud.

9 THE COURT: Yeah. Less rain; lots of mud. All  
10 right. Are we ready then?

11 MS. LAU: Yes, Your Honor.

12 THE COURT: All right. Ready from the defense?

13 MR. MOORE: Yes, Your Honor.

14 THE COURT: All right. Bring the jury in.

15 (At 10:05 a.m., the jury entered the  
16 courtroom.)

17 THE COURT: All right. Everybody please be  
18 seated.

19 THE JURORS: (Complying.)

20 THE COURT: All right. You may proceed.

21 MS. LAU: Thank you, Your Honor.

22 BY MS. LAU:

23 Q. Mr. Gahagan, you had texted Ms. Wingo's  
24 therapist that Ms. Wingo lied about the nature of  
25 her sexual encounter with Mr. Pampu, right?

1 A. I did text that, yes.

2 Q. And in January of 2017, you texted Mr. Pampu  
3 that he was innocent, right?

4 A. I did text that, yes.

5 Q. You texted Mr. Pampu he was innocent four  
6 times, right?

7 A. I do not recall the exact amount, but I did say  
8 it, yes.

9 MS. LAU: Marking this document as Plaintiff's  
10 14.

11 THE COURT: Any objection?

12 MR. MOORE: No. No, Your Honor.

13 MR. GRANTLAND: No, sir.

14 THE COURT: All right. In without objection.  
15 (Plaintiff's Exhibit No. 14 was received into  
16 evidence.)

17 MS. LAU: May I approach?

18 THE COURT: You may.

19 THE WITNESS: Thank you.

20 BY MS. LAU:

21 Q. Mr. Gahagan, what is this document?

22 A. These are text messages between me and Drew.

23 Q. Can you read to the jury the first text message  
24 you sent to Mr. Pampu on January 15, 2017, at  
25 4:32 a.m. UTC. That would've been at that time of

1 year 11:32 p.m. eastern standard time from  
2 January 14, right?

3 A. Yes, ma'am.

4 Q. Please read out to the jury what you told him.

5 A. I said, "You're innocent. I lied in that  
6 hearing. Erin wanted to have sex that night. Get  
7 your brothers away from me and never touch your life  
8 again, and I'll come through with the truth that she  
9 lied."

10 Q. And please read the next text down that was  
11 sent three minutes later, 11:35 p.m.

12 A. I said, "I deleted texts from that night to  
13 prove she was fucking crazy. You're innocent. Just  
14 pull your fucking boys off me and never touch me  
15 again. It's sad that you were like a brother to me  
16 and this happened. You are innocent."

17 Q. Then read the next text message -- text message  
18 down you sent three minutes later.

19 A. Yes, ma'am. I said, "Send these to your  
20 lawyer. Just don't call me into the hearing and  
21 leave me alone. You're welcome. That's all I ask.  
22 You're innocent, bud."

23 Q. And the final message on that page, please read  
24 that into the record that was sent at 12:56 a.m.

25 A. Yes, ma'am. I say, "Bye-bye Carry Simon's

1 legacy. You're innocent, Drew, and that comes from  
2 CJ, the man that lied."

3 Q. That was four times that you told Mr. Pampu  
4 that he was innocent in those messages, right?

5 A. Yes, ma'am.

6 Q. And Ms. Wingo, she told you late in the evening  
7 on October 25th, the day after the encounter, that  
8 she let the sex happen with Mr. Pampu, right?

9 A. I don't recall that from our conversation. Can  
10 you refer to the testimony, please?

11 Q. Can you please turn to page 203 of your  
12 deposition testimony on October 19, 2020?

13 A. (Complying.)

14 Q. Are you there?

15 A. Yes, ma'am.

16 Q. Can you please -- withdrawn. I'll -- I'll read  
17 out the question and I'd like you to read out your  
18 answer. The question was, "When she says, I need  
19 you to tell me it's going to be okay because I'm  
20 lying here in bed and all I can think about is last  
21 night and the crying and how I feel violated because  
22 Drew should've known better and I shouldn't get to  
23 be upset because I let it happen, but I am mad  
24 because I screwed up with you again. And I know we  
25 aren't a thing and stuff, but you're my best friend

1 and I need to know it's going to be okay because  
2 right now I feel like I don't deserve it to be  
3 okay." And what do you say?

4 A. "Yes, ma'am, I do," or do you want my response  
5 to that message?

6 Q. You stated on line 14.

7 A. "Yes, ma'am, I do."

8 Q. And I said -- or I asked, "What is she  
9 referring to when she says I screwed up again"?

10 MS. PORTER: Objection, Your Honor. It's  
11 protective order.

12 MS. LAU: But it's referring to Mr. Pampu and  
13 Ms. -- Ms. -- Ms. Wingo. It's not referring to  
14 anything else.

15 THE COURT: Come over here.

16 (Sidebar discussion.)

17 BY MS. LAU:

18 Q. Mr. Gahagan, I'm going to withdraw that last  
19 question where I asked you what she's referring to,  
20 but you do remember that Ms. Pampu -- Ms. Wingo said  
21 she shouldn't get to be upset because I let it  
22 happen?

23 A. Yes. She did say that.

24 Q. She also said that she screwed up with you in  
25 that message?

1 MS. PORTER: Objection. This is what we just  
2 had the sidebar about.

3 THE COURT: I didn't take that from her  
4 question at all. Come over here.

5 (Sidebar discussion.)

6 BY MS. LAU:

7 Q. Mr. Gahagan, Ms. Wingo had told you she screwed  
8 up with you, right?

9 A. Yes. She says that.

10 Q. She was referring to her sexual encounter with  
11 Mr. Pampu?

12 A. I'm sorry. Can you clarify?

13 Q. Was she referring to her sexual encounter with  
14 Mr. Pampu when she told you she screwed up with you?

15 MR. GRANTLAND: Objection, Your Honor. He's --  
16 she's asking them what Ms. Wingo ---

17 THE COURT: If she knows.

18 MS. LAU: If he knows.

19 THE WITNESS: Can you clarify?

20 BY MS. LAU:

21 Q. Do you know if she was referring to her sexual  
22 encounter with Mr. Pampu when she told you, "I  
23 screwed up with you"?

24 A. Yes, ma'am. I believe so. Thank you for  
25 clarifying.

1 MS. LAU: I'd like to mark Plaintiff's 15 at  
2 this time.

3 THE COURT: Any objection?

4 MR. GRANTLAND: No objection, except the  
5 redactions.

6 THE COURT: Y'all agree on the redactions?

7 MS. LAU: We redact that. Yeah, we agree on  
8 the redactions.

9 THE COURT: All right. This is exhibit?

10 MS. LAU: Plaintiff's 15.

11 THE COURT: All right. Without objection,  
12 subject to redactions.

13 (Plaintiff's Exhibit No. 15 was received into  
14 evidence, subject to redactions.)

15 MS. LAU: May I approach?

16 THE COURT: Yes.

17 THE WITNESS: Thank you.

18 BY MS. LAU:

19 Q. Mr. Gahagan, what is this document?

20 A. These are text messages between me and Erin  
21 Wingo.

22 Q. Sixth message down on that page, that's a  
23 message from Erin Wingo on 10/26/2015, 3:41 a.m. UTC  
24 time, which would've been 11:41 p.m. the previous  
25 night, right, twelve -- October 25th; is that right?

1 A. Yes, ma'am, it is.

2 Q. And is this the message that we just talked  
3 about where she told you that she screwed up?

4 A. Yes, ma'am, it is.

5 Q. Give me one moment, please. Mr. Gahagan, do  
6 you already have Plaintiff's 5 up on the stand with  
7 you?

8 A. I do not. Oh, sorry. Yes, I do.

9 Q. Okay. And just please identify that document  
10 again for the jury. What is that?

11 A. These are text messages between me and Erin  
12 Wingo.

13 Q. And these are messages that start at 7:58 a.m.  
14 from Ms. Wingo that we talked about earlier right  
15 after the sexual encounter with Mr. Pampu?

16 A. Yes, ma'am, they are.

17 Q. These series of messages you exchanged -- or  
18 rather that Ms. Wingo texted to you and that you  
19 responded at 10:55 a.m. that day, "Not the time to  
20 say I love you." Those messages?

21 A. Yes, ma'am.

22 Q. Do you recall exchanging a series of text  
23 messages with Drew on November 12, 2015?

24 A. Yes. But I do not recall the exact nature of  
25 it.

1 Q. And this -- Mr. -- Mr. Gahagan, do you have  
2 Plaintiff's 13 up there with you?

3 A. Yes, ma'am, I do.

4 Q. And these are the messages between you and  
5 Bobby Cuomo also known as Drew?

6 A. Yes, ma'am, they are.

7 Q. And in that top message that you sent  
8 November 12, 2015, at 6:07 p.m. UTC would've been  
9 2:07 p.m. UTC, right?

10 A. Yes, ma'am.

11 Q. This is the message where you say, "I know the  
12 kind of kid you are"?

13 A. Yes. That is what's stated.

14 Q. And you say next, "I know you would never do  
15 that"?

16 A. Yes, ma'am. That is correct.

17 Q. And by "that," you were referring to rape?

18 A. Yes, ma'am.

19 Q. And this was eight days after you told  
20 Ms. Wingo that you wanted her to press criminal  
21 charges against Mr. Pampu, right?

22 A. Eight days? I'm sorry?

23 Q. Eight days after you told Ms. Wingo you wanted  
24 her to press criminal charges against Mr. Pampu,  
25 right?

1 A. I do not believe that is correct. Can you  
2 refer me to a text message and time stamp?

3 Q. You don't recall telling Ms. Wingo that you  
4 want her to press criminal charges against  
5 Mr. Pampu?

6 A. I do recall saying it, but I do not recall it  
7 being eight days before November 12th.

8 Q. I'm sorry. Eight days after.

9 A. Can you point me to the time stamp where I did  
10 say that?

11 MS. LAU: Sure. Marking this as Plaintiff's  
12 16.

13 THE COURT: What number is this, 16?

14 MS. LAU: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. MOORE: Yes, Your Honor.

17 MS. PORTER: Just preserving the record for  
18 later.

19 THE COURT: I mean is there ---

20 MS. PORTER: Do you want a sidebar?

21 THE COURT: Yes.

22 (Sidebar discussion.)

23 THE COURT: All right. Exhibit 16 is in sub --  
24 with redactions -- what you're redacting is subject  
25 to your objections.

1 MS. PORTER: Thank you, Your Honor.

2 (Plaintiff's Exhibit No. 16 was received into  
3 evidence, subject to redactions.)

4 MS. LAU: Thank you, Your Honor. May I  
5 approach?

6 THE COURT: Yes, you may.

7 THE WITNESS: Thank you.

8 BY MS. LAU:

9 Q. What's this document, Mr. Gahagan?

10 A. These are text messages between me and Erin.

11 Q. Can you look at the second message down from  
12 the top on the first page? It's Bates stamped  
13 CJG-000299. That's a message from you to Ms. Wingo  
14 on 11/17/2015 at 3:49 a.m. UTC. With the  
15 conversion, it would've been 11/16/2015 at  
16 10:49 p.m. eastern time.

17 A. Yes, ma'am.

18 Q. What do you say there? Can you read that to  
19 jury?

20 A. I say, "One step closer to him being gone."

21 Q. When you were referring -- you were referring  
22 to Mr. Pampu when you used the word "him," right?

23 A. Yes, ma'am, I am.

24 Q. And by "being gone," you meant being gone from  
25 Clemson?

1 A. Yes, ma'am.

2 Q. Okay. And then if you turn to Bates stamp No.  
3 CJG-0000301. That's the third page of the document.  
4 You sent a message to Ms. Wingo November 17, 2015,  
5 3:53 a.m. UTC. That would've been the prior day?

6 A. I'm sorry. Can you repeat the time one more  
7 time?

8 Q. It's the top message, sir.

9 A. Thank you.

10 Q. Okay. That would've been the prior day,  
11 11/16/2015?

12 A. Yes, ma'am.

13 Q. 11:53 p.m. What do you say there?

14 A. "Well, you have four chances in school to get  
15 what you want. Then you have criminal, unless you  
16 decide criminal sooner is the best option."

17 Q. The bottom of that page Ms. Wingo wrote to you  
18 10:57 -- I might've done the conversions wrong on  
19 this. Daylight savings is four and five hours.  
20 This time of year would've been five hours behind,  
21 so it would've been 10:57 p.m. on 11/16. What does  
22 she say to you?

23 A. She says, "Half of me wants to have him  
24 expelled and throw his ass in jail. Half of me  
25 wants to hide. Right now, the northern in me is

1 coming out and I'm ready to hit him with a lawsuit."

2 Q. Okay. The last page of that document,  
3 CJG-0000303. That's a message from you 11:01 p.m.  
4 eastern standard time on November 16th, right?

5 A. Yes, ma'am.

6 Q. Okay. And what do you say at the top?

7 A. I say, "What do you mean 'worked out'? There's  
8 no way this kid can stay at this school. It's  
9 honestly impossible."

10 Q. And by "this kid," you were referring to  
11 Mr. Pampu?

12 A. Yes, ma'am.

13 Q. Okay. Then the third message from the bottom,  
14 another message from you to Ms. Wingo, November 16,  
15 11:02 p.m. Please read to the jury what you stated.

16 A. I say, "You are safe. He's gone, Erin. It's  
17 not going to be possible for him to stay."

18 Q. By "him," you're referring to Mr. Pampu, right?

19 A. Yes, ma'am.

20 MS. LAU: No further questions for this  
21 witness.

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION

24 BY MR. GRANTLAND:

25 Q. Good morning, Mr. Gahagan.

1 A. Good morning.

2 Q. May I call you CJ?

3 A. Yes, you may.

4 Q. Okay. I'm John Grantland. I'm one of Erin's  
5 lawyers. You and I have one thing in common. We've  
6 been in this courthouse for two days and haven't  
7 talked until today. It's nice to meet you. Sorry  
8 to meet you under these circumstances. And I'll do  
9 my best not to plow over a lot of ground that's  
10 already been covered, but I do have some questions  
11 for you.

12 A. Yes, sir.

13 Q. Back in -- let's go back to 2015. Erin was  
14 your best friend back in the fall of 2015?

15 A. Yes, sir.

16 Q. You dated before the incident with Mr. Pampu?

17 A. Yes, sir.

18 Q. Let's go back to the night of October -- in  
19 October 2015, the subject of this lawsuit. You and  
20 Mr. Pampu were both pledging the Phi Delta Theta  
21 fraternity?

22 A. Yes, sir.

23 Q. Y'all had a party Saturday night at the  
24 Compound where the fraternity house was located?

25 A. That is correct.

1 Q. It was also Mr. Pampu's birthday, and Erin  
2 attended the party?

3 A. Yes, sir. That is correct.

4 MR. GRANTLAND: And I'm going to show you some  
5 texts between you Erin marked as Defense Exhibit 8.  
6 May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. GRANTLAND:

9 Q. I'll give you a chance to look at it and you  
10 can tell me what -- then we can talk about it  
11 briefly.

12 A. Okay.

13 Q. Are these texts between you and Erin prior to  
14 her coming to the party?

15 A. Yes, sir. They are.

16 MR. GRANTLAND: I'll admit -- I'll admit  
17 Defendant's Exhibit 8 into evidence.

18 THE COURT: Any objection?

19 MS. LAU: No objection.

20 THE COURT: All right. Admitted into evidence.

21 (Defendant's Exhibit No. 8 was received into  
22 evidence.)

23 BY MR. GRANTLAND:

24 Q. Let's briefly just kind of go through it.

25 Which one is you? Are you in the blue or are you in

1 the white?

2 A. On these text messages, I'm in the blue and  
3 Erin is in the white.

4 Q. Okay. And Erin asked you, "How's it going  
5 there?" And you say?

6 A. "Don't come until at least 11."

7 Q. Okay. And then you say, "I'll let you know to  
8 call him and I'll text him to get priority to you  
9 guys." What's that in reference to?

10 A. That is in reference to getting her a pledge  
11 driver to take her from the dorm she's currently at  
12 to the Compound.

13 Q. Okay. And what did Erin respond to you by  
14 saying?

15 A. She responds in one message, "You rock.  
16 XOXOXOXO."

17 Q. Okay. And then what was the next comment she  
18 made?

19 A. And then the next message is, "We're all drunk,  
20 so we should call Jessie or not yet."

21 Q. Okay. And then turn the page to the next  
22 text -- the next list of texts. And then -- so  
23 you're -- at some point she says, "We're walking;"  
24 is that right?

25 A. Yes, she does.

1 Q. "I do. We are walking though." And then you  
2 respond?

3 A. "Okay. It's not a long walk."

4 Q. And then she stops -- she starts and says her  
5 next text is, "We're at Johnstone so Rachel can  
6 pee;" is that right?

7 A. Correct.

8 Q. Okay. And then you say, "LOL." And then what  
9 was her next text to you?

10 A. Her next texts are, "Shut up. I'll be drunk  
11 off me ass when I get very there." And then third  
12 message is mistakes.

13 Q. Okay. So there's no question Erin was  
14 intoxicated when she got to the party?

15 MS. LAU: Objection. Calls for speculation.

16 THE COURT: Sustained.

17 BY MR. GRANTLAND:

18 Q. There's no question Erin told you she was  
19 drunk?

20 A. She told me, yes.

21 Q. Okay. And you hadn't seen her yet?

22 A. I had not.

23 Q. Okay. And when you did see Erin at the party,  
24 you knew she'd been drinking vodka before she got  
25 there?

1 A. Yes.

2 Q. You thought she was drunk?

3 A. Yes.

4 Q. From your observations?

5 A. Yes, sir.

6 Q. You spent about 15 to 30 minutes together  
7 before midnight?

8 A. Yes, sir. In the front house.

9 Q. And you told her to go have fun with her  
10 friends?

11 A. Yes, sir. I did say that.

12 Q. And you told her to go have fun with her  
13 friends because you did not want to deal with her  
14 since she was so visibly drunk?

15 A. I do not ---

16 MS. LAU: Calls for speculation.

17 THE COURT: It's based on his -- yeah,  
18 overruled.

19 THE WITNESS: Can you repeat the question?

20 BY MR. GRANTLAND:

21 Q. Sure. And I'm not trying to trick you or  
22 anything. You told her to go have fun with her  
23 friends because you did not want to deal with her  
24 since she was so visibly drunk?

25 A. That is correct.

1 Q. And you didn't see Erin again that night?

2 A. I did not, no.

3 Q. Okay. Let's talk about the communication after  
4 y'all separated from each other. At some point  
5 later after midnight, you texted her and asked her  
6 where she was?

7 A. I did. Yes.

8 Q. You learned that she was off somewhere, but you  
9 didn't know where she was?

10 A. I did not. No.

11 Q. You were worried you couldn't find Erin?

12 A. I was. Yes.

13 Q. She was not on the Compound anymore?

14 A. At least to the best of my knowledge, yes.

15 Q. And you knew -- and from your observation, she  
16 was drunk?

17 A. Yes.

18 Q. You were worried because -- I mean, again,  
19 you -- she was drunk and you didn't know who she was  
20 with or what she was doing?

21 A. Correct.

22 Q. At some point, you went back to your dorm?

23 A. Yes, sir.

24 Q. And you admittedly were drunk when you got back  
25 to your dorm?

1 A. Yes, sir.

2 Q. And you got a text later in the morning from  
3 Erin with typos that didn't make sense?

4 A. That is correct. Yes.

5 Q. And you assumed from her text that she was very  
6 drunk?

7 A. That is correct. Yes.

8 Q. Now, let me ask you about your communication  
9 with Mr. Pampu. Mr. Pampu called you some time  
10 during the morning or either the night or early  
11 morning hours of the party?

12 A. Yes, he did.

13 Q. He told you he was taking Erin to the Compound  
14 after going to Jimmy John's?

15 A. That is what he said. Yes.

16 Q. Mr. Pampu also told you he needed help getting  
17 Erin home?

18 A. He did say that. Yes.

19 Q. Now, to your knowledge, did Mr. Pampu ever take  
20 Erin to Jimmy John's to get something to eat?

21 A. To my knowledge, no.

22 Q. Did Mr. Pampu actually help Erin get home or  
23 get back to her dorm?

24 A. I do not believe so, no.

25 Q. So none of what he said to you was true?

1 A. No, sir.

2 Q. Not long after you talked to Mr. Pampu about  
3 taking Erin back to the Compound from Jimmy John's  
4 and -- and helping her get a ride, you received a  
5 text from the fraternity from Mr. Pampu where he  
6 said he fucked a chick by the garbage thing behind  
7 the Chipotle?

8 A. I received it, but I don't think I saw it until  
9 a day after.

10 MR. GRANTLAND: But this -- this is Exhibit 2?  
11 May I approach, Your Honor.

12 THE COURT: You may.

13 BY MR. GRANTLAND:

14 Q. Show you Exhibit 2 that's already into  
15 evidence. Is this -- were you on this GroupMe that  
16 you received this text?

17 A. Yes, sir.

18 Q. Okay. And this -- and -- and, again, Mr. Pampu  
19 says in the text, you know, he -- he fucked a chick  
20 by the garbage thing behind Chipotle, but I think I  
21 definitely did with -- did with that alone. Thanks  
22 though, my man. Thanks for contributing to tonight  
23 in a huge way. And you got that text?

24 A. Correct.

25 Q. Okay. And Mr. Pampu was thanking someone for

1 helping him have a good birthday?

2 A. That is correct.

3 Q. Okay. Now, Jimmy John's and Chipotle are  
4 pretty close to each other?

5 A. They're in the same structure building, yes.

6 Q. In the same -- same building?

7 A. Yeah.

8 Q. Okay. And then when you got that text from --  
9 from Mr. Pampu or from the GroupMe, you then put two  
10 and two together after Drew called you about Erin  
11 needing a ride and -- and walking her back from  
12 Jimmy John's?

13 A. At this point, yes, I did put two and two  
14 together.

15 Q. You read -- you -- you remember he called you  
16 and said, "I'm taking her back to Jimmy John's. I  
17 need help -- she needs help getting a ride. And  
18 then -- then you get this text about him bragging  
19 about having sex?

20 A. Correct.

21 Q. And you figured out the chick in this GroupMe,  
22 the chick in this text was Erin?

23 A. Correct.

24 Q. That Mr. Pampu was bragging about?

25 A. Correct.

1 Q. So instead of taking Erin to Jimmy John's, he  
2 took her to the garbage thing behind the Chipotle?

3 A. That's correct.

4 Q. Okay. And you were upset by Mr. Pampu's text?

5 A. I was. Yes, sir.

6 Q. You're still upset by it?

7 A. Yes, sir.

8 Q. It was vile and degrading to Erin, wasn't it?

9 A. Correct.

10 Q. And you knew Erin was drunk based on the text  
11 that she gave you -- the text that didn't make  
12 sense?

13 A. Correct.

14 Q. And you knew she was drunk long before she sent  
15 you that text?

16 A. Correct.

17 Q. Now, let me ask you about Sunday. You went to  
18 check on Erin Sunday afternoon?

19 A. Yes, sir.

20 Q. What was her condition?

21 A. She was not doing well.

22 Q. Did she appear hung over?

23 A. She was definitely hung over. She was not  
24 doing great by any means.

25 Q. And you showed her this -- this -- this vile

1 and degrading text from Mr. Pampu where he bragged  
2 about having sex?

3 A. I did. Yes.

4 Q. Erin was ashamed and embarrassed?

5 A. Yes, she was.

6 Q. Erin told you she remembered being pushed up  
7 against a wall and having her butt slapped several  
8 times?

9 A. She did say that. Yes.

10 Q. At that point, you believed Mr. Pampu had raped  
11 Erin?

12 A. With the information I had at that time, yes.

13 Q. And I think you even said Mr. Pampu made an  
14 unforgivable mistake in another text?

15 A. I did say that. Yes.

16 Q. I think that's Exhibit 10. I'm not sure if it  
17 was talked about by Ms. Lau or not, but you sent him  
18 a -- you sent Mr. Pampu -- I mean, at some point,  
19 you -- you had a lot of conversations with Mr. Pampu  
20 about this?

21 A. Correct.

22 Q. And you told him he made an unforgivable  
23 mistake, didn't you?

24 A. Correct.

25 Q. And in another text, I think you told Mr. Pampu

1           whether it was his birthday or not, you thought he  
2           took advantage of Erin and that she didn't even  
3           remember it; is that right?

4           A.     I did say that.   Yes.

5           MR. GRANTLAND:   And that's in Exhibit 3.   May I  
6           approach, Your Honor?

7           THE COURT:   You may.

8           BY MR. GRANTLAND:

9           Q.     This is already into evidence.   I will take  
10          this one back.

11          A.     Thank you.

12          Q.     And Exhibit 3, what is -- what is those -- what  
13          are those text messages?

14          A.     Umm ---

15          Q.     Is that between you ---

16          A.     Yeah, it's a screen shot of the text message  
17          between me and Drew that I sent to -- all the names  
18          are cut off.   Could you refresh my memory?

19          Q.     Okay.   But what -- what did you say?   That's  
20          what's more important.   What did you say to Drew in  
21          that text message?

22          A.     In that text message I say, "Whether it was  
23          your birthday or not, not too proud of you for  
24          taking advantage of -- redacted -- meaning Erin like  
25          you did last night.   The poor girl doesn't even

1 remember it."

2 Q. Thank you. Now, let me ask you about -- I'll  
3 take that back. Let me ask you about your -- some  
4 more communications. I mean, first of all, you're  
5 probably the only person who talked to both Erin and  
6 Drew that -- that night around the same time?

7 A. To the best of my knowledge, yes.

8 Q. And based on your conversations with Mr. Pampu  
9 and Erin, you thought Erin was drunk and Mr. Pampu  
10 took advantage of her?

11 A. Yes, sir.

12 Q. Erin told you she had blacked out?

13 A. Yes, sir.

14 Q. Erin told you she did not remember much of the  
15 night?

16 A. She did. Yes.

17 Q. Erin didn't remember having sex with Mr. Pampu?

18 A. She did tell me that.

19 Q. She did remember being up against a wall and  
20 having her butt slapped?

21 A. Yes.

22 Q. Erin texted you later that she felt violated?

23 A. Yes, sir.

24 Q. And Mr. Pampu should've known better?

25 A. Yes, sir.

1 Q. You told Erin that you thought she was pretty  
2 much raped by Mr. Pampu?

3 A. I did say that. Yes.

4 Q. And some time later in November, you even  
5 encouraged Erin to press criminal charges against --  
6 against Mr. Pampu?

7 A. I did say that. Yes.

8 Q. Even though you knew it would mess you up with  
9 the fraternity?

10 A. Correct.

11 Q. I mean, I think at some point you've read a  
12 text with Ms. Lau about how it would eff you over --  
13 not trying to cuss too much -- but it would mess you  
14 up with the fraternity if criminal charges were  
15 pressed against him?

16 A. Yes, sir.

17 Q. But you -- you -- you -- but you believed that  
18 was the right thing to do under the circumstances?

19 A. Yeah, under the circumstances.

20 Q. Eve -- even if it would hurt you personally?

21 A. Correct. Yes. I believed it was the right  
22 thing to do.

23 Q. And Erin did not want to do that?

24 A. That is correct.

25 Q. You told Mr. Pampu and his fraternity they

1 should respect women?

2 A. I sure did.

3 MR. GRANTLAND: And I think that's in the -- is  
4 this Exhibit 6? May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. GRANTLAND:

7 Q. Is this your text to -- is this your -- this is  
8 Exhibit 6. It has a couple of pages, but was that  
9 your text to the fraternity?

10 A. That is correct, yes.

11 Q. On October 26th?

12 A. Yes.

13 Q. Why don't you read it?

14 A. "Guys, I feel like this should go without  
15 saying, but we need to respect girls. We all  
16 complain about what older brothers do to steer away  
17 girls and are failing to realize some of the shit  
18 that we do ourselves. I've heard things from  
19 multiple girls about how they are not happy with the  
20 way that they are treated at the Compound. We all  
21 talk this -- we all talk this big talk about how we  
22 want to make this fraternity better, and  
23 disrespecting just one girl can make that all  
24 impossible. I think it's sad that I have to say  
25 that -- say this in the first place."

1 Q. And the "disrespecting one girl," are you  
2 referring to what Mr. Pampu did to Erin?

3 A. Yes, sir.

4 Q. And what was Mr. -- what was Mr. Pampu's  
5 response to you? If you can turn the page on it --  
6 on Exhibit -- on Exhibit 6. What was his response  
7 to this -- this text where you told him and the rest  
8 of the fraternity to respect girls, what did  
9 Mr. Pampu say to you?

10 A. His response is, "At CJ Gahagan, fuck off,  
11 dude. Girls are fine. Next time, just don't let  
12 your girl hook up with one of your pledge brothers."

13 Q. And I'm making sure this is all admitted into  
14 evidence, Your Honor, Exhibit 6. Did you respond  
15 back to him to your knowledge?

16 A. To my knowledge, no.

17 Q. So he told you -- when you told them they need  
18 to respect -- the fraternity respect girls,  
19 Mr. Pampu told you to fuck off and don't let your  
20 girlfriend hook up with a pledge brother?

21 A. That is correct. Yes.

22 MR. GRANTLAND: And that -- and, again, Your  
23 Honor, Exhibit 6 is entered into evidence. I think  
24 it was already entered into evidence. I just want  
25 to make sure I'm clear.

1 THE COURT: Okay.

2 BY MR. GRANTLAND:

3 Q. So did the -- the after -- getting that e-mail  
4 out to Mr. Pampu and his fraternity brothers, did  
5 the fraternity support you?

6 A. They did not, no.

7 Q. In fact, you were eventually blackballed by the  
8 fraternity where you were pledging with Mr. Pampu as  
9 a result of Erin's incident, weren't you?

10 A. Yes, sir. That is correct.

11 Q. And you believe you were -- because you stood  
12 up for Erin in this text and in other texts, that  
13 led you to be blackballed by Mr. Pampu and this  
14 fraternity?

15 A. Yes, sir.

16 Q. But in November, 2015, you did have civil  
17 conversations with Mr. Pampu?

18 A. I did. Yes.

19 Q. He was nice to you and you were trying to be  
20 nice to him?

21 A. Yes, sir.

22 Q. You were being nice to Mr. Pampu, but based on  
23 everything you knew, you still believed he had  
24 sexually assaulted Erin back in October?

25 A. Yes, sir.

1 Q. You were Erin's friend in October and November  
2 2015?

3 A. I was. Yes.

4 Q. You went with her to counseling sessions after  
5 the incident?

6 A. I did. Yes.

7 Q. You don't know what was said, but you were  
8 there to be supportive of her?

9 A. Correct.

10 Q. Now, you and Mr. Pampu stopped talking to each  
11 other some time in 2016?

12 A. Correct.

13 Q. Is that right? And you and Erin broke up I  
14 guess around August of 2016. Does that sound right?

15 A. That is correct. Yes.

16 Q. And up until this lawsuit, you really had no  
17 contact with Erin at all after y'all broke up?

18 A. Yes, sir.

19 Q. Okay. Now, you were asked about Brendan  
20 Swinehart ---

21 A. Correct.

22 Q. --- one of your pledge brothers that you saw?  
23 And you told Brendan that you saw Erin at the  
24 Compound. She was blackout drunk and couldn't  
25 handle herself and Drew took advantage?

1 A. Yes, sir. I did say that.

2 Q. And I think that was in -- and that was -- you  
3 said that was an opinion you formed after the fact?

4 A. Correct.

5 Q. And that was -- you were asked to read  
6 exhibit -- portions of Exhibit 11, but I want to  
7 make sure you have all of Exhibit 11. Do you have  
8 that in front of you?

9 A. Yes, sir, I do.

10 Q. Okay. So, I mean, you -- Ms. Lau only asked  
11 you to read part of it. I'd like for you to read  
12 all of it.

13 A. Okay. And which message are you referring to?

14 Q. I think it's at the top. It begins with,  
15 "Don't know if you saw the shit in the GroupMe."  
16 Are we looking at Exhibit 11?

17 A. Yes.

18 Q. Yeah, if you can just briefly read through  
19 this.

20 A. I say, "Don't know if you saw the shit in the  
21 GroupMe, but Saturday Drew legit raped one of my  
22 best friends here. And the fact that I catch shit  
23 for saying that we need to respect girls is a  
24 serious problem. I don't see any reason why I would  
25 want to be associated with these kids anymore."

1 Q. And what was your friend's response back to  
2 you?

3 A. He said ---

4 Q. "Don't drop. You had to do so much shit and  
5 time." And then what was your response back to him?

6 A. Which time stamp are you referring to?

7 Q. I'm just going down the -- just going down.  
8 I'll stop interrupting you. I'll stop interrupting  
9 you.

10 C.J., why don't you just read -- read your  
11 response to your friend Brendan and his response  
12 back to you.

13 A. So I say, "No offense, but this isn't something  
14 that is going to be able to blow over considering by  
15 my best friend here now thinks she needs counseling  
16 to cope with how bad it was."

17 Q. And what was his response?

18 A. And his response is, "What -- what did he do  
19 exactly?"

20 Q. On the next page is your response.

21 A. I say, "He fucked her behind the garbage thing  
22 behind Chipotle and Moe's, and when she was too  
23 drunk -- when she was too drunk to give anything  
24 remotely close to consent."

25 Q. And what was his response?

1 A. "You say something to him?"

2 Q. No. What was in the next response on the text?

3 A. I -- I also say, "I saw her at the Compound.  
4 She was blackout drunk and couldn't handle herself  
5 and Drew took advantage of it.

6 Q. And then what was his response to you?

7 A. He says, "You say something to him?"

8 Q. And then what did you say?

9 A. I say, "Yeah, and he refuses to accept that  
10 he's done something wrong, which really bothers me.  
11 Also another reason why I don't feel like I should  
12 be associated with these kids."

13 Q. And you're referring to the fraternity?

14 A. Correct.

15 Q. Okay. And what was his response back to you?

16 A. He says, "So you're pretty set on dropping?"

17 Q. And what was your response?

18 A. I say, "Like 90 percent sure. I probably will  
19 by the end of the week. I'm going to talk to a few  
20 more different people during the course of the week  
21 and make my decision."

22 Q. And then what was your response? What was the  
23 next response on the text?

24 A. He then says, "Damn, well, you're one of my  
25 best friends in the pledge class so I'd be pissed to

1 see you go, but, ultimately, make the best decision  
2 for yourself that you think is right. Definitely  
3 want you to stay though."

4 Q. And -- and, ultimately, Mr. Pampu's fraternity  
5 blackballed you?

6 A. Yes, sir.

7 Q. Okay. And I think it was mentioned you told  
8 Cameron Caramatie that you thought Draw raped Erin?

9 A. I did say that. Yes.

10 Q. And that was in Exhibit 12. You have Exhibit  
11 12?

12 A. Yes, sir, I do.

13 Q. And same thing, if you could just kind of --  
14 and I'll -- I'll try not to interrupt you, but if  
15 you could just read down the -- the entire text  
16 message for completeness.

17 A. Yes, sir. So I say, "Honest question I have  
18 for you. If I dropped Phi Del and re-rush Beta in  
19 the spring, what would my chances be?"

20 I then said, "Reason I have for telling you  
21 this is that Drew raped Erin on Saturday and I just  
22 about had it with everyone in my pledge class."

23 He then responds, "You would have mine, Pete,  
24 and James' support. I'll talk to some of the  
25 brothers and get back to you with a better idea, but

1 I think you would be fine."

2 Q. And then down at the end, what -- what was his  
3 response to you? I mean, I think the words are what  
4 and -- and then the eff word again and then the ---

5 A. Yeah, he then responds, "What the fuck" in  
6 three separate text messages.

7 Q. Okay. And what was the bottom response?

8 A. "Was she just like too drunk or passed out or  
9 what?"

10 Q. And do you recall what you said to him in  
11 response to that?

12 A. I do not. I would need to be shown the rest of  
13 the conversation.

14 Q. And you were -- finally, you were asked in  
15 Exhibit 14, you were ask about your comment -- your  
16 text to Drew. And this was in January 2017, a good  
17 while after 2015, you know, a year-and-a-half, you  
18 were asked about these texts between you and Drew.  
19 What was the context of these texts? Do you recall?

20 A. Yes, sir. So as I've previously stated, I  
21 broke up with Erin some time in August of 2016. It  
22 was mutual due to everything that had gone on and  
23 the whole process over the past year of our lives.  
24 It was very tough for us.

25 And I had suffered my own damages from being

1 blackballed. I tried rushing again in January. I  
2 couldn't do it. It was impossible. I even tried  
3 doing it again in the following September, and I  
4 could only get into an off-campus fraternity. My  
5 social possibilities were extremely limited by this.

6 And I had an okay fall, but also throughout  
7 2016, I began suffering myself with anxiety and  
8 depression as well and I wasn't doing alright. And  
9 then in January of 2017, there was a party at the  
10 fraternity that I pledged at but never became a  
11 member because it ended up fizzling out because it  
12 was an off-campus fraternity.

13 But that night I had one party that I planned  
14 on going to. It was at this fraternity. It was my  
15 only option of places to go. And Erin, as a girl,  
16 could go wherever she wanted, because, typically,  
17 that's how it worked. Guys would be limited to  
18 whatever fraternity they were at and girls were  
19 invited everywhere.

20 And I had heard from Erin's big sister that  
21 morning that Erin planned on coming to that party  
22 that night, and I had not seen Erin for a few months  
23 at that point. We did try and rekindle things, but  
24 it -- it didn't pan out. And I wanted to be able to  
25 have fun on my own and not be involved with this

1 anymore. So I asked her big sister if she could  
2 direct her to go somewhere else, and Erin did not do  
3 that. She did show up at the party. And at that  
4 point, I was extremely drunk at the thought that she  
5 might even be there in the first place. And I saw  
6 her and I got very angry.

7 Then once she -- once she left, I went outside.  
8 And because of how angry I was, I started texting  
9 Drew and Erin's counselor terrible, spiteful,  
10 revengeful things that none of which were true and I  
11 stand by that. And I woke up the next morning and I  
12 regretted every single one of those text messages to  
13 this day.

14 Q. The texts you sent to Drew?

15 A. Yes, sir.

16 Q. Was Drew threatening to sue you in June -- in  
17 2017?

18 A. I don't recall that, but he did ask me to meet  
19 with his lawyers.

20 Q. Thank you. One second. CJ, it's -- it's  
21 difficult to stand up to a bunch of your peers and  
22 say something like this?

23 A. Yes, sir.

24 Q. It's difficult to stand up to a fraternity that  
25 has a lot of fun and has a lot of power to stand up

1 for one girl, isn't it?

2 A. Yes, sir.

3 Q. Would you do it again?

4 A. Absolutely.

5 MR. GRANTLAND: Thank you. No further  
6 questions.

7 THE COURT: Mr. Moore.

8 CROSS-EXAMINATION

9 BY MR. MOORE:

10 Q. CJ, you okay?

11 A. Yes, sir.

12 Q. Are you ready to go?

13 A. Yes, sir.

14 Q. All right. I'm not going to belabor a lot of  
15 this, but I need to regroup some of the facts. On  
16 October 24th I believe is when the party --  
17 fraternity party was held; am I right?

18 A. Yes, sir.

19 Q. Okay. And you and Drew were both pledges for  
20 this fraternity, correct?

21 A. Yes, sir.

22 Q. As part of your jobs as pledges for the  
23 fraternity, you had certain obligations you had to  
24 undertake?

25 A. Yes, sir.

1 Q. Correct? All right. And one of those  
2 obligations was helping to setup for a party such as  
3 this?

4 A. Correct.

5 Q. So you went early to the party to help set it  
6 up, correct?

7 A. Correct.

8 Q. Okay. While you're there, are you texting with  
9 Erin?

10 A. I am. Yes.

11 Q. And Erin has indicated that she's at a  
12 pre-party, a drinking fest, I guess; am I right?

13 A. That is correct.

14 Q. She's drinking pretty heavily and she's  
15 indicated to you that she's -- she's drunk, correct?

16 A. Yes, sir.

17 Q. And then after that and after you have  
18 completed your work for the fraternity, she  
19 indicates she's coming over to the party as I  
20 understand it?

21 A. Yes, sir.

22 Q. Okay. Then when she comes to the party, she  
23 initially comes to you; am I right?

24 A. Yes, sir.

25 Q. Okay. Did you notice she was drunk at that

1 time in your opinion?

2 A. I knew the text that she had sent beforehand  
3 where she had said something to the nature of, "I'll  
4 be drunk off my ass whenever I get there."

5 Q. Okay. And -- and you basically blew her off  
6 and said, "Go have fun with your friends" at that  
7 point in time, right?

8 A. After a short conversation, yes.

9 Q. Okay. All right. Now, was she at that point  
10 in time fall down drunk?

11 A. She was not, no.

12 Q. She wasn't sloppy or anything else? She was --  
13 she had control of herself as I understand it?

14 A. Correct.

15 Q. Now, did you see her personally for the  
16 remainder of that evening?

17 A. I did not, no.

18 Q. Okay. However, you did try to find her that  
19 evening; am I correct?

20 A. I did.

21 Q. Couldn't do it?

22 A. Couldn't.

23 Q. Okay. Did you get mad at her at that point?

24 A. Yes. I did start sending some text messages to  
25 her trying to find her.

1 Q. You started trying to text her; am I right?

2 A. Yes, sir.

3 Q. Okay. Now, she didn't respond to you while --  
4 when you were texting to her, which made it worse I  
5 guess; am I right?

6 A. That is correct.

7 Q. Okay. During the time you're texting her, at  
8 some point in time you get a call from Drew; am I  
9 right?

10 A. Yes, sir.

11 Q. Okay. And, essentially, I don't think you  
12 picked it up the first time, but, basically, what he  
13 told you was he was have -- he needed some help with  
14 CJ -- with Erin? Excuse me.

15 A. Yes, sir.

16 Q. Okay. And, subsequently, you began -- shortly  
17 thereafter, you began to get these texts from Erin  
18 as I understand it, correct?

19 A. Correct.

20 Q. Okay. We've gone through this before, so I'm  
21 not going to belabor it. Those texts were somewhat  
22 disjointed, were they not?

23 A. They were.

24 Q. Okay. In essence, it looks almost like she  
25 can't type?

1 A. That is correct. There are multiple typos.

2 Q. Now, you go -- you've already, by that time,  
3 left the party and gone home; am I right?

4 A. Yes, sir.

5 Q. The next morning when you get up, you're  
6 confronted with this text that -- that Drew has sent  
7 out about his fun of the night before; am I right?

8 A. Yes, sir.

9 Q. The one where, "I fucked a chick by the garbage  
10 thing"?

11 A. Correct.

12 Q. Now, he doesn't name who he's having his fun  
13 with; am I right?

14 A. That is correct.

15 Q. Okay. However, you put two and two together at  
16 that point in time?

17 A. I do. Yes.

18 Q. And what you remember is, wait a minute. I got  
19 a call from Drew last night, and then shortly  
20 thereafter, I'm getting these muddled texts from  
21 Erin. And then we have this text where he's -- he's  
22 had his fun with this chick. So the "chick" you  
23 understand to be Erin; am I correct?

24 A. Yes, sir.

25 Q. Okay. Now, based upon that, do you go and see

1 Erin?

2 A. Yes. Later that day I do.

3 Q. And you confront her about what's going on; am  
4 I right?

5 A. Correct.

6 Q. Okay. Now, she's unaware of the text at that  
7 point in time; am I correct?

8 A. Yes, sir.

9 Q. Okay. You show her this text, correct?

10 A. Yes, sir.

11 Q. Okay. And her response is, "I don't remember  
12 most of this. I don't remember most of the night;"  
13 am I right?

14 A. Yes, sir.

15 Q. Okay. So she has basically what is a blackout  
16 as a result of just too much to drink according to  
17 what she's telling you, correct?

18 A. That is correct.

19 Q. Okay. Now, you also tried to talk to Drew  
20 about this, did you not?

21 A. I did.

22 Q. Okay. And he wasn't very communicative at that  
23 point; am I right?

24 A. Yeah, he was dismissive. That is correct.

25 Q. He kind of put you off at that juncture?

1 A. Correct.

2 Q. Okay. Now, let's get the timing right here.  
3 This is the day after the -- the event, 24th going  
4 into the 25th, where you had these conversations or  
5 your attempted conversation with Drew. Then you  
6 have this -- the e-mails that we talked about  
7 earlier with these two other individuals -- sorry --  
8 not e-mails -- texts, correct?

9 A. Correct.

10 Q. All right. And the -- the texts that you sent  
11 out were to Mr. Swinehart, as I said it, who was a  
12 pledge brother, correct?

13 A. That's correct.

14 Q. And Mr. Caramatie? Is that how you pronounce  
15 his name?

16 A. That is correct.

17 Q. Okay. These are the only communications you  
18 had where you name Drew as having raped Erin; am I  
19 correct on that?

20 A. Yes, sir.

21 Q. And they're just texts. There's nobody else  
22 that can hear or see them or anything else; am I  
23 right?

24 A. Yes, sir.

25 Q. Okay. Now, and you told them at that

1 particular point in time that you thought that Drew  
2 had raped Erin, right?

3 A. That is correct.

4 Q. Now, did you have a subsequent meeting with  
5 Drew?

6 A. I did. Yes, sir.

7 Q. Okay. And at that point in time, did he then  
8 give you his version of what had occurred?

9 A. He did.

10 Q. So if we look at Plaintiff's 10 where you say,  
11 "Hearing his side of the story definitely made me  
12 feel like he's not a criminal." What made you  
13 change your mind at that particular point in time is  
14 your -- based upon your discussion with him,  
15 correct?

16 A. That is correct.

17 Q. Okay. Now, you go on to say, "But he still did  
18 make an extreme -- extreme unforgivable mistake;" am  
19 I right?

20 A. Yes, sir.

21 Q. Okay. Now, what you understood based upon your  
22 investigation on this matter is that he met up with  
23 Erin when she was drunk; am I right?

24 A. Correct.

25 Q. Okay. And your investigation indicates that --

1 that they apparently had sex together; is that not  
2 right?

3 A. Apparently, yes.

4 Q. And your investigation indicates that either at  
5 the time or immediately thereafter, she's stumbling,  
6 she's mumbling, she's having a hard time. In fact,  
7 Drew called you about that; am I right?

8 A. That is correct. Yes, sir.

9 Q. And then she texts you and she can't -- she  
10 can't type very well; am I right?

11 A. Yes, sir.

12 Q. Then when you -- you get this text here about  
13 what Drew had done the night before and put two and  
14 two together, then you went and checked with Erin?

15 A. That is correct.

16 Q. You tried to check with Drew?

17 A. Correct.

18 Q. And based upon the information that you had at  
19 that time was, number one, that I don't think it's  
20 any question about this, that Drew had had sex with  
21 Erin; am I right?

22 A. Yes, sir.

23 Q. Okay. And based upon the information you had  
24 at that time before you met with Drew the second --  
25 met with Drew again was that that she had had

1           blackouts, that she was blacking out because of the  
2           alcohol; am I right?

3           A.     Yes, sir.

4           Q.     Okay.  So if she's blacking out, she's  
5           obviously had a lot of alcohol; am I right?

6           A.     That's correct.

7           Q.     Okay.  And based upon that fact that she had a  
8           lot of alcohol, you felt as if she could not have  
9           given consent to have sex; am I right?

10          A.     Yes, sir.

11          Q.     Okay.  Now, your understanding of rape as we're  
12          discussing it is that it's nonconsensual sex; am I  
13          right?

14          A.     Correct.

15          Q.     So that we know it's a given, he bragged about  
16          it.  There was sex between Erin and Drew, correct?

17          A.     Correct.

18          Q.     We also know based upon your investigation up  
19          until that time is it looks like she's blacked out,  
20          she can't control herself, she doesn't know what  
21          she's doing, she can't consent and, therefore, it's  
22          nonconsensual sex; am I right?

23          A.     That is correct.

24          Q.     Okay.  Now Drew gives you some more  
25          information, but it is after the 26th when you had

1 your texts with these -- with Mr. Swinehart and  
2 Mr. Caramatie; am I right?

3 A. Yes, sir.

4 Q. Now, following your discussion with Drew, did  
5 Erin go through counseling?

6 A. She did.

7 Q. Okay. Did you attend counseling with her?

8 A. I did attend.

9 Q. Try to help her through that?

10 A. Yes, sir.

11 Q. Okay. In the meantime, did you continue to  
12 have correspondence with Drew as to what was going  
13 on?

14 A. I did. Yes, sir.

15 Q. And did you have fairly cordial conversations  
16 with him up to a point?

17 A. I did. Yes.

18 Q. Now, on -- up -- I'm sorry. I think it's  
19 November 7th I think, the day of the FSU/Clemson  
20 game?

21 A. Correct.

22 Q. Is that the correct date? I think I'm right on  
23 that.

24 A. The 7th or the 8th.

25 Q. Okay. Not a good day, was it?

1 A. It was not a good day, no.

2 Q. Why is that?

3 A. Because this was about two weeks after  
4 everything had happened and my family had visited  
5 from that -- or for that game -- sorry -- and they  
6 came down from New Jersey. And by that point, after  
7 some of the texts that I had sent about respecting  
8 women and getting the response that I did and some  
9 of the continued follow-up that I wasn't happy with  
10 within the fraternity, I kind of mentally checked  
11 out at that point.

12 I did have some cleaning responsibilities, but  
13 I chose to go and tailgate with my family instead.  
14 And at that tailgate, I got extremely drunk. I  
15 blacked out to the point of falling over, and I even  
16 had to be carried, is what I've been told, back to  
17 my dorm all the way across campus. And it was a  
18 terrible day. And I remember being at the tailgate,  
19 and then I don't remember anything until waking up  
20 in my bed late that night.

21 Q. Let's back up a little bit. This is right  
22 after you had a series -- you've had discussions  
23 with your pledge class as I understand it, correct?

24 A. Correct.

25 Q. And as a result of that discussion, one of the

1           comments made -- this is all by text as I understand  
2           it; am I right?

3           A.     Correct.

4           Q.     That Drew made was told you to fuck off, the  
5           girls ought to take care of themselves; am I right?

6           A.     Yes, sir.

7           Q.     So despite the fact you're trying to help him  
8           out through this period of time, he's telling you to  
9           fuck off, go away, correct?

10          A.     That is correct.

11          Q.     So and then you get plastered and you make a  
12          decision at that point in time, you're going to  
13          leave the fraternity; am I right?

14          A.     That is correct.

15          Q.     Now, initially you and Erin were best friends  
16          as I understand it?

17          A.     Yes, sir.

18          Q.     Okay.  You're dating, but you're -- you're --  
19          the relationship was open enough to where y'all  
20          could date other people?

21          A.     That is correct.

22          Q.     Erin obviously indicated after this event that  
23          she felt differently, that she was romantically  
24          involved; am I right?

25          A.     Yes, sir.

1 Q. Okay. Were you romantically involved at that  
2 point?

3 A. I would say that I was, but I wasn't ---

4 Q. Didn't recognize it at that point?

5 A. I wasn't recognizing it.

6 Q. Okay. Did y'all subsequently begin to date  
7 solely with one another?

8 A. Yes, sir.

9 Q. Okay. And I guess towards the end of that  
10 freshman year, y'all broke up because just  
11 circumstances and it was hard to deal with things?

12 A. It was after that freshman year, not until  
13 about August when we started our sophomore years.

14 Q. Okay. Now, did y'all try or attempt to get  
15 back together?

16 A. We did. Some time late in the fall semester of  
17 2016.

18 Q. And at that point in time, your intent was you  
19 wanted to have a relationship where you -- you --  
20 you were dating -- y'all were just dating each  
21 other; am I right?

22 A. That is correct.

23 Q. Okay. Now, there came a time I think where you  
24 were sitting in the library at Clemson with Erin; am  
25 I right?

1 A. Yes, sir.

2 Q. Okay. And you learned at that point in time  
3 she wasn't just dating you, she was dating others;  
4 am I right?

5 A. That is correct.

6 Q. And you got upset about that?

7 A. I did.

8 Q. Okay. And you directed her at that point in  
9 time because you were trying to pledge to another  
10 fraternity, don't come to another party; am I right?

11 A. Yes, sir.

12 Q. Okay. Now, she came anyway, didn't she?

13 A. She did.

14 Q. Okay. And you were drunk that night?

15 A. Very.

16 Q. And you got upset with her?

17 A. I did.

18 Q. Okay. And you stormed out of the other  
19 fraternity house and sent a number of texts out,  
20 didn't you?

21 A. I did.

22 Q. Okay. One of those texts went to Drew; am I  
23 right?

24 A. Yes, sir.

25 Q. And you indicated that you and Erin had lied in

1 the hearing; am I right?

2 A. Yes, sir.

3 Q. Okay. And, now, did you lie in that hearing?

4 A. No, sir, I did not.

5 Q. Okay. Did Erin lie in that hearing?

6 A. To the best of my knowledge, no.

7 Q. Okay. So what you're talking about is  
8 basically you're trying to get back at Erin at that  
9 particular point in time?

10 A. Yes, sir.

11 Q. Okay. You basically were lying at that  
12 juncture, not -- not during the course of the  
13 hearing?

14 A. That is correct.

15 Q. Now, you also text the counselor that y'all had  
16 gone to as well as I understand it?

17 A. Correct.

18 Q. Telling her the same thing with regard to that  
19 hearing?

20 A. Yes, sir.

21 Q. Okay. That you had lied in the hearing of  
22 course. That's just simply untrue; am I right?

23 A. Exactly.

24 Q. So -- so the -- the questions regarding you  
25 lying really had to do with that particular event

1 where you're trying to get back at Erin, as opposed  
2 to what happened during the course for the Clemson  
3 hearing; am I correct?

4 A. Yes, sir.

5 Q. Now, we've gone through this and I want to --  
6 ad nauseam, but my understanding is, obviously you  
7 weren't there when this event occurred?

8 A. That is correct.

9 Q. But you gathered information and then you made  
10 your statements regarding what Drew did based upon  
11 that information that you had gathered; am I  
12 correct?

13 A. That is correct.

14 Q. And there was no other way for you to have  
15 obtained any information about this other than what  
16 you did; is that correct?

17 A. Yes, sir.

18 MR. MOORE: Okay. Thank you.

19 THE COURT: All right. Redirect.

20 MS. LAU: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. LAU:

23 Q. Mr. Gahagan, you testified a moment ago that  
24 when you first saw Erin at the party on October 24,  
25 2015, that you told her to go have fun with her

1 friends?

2 A. I did say that. Yes.

3 Q. You didn't tell Erin to go find somebody else?

4 A. I did not say that. No.

5 Q. So if Ms. Wingo had testified to that end, then  
6 she would be lying?

7 MR. GRANTLAND: Objection. Pitting witnesses.

8 THE COURT: Sustained.

9 BY MS. LAU:

10 Q. Well, go have fun with your friends is  
11 different than saying go find somebody else, right?

12 A. They are very different statements. Yes.

13 Q. And counsel for Defendant Wingos and yourself  
14 had showed you the GroupMe message that was put into  
15 the group chat about the sexual encounter from  
16 October 24th. Do you recall that?

17 A. Yes, ma'am.

18 Q. But you know Mr. Pampu did not send that  
19 message to the group chat, right?

20 A. Yes. I'm aware it was sent by Jon Stoddart.

21 Q. And he did not name Erin in that group chat,  
22 right, Mr. Pampu that is?

23 A. He did not, no.

24 Q. You also testified that Erin was visibly drunk  
25 when you saw her at the Compound in response -- in

1 response to Mr. Grantland's questions. Do you  
2 remember that?

3 A. Yes, ma'am.

4 Q. Don't you recall that you testified earlier  
5 this morning that Erin was not stumbling when you  
6 saw her at the Compound?

7 A. Yes, ma'am.

8 Q. That she was walking unassisted?

9 A. Yes, ma'am.

10 MR. GRANTLAND: Objection, Your Honor. This is  
11 improper redirect. She's covered this in her  
12 direct -- in her initial direct.

13 MS. LAU: I need to be able to bring this out.

14 THE COURT: I'm going to allow it.

15 BY MS. LAU:

16 Q. That Erin, when you saw her at the Compound,  
17 she didn't vomit, right?

18 A. She did not vomit.

19 Q. And you don't recall her slurring, right?

20 A. I did not recall her slurring.

21 Q. So you did not actually observe Erin to be  
22 visibly drunk at the Compound when you saw her,  
23 right?

24 A. I can't say that for certain yes or no.

25 Q. You also testified that you did not believe

1 Mr. Pampu had helped Erin get home that night?

2 A. Yes. Because Mr. Pampu was not there whenever  
3 she got back to her dorm.

4 Q. Wouldn't helping Erin get a ride to her dorm be  
5 considered helping her getting home?

6 A. Very minimally.

7 Q. But it would be considered help, correct?

8 A. It would be considered help.

9 Q. Didn't Drew defend you with the other pledge  
10 brothers while you were still pledging the  
11 fraternity?

12 A. I do not recall. Can you point me to a time  
13 when he did?

14 Q. You don't recall a time when you were friendly  
15 with Drew?

16 A. I was friendly with Drew, yes.

17 Q. A time when you were friendly with him after  
18 the sexual encounter?

19 A. Yes, ma'am. I was.

20 Q. And you don't recall that time where during  
21 that time period where Drew was defending you with  
22 the other pledge brothers?

23 A. I do not have evidence to support that he was  
24 supporting me, no.

25 Q. You don't recall that being stated to you by

1 Mr. Pampu?

2 A. If you could point me to a text, but I do not  
3 recall it right now.

4 Q. I'm going to come back to that question,  
5 Mr. Gahagan.

6 A. Okay.

7 Q. Mr. Gahagan, you testified that your  
8 January 2017 messages to Drew and Ms. Wingo's  
9 therapist, that you just sent those to hurt  
10 Ms. Wingo?

11 A. Yes, ma'am.

12 Q. These were the messages where you said, "I lied  
13 at that hearing," and that she had lied as well  
14 about the sexual encounter being consensual?

15 A. Yes, ma'am.

16 Q. So you're testifying under oath today before  
17 this jury that you were lying when you said to Drew  
18 and her -- and Ms. Wingo's therapist that you lied  
19 at the hearing? That's what you're testifying to?

20 A. Yes, ma'am.

21 Q. To clarify, you were asked a question about a  
22 message that you had sent Mr. Pampu right after you  
23 discussed the sexual encounter with Ms. Wingo in her  
24 room on October 25th, right?

25 A. Yes, ma'am.

1 Q. And that was a message around -- after -- some  
2 time after 5:30 that -- that day?

3 A. Some time, yes.

4 Q. And the message was along the lines of,  
5 "Whether it's your birthday or not, not too proud of  
6 what you did"?

7 A. Yes, ma'am. I recall that.

8 Q. At that point, you only had one side of the  
9 story, right?

10 A. That is correct.

11 Q. Ms. Wingo's?

12 A. That is correct.

13 Q. And Ms. Wingo had not told you that she had  
14 been raped at that time?

15 A. She had not.

16 Q. And this was an event you had not witnessed  
17 yourself?

18 A. It is not.

19 MS. LAU: No further questions.

20 THE COURT: All right. You may step down.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: All right. Ladies and gentlemen,  
24 we're going to take a ten-minute break. Go back to  
25 the jury room and do not discuss the case, and we'll

1 bring you back out in just a few minutes.

2 (At 11:26 a.m., jury exited the courtroom.)

3 THE COURT: All right. A couple of things  
4 before we get too much further into this. Y'all  
5 make sure that all of the exhibits are properly in  
6 their place and that they've been redacted. You  
7 know, I don't want to get this back there and have a  
8 problem.

9 And not to hold you to -- everybody else can  
10 sit down. I'm trying to figure out because we're  
11 going to have to order lunch. What -- how long do  
12 you expect your next witness to be?

13 MS. LAU: Very short. Under an hour. I mean,  
14 we probably only need 20 minutes.

15 THE COURT: All right. What we'll do is, we'll  
16 plan on having lunch after. Let's take a ten-minute  
17 break now. Like I said, look at the exhibits and  
18 make sure.

19 (From 11:28 to 12:14 p.m., recess.)

20 THE COURT: I'm going to let y'all get your  
21 exhibit together and we can discuss it.

22 MS. PORTER: We're ready whenever you are, Your  
23 Honor.

24 THE COURT: Okay. What is it marked as  
25 exhibit? What have y'all got it labelled as.

1 MR. FIGLIOZZI: It will be -- it hasn't been  
2 marked yet, but it will likely be Plaintiff's 20.

3 THE COURT: All right. And in chambers we  
4 discussed Exhibit 20 and y'all -- I think y'all had  
5 agreed on portions of the redaction, portions that  
6 were not agreed on. I ruled that any reference to  
7 the hearing, referenced to actions or statements  
8 made by other individuals, damages, which I think  
9 Mr. Wingo was claiming in the demand of Mr. Wingo.  
10 I've ruled that those are to be redacted. I think I  
11 covered all the areas and I'll be glad to -- I want  
12 to hear from plaintiff first. Anything they want to  
13 put on the record in that regard?

14 MS. LAU: Yes, Your Honor. We -- we wish to  
15 put -- we wanted to put Dr. Harrison-Pope ---

16 THE COURT: No. I'm just talking about -- this  
17 is just the letter.

18 MS. LAU: Oh, I'm sorry.

19 THE COURT: Yeah. I think the other thing cut  
20 out was the demand.

21 MR. FIGLIOZZI: Yes. Plaintiff wanted certain  
22 language on page 6 of the letter that was page --  
23 Bates stamped E001265 that included statements  
24 regarding the removal of plaintiff from Phi Delta  
25 Theta.

1 THE COURT: All right.

2 MS. PORTER: Thank you, Your Honor. Again, we  
3 would renew our objection that this should be  
4 excluded under Rule of Evidence 408, offered and  
5 compromised. And then, again, we would ask that  
6 there were certain redactions made that we felt like  
7 if the letter was going to come in should be  
8 included regarding the fraternity's treatment of  
9 particularly codefendant CJ Gahagan and my client,  
10 Erin Wingo, at this time due to fact that the  
11 plaintiff is claiming the defendants' actions that  
12 got him expelled from the fraternity and portions of  
13 this letter we would argue contradict that  
14 assertion. Thank you.

15 THE COURT: Do you want to put up a copy of the  
16 letter into evidence marked as identification just  
17 to protect the record?

18 MS. PORTER: Yes. That would be wonderful.  
19 Unfortunately, I marked up my copy.

20 THE COURT: Right. I just want to make sure  
21 you're protected on what I deleted.

22 MS. PORTER: I will -- I will offer it as a  
23 Court's exhibit as soon as I get a clean copy.

24 THE COURT: Okay.

25 MS. PORTER: Thank you, Your Honor.

1 THE COURT: All right. Anything else before --  
2 before we bring the jury in? We were going to -- I  
3 thought we just kind of had left the expert issue up  
4 in the air for now. We were just going to take care  
5 of this witness and then address that.

6 MS. LAU: Yes, Your Honor.

7 THE COURT: Okay. Is that what everybody's  
8 understanding was?

9 MR. MOORE: Yes, sir.

10 THE COURT: Okay. All right. If they're  
11 ready, we'll bring the jury in.

12 (At 12:17 p.m., jury entered the courtroom.)

13 THE COURT: All right. Okay. Please be  
14 seated.

15 THE JURORS: (Complying.)

16 THE COURT: All right. Now, plaintiff, call  
17 your next witness.

18 MR. FIGLIOZZI: Plaintiff calls David Wingo.

19 THE COURT: Mr. Wingo, if you'd come to the  
20 stand and be sworn.

21 THE WITNESS: (Complying.)

22 THE CLERK: Raise your right hand.

23 THE WITNESS: (Complying.)

24 THE CLERK: Do you solemnly swear that the  
25 testimony you're about to give in this case to be

1 the truth, the whole truth, and nothing but the  
2 truth so help you God?

3 THE WITNESS: So help me God.

4 THE CLERK: State your full name or the record.

5 THE WITNESS: David Jack Wingo.

6 DAVID WINGO,

7 having been produced and first duly sworn as a  
8 witness on behalf of the Plaintiff, testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. FIGLIOZZI:

12 Q. Good afternoon, Mr. Wingo. My name is James  
13 Figliozzi. I'm an attorney representing the  
14 plaintiff, Andrew Pampu. Erin Wingo is your  
15 daughter, correct?

16 A. Correct.

17 Q. You're aware that Erin attended a party at the  
18 Phi Delta Theta location known as the Compound on  
19 the night of October 24, 2015, correct?

20 A. Correct.

21 Q. You were not in South Carolina on the evening  
22 of October 24, 2015, correct?

23 A. No, I was not.

24 Q. You were not present at the pre-game that Erin  
25 attended in McCabe Hall on the evening of October

1 24, 2015, were you?

2 A. No, I was not.

3 Q. You did not attend the October 24, 2015, party  
4 at the Compound, right?

5 A. No, I did not.

6 Q. And you did not observe the amount of alcohol  
7 that Erin drank on the evening of October 24, 2015,  
8 right?

9 A. No, I did not.

10 Q. You did not observe Erin's actions at the  
11 Compound on the evening of October 24, 2015, right?

12 A. No, I did not.

13 Q. And on the night of October 24, 2015, you did  
14 not observe Ms. Wingo -- Erin's sexual encounter  
15 with Mr. Pampu, right?

16 A. No, I did not.

17 Q. And you did not find out about the sexual  
18 encounter between Erin and Drew until October 27,  
19 2015, right?

20 A. Correct.

21 Q. And that was during a phone conversation  
22 between you, your wife, and Erin, correct?

23 A. Correct.

24 Q. And during that call, you did not discuss the  
25 details of the sexual encounter, right?

1 A. No.

2 Q. You have no firsthand knowledge of the sexual  
3 encounter between Erin and Drew, correct?

4 A. Correct.

5 Q. And you're not aware of any rape kit being  
6 performed on Erin as a result of that sexual  
7 encounter, correct?

8 A. Not to my knowledge.

9 Q. And after that October 17 -- 27th -- excuse  
10 me -- 2015 phone call, you did not travel to Clemson  
11 to see Erin; is that right?

12 A. Could you say that again?

13 Q. Sure. After that October 27, 2015, phone call,  
14 you did not travel to Clemson to see Erin, right?

15 A. No, I did not. I sent my wife.

16 Q. Mr. Pampu was a member of Phi Delta Theta,  
17 right?

18 A. Correct.

19 Q. And at some ---

20 A. As far as I know at that time.

21 Q. And at some point, you decided to miss --  
22 sorry -- you decided to submit a claim to Phi Delta  
23 Theta regarding the sexual encounter between Erin  
24 and Drew, right?

25 A. I initially advised Phi Delta Theta by a

1           voicemail that there was an incident on October 24th  
2           between Mr. Pampu and my daughter and they needed to  
3           investigate it.

4           Q.     Wasn't that submitting a claim to Phi Delta  
5           Theta?

6           A.     No.  That's submitting -- I think at the end, I  
7           did indicate that we may submit a claim, but it was  
8           at that point in time, we were asking them to  
9           investigate the incident and that we would be  
10          looking to take further action.

11          Q.     Well ---

12          A.     But there was no demand.

13          Q.     Well, did you discuss this decision to contact  
14          Phi Delta Theta with Erin?

15          A.     Yes, I did.

16          Q.     And you wouldn't have reached out to Phi Delta  
17          Theta unless Erin said that it was okay to do so,  
18          right?

19          A.     Correct.

20          Q.     So was your initial -- well, let me rephrase  
21          that.  So your initial contact with Phi Delta Theta,  
22          that communication was done on behalf of Erin,  
23          right?

24          A.     Well, the reason why was because there was  
25          quite the blatant harassment and intimidation both

1 of my daughter as well as CJ. Being somebody that  
2 does have a disability per se from talking, I  
3 want -- I don't have any tolerance for that, and,  
4 thus, I wanted to raise the issue to Phi Delt for  
5 them to investigate.

6 MR. FIGLIOZZI: I'd like to move to strike that  
7 as nonresponsive.

8 THE COURT: Overruled. I'm going to let him go  
9 ahead.

10 BY MR. FIGLIOZZI:

11 Q. And following this communication with Phi Delta  
12 Theta, did you -- you provided Erin with multiple  
13 updates regarding the issues that you brought to Phi  
14 Delta Theta's attention, right?

15 A. I gave her at various times an update, yes.

16 Q. Who's Shawn Wagoner?

17 A. Mr. Wagoner is the president of Phi Delta  
18 Theta.

19 Q. The national president?

20 A. Yes.

21 Q. And on April 1, 2016, you told Mr. Wagoner that  
22 Mr. Pampu raped Erin, right?

23 A. If you would refresh my memory on exactly what  
24 document?

25 MR. FIGLIOZZI: This will be Plaintiff's

1 Exhibit No. 17 for identification purposes only.

2 Your Honor, may I approach the witness?

3 THE COURT: You may.

4 BY MR. FIGLIOZZI:

5 Q. Please review this document silently to  
6 yourself and tell me when you're done, Mr. Wingo.

7 A. (Complying.) I have reviewed it.

8 Q. And does reviewing this document refresh your  
9 memory as to whether -- well, does it refresh your  
10 memory?

11 A. I remember sending this. Yes.

12 Q. So on April 1, 2016, you told Shawn Wagoner at  
13 Phi Delta Theta that Mr. Pampu raped your daughter,  
14 right?

15 A. I believe you need -- well, could you show me  
16 in this document the word "rape"?

17 Q. Well, on April 1, 2016, you told Shawn Wagoner  
18 at Phi Delta Theta that Mr. Pampu sexually assaulted  
19 your daughter, right?

20 A. Say that again.

21 Q. Sure. On April 1, 2016, you told Shawn Wagoner  
22 at Phi Delta Theta that Mr. Pampu sexually assaulted  
23 your daughter, right?

24 A. I said the assault occurred on October 24,  
25 2015.

1 Q. Well, upon reviewing this document, do you  
2 recall whether on April 1, 2016, you told Shawn  
3 Wagoner that Mr. Pampu sexually assaulted your  
4 daughter?

5 A. Yes. I said "assaulted."

6 Q. Does it say "sexually assaulted" at any point?

7 A. Yes, it does. I'm sorry. You are correct.

8 MR. FIGLIOZZI: Thank you. May I approach?

9 THE COURT: You may.

10 MR. FIGLIOZZI: This will be Plaintiff's 17  
11 identification purposes only.

12 You also provided Mr. Wagoner with a letter  
13 dated April 4, 2016.

14 MR. MOORE: James, can we get a copy of what  
15 you're referring to?

16 MR. FIGLIOZZI: Oh, I gave you the -- is it the  
17 same one you just looked at? What are you referring  
18 to?

19 MR. MOORE: This is 17. Is that same one?

20 MR. FIGLIOZZI: Yes. That's the one I just  
21 gave you.

22 MR. MOORE: I'm sorry.

23 BY MR. FIGLIOZZI:

24 Q. And you provided Mr. Wagoner at Phi Delta Theta  
25 with a letter dated April 4, 2016, regarding the

1 sexual encounter between Drew and Erin, correct?

2 A. If you will refresh my memory?

3 MR. FIGLIOZZI: I'd like to mark this as  
4 Plaintiff's Exhibit 18, and I have already shown it  
5 to defense counsel. Your Honor, may I approach the  
6 witness?

7 THE COURT: Is there any objection to this?

8 MR. MOORE: No.

9 THE COURT: This is the redacted ---

10 MS. PORTER: This is what we already put on the  
11 record.

12 THE COURT: It's over your previous objections.

13 MS. PORTER: Yes.

14 THE COURT: This is Exhibit 20?

15 MR. FIGLIOZZI: Exhibit 18.

16 THE COURT: I'm sorry. Exhibit 18 is in,  
17 subject to the objections of the defense.

18 (Plaintiff's Exhibit No. 18 was received into  
19 evidence.)

20 MR. FIGLIOZZI: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MR. FIGLIOZZI:

23 Q. Please review this document, Mr. Wingo.

24 A. (Complying.)

25 Q. Do you recognize this document?

1 A. Yes. This is a redacted copy of the letter  
2 that I sent on April 4th to Shawn. Yes.

3 Q. And does this document, outside of those  
4 redactions, accurately reflect the letter dated  
5 April 4, 2016, that you sent to Shawn Wagoner?

6 A. I believe all you did is outline the blocks or  
7 basically redact it, so I assume that's correct.

8 Q. Now, on the first page of this exhibit, which  
9 is Bates stamped P001260, can you please read the  
10 first two sentences of your letter?

11 A. "Clemson University Phi Delta Theta Member  
12 Andrew Pampu, preyed on my daughter, Clemson  
13 freshman Erin Wingo, severely intoxicated state at a  
14 Phi Delt party. Brought her to secluded location  
15 and sexually assaulted her."

16 Q. Thank you.

17 A. Is that one or two?

18 Q. That -- that's -- that's what I was looking  
19 for. Yep.

20 A. Do you want me to go on, or would like to...

21 Q. Well, if you look at the next sentence of that  
22 document, it says that you indicated that you wanted  
23 Mr. Pampu's membership, quote, swiftly revoked,  
24 closed quote, correct?

25 A. It says, "For the rape, I'm asking Phi Delt

1 organization if his membership is not swiftly  
2 revoked."

3 Q. So were you indicating that you wanted  
4 Mr. Pampu's membership in Phi Delta Theta be  
5 revoked?

6 A. Yes.

7 Q. And if we look still on that first page,  
8 there's a heading that says Phi Delt Drew Pampu  
9 sexually assaulted Erin at a Phi Delt party ---

10 A. Correct.

11 Q. --- right? Okay. And in the third paragraph  
12 of that letter, which comes under that heading, it's  
13 the first paragraph under that heading, you wrote  
14 that Erin was, quote, clearly intoxicated when she  
15 was at the Phi Delta Theta party, right?

16 A. Correct.

17 Q. And same paragraph, you also wrote that Erin  
18 was extremely intoxicated at the time of the  
19 assault, right?

20 A. Correct.

21 Q. Please go to the fourth page of the letter.

22 A. The fourth page?

23 Q. Fourth page, yes. It has a four on the bottom  
24 and it also has a Bates stamp that says P001263.

25 A. Correct.

1 Q. Okay. And there's a heading that says, "Drew  
2 is a risk to other Phi Delt members, guests, and the  
3 Clemson community," right?

4 A. I said, "Drew is a risk to the entire Phi Delt  
5 and Clemson community," so I believe you added more  
6 into that than what is there.

7 Q. I was referring to the heading.

8 A. Oh, I'm sorry.

9 Q. And that says, "Drew's a risk to other Phi Delt  
10 members, guests, and the Clemson community," right?

11 A. Correct.

12 Q. And can you please read the first paragraph of  
13 that -- under that subheading?

14 A. Drew's, or sorry, the whole thing?

15 Q. Just the first paragraph.

16 A. Okay. "Drew is a risk to the entire Phi Delt  
17 and Clemson community. Drew's conduct towards Erin  
18 was predatory. He preyed upon a highly intoxicated  
19 victim and brought her to an isolated but public  
20 location to sexually assault her. As you know,  
21 something, penetration is common among repeat -- I'm  
22 sorry -- repeat penetration is common among college  
23 predators. Some studies indicate that serial  
24 predators sexually assault an average of six women."

25 Q. I know the text of this is a little small,

1 so...

2 A. Could you ---

3 Q. I can tell you how I view it.

4 A. Sometimes I read things differently because of  
5 my eyes.

6 Q. Understood. So ---

7 A. So if you would like to clarify ---

8 Q. Sure.

9 A. --- feel free to do so.

10 Q. So the last sentence of that paragraph, it  
11 says, "As you know, repeat perpetration is common  
12 among college perpetrators. Some studies indicate  
13 that serial perpetrators sexually assault an average  
14 of six women." Do you agree with that reading?

15 A. Yes.

16 Q. And the purpose of sending this letter was to  
17 have Mr. Pampu's membership in Phi Delta Theta  
18 revoked, right?

19 A. There was -- there was many -- there was  
20 various different issues that were requested in this  
21 letter, but not all of them stated by yourself, if I  
22 remember correctly because a lot of this is  
23 redacted.

24 Q. Well, I'm not asking about the content of the  
25 letter. I'm asking about its -- its purpose. Was

1 your purpose in sending this letter -- well, your  
2 purpose in sending this letter was that Mr. Pampu's  
3 membership ---

4 A. This purpose was in response to Mr. Wagoner's  
5 request to provide a demand. Prior to that, there  
6 was e-mails that were sent requesting that Mr. --  
7 that the Phi Delt fraternity investigate the  
8 incident to advise or provide counsel to their  
9 brothers.

10 Since I was a part of a fraternity, I asked the  
11 head office to request that they have somebody come  
12 down to that that facility to instruct the brothers  
13 on how properly to deal with the situation because  
14 there was bulliness and harassment that was going  
15 on.

16 Q. Well, at the time that you sent this letter,  
17 you wanted Mr. Pampu's membership in Phi Delta Theta  
18 revoked, right?

19 A. That was a possibility. Yes.

20 Q. That was something you wanted, right?

21 A. I had suggested it, yes, but they have to make  
22 the decision, not I.

23 Q. Well, if you were the president of Phi Delta  
24 Theta, you would've revoked Mr. Pampu's membership,  
25 right?

1 A. Well, based on the letter if I remember ---

2 MS. PORTER: Objection. Calls for speculation.

3 THE COURT: Yeah, sustained.

4 BY MR. FIGLIOZZI:

5 Q. You're not aware of any prior accusations of  
6 rape made against Mr. Pampu by your daughter or  
7 anybody else, right ---

8 MS. PORTER: Objection.

9 MR. FIGLIOZZI: --- at the time this letter was  
10 written?

11 THE COURT: Re-ask the question.

12 MR. FIGLIOZZI: Sure.

13 BY MR. FIGLIOZZI:

14 Q. At the time this letter was written, you're not  
15 aware of any prior accusations of rape made against  
16 Mr. Pampu, correct?

17 A. Not that I know of.

18 Q. And you were not at the party at the Compound  
19 on October 24, 2015, right?

20 A. Correct.

21 Q. And you didn't observe Erin's drinking behavior  
22 on the evening of October 24, 2015, right?

23 A. I did not.

24 Q. And you described in this letter an isolated  
25 but public location where the sexual encounter took

1 place, but you were not present when Erin and  
2 Mr. Wingo engaged in the sexual encounter on October  
3 24, 2015, right?

4 A. Correct. I was not present.

5 Q. And you were not present when Erin and Drew  
6 walked to the location of where their sexual  
7 encounter took place, right?

8 A. I was not.

9 Q. Mr. Pampu was eventually removed from Phi Delta  
10 Theta, right?

11 A. Based on my understanding from Mr. Wagoner, he  
12 was removed from Phi Delt based on their decision.

13 Q. And you communicated that information to Erin,  
14 right?

15 A. I probably did.

16 Q. You say "probably." Do you know for certain?

17 A. Yes.

18 Q. Do you know how you did that?

19 A. No.

20 Q. Do you know when you did that?

21 A. No.

22 Q. On April 20, 2016, you told Erin and  
23 Mr. Gahagan, CJ, to keep Drew's removal from Phi  
24 Delta Theta on the down low, right?

25 A. If you'll refresh my memory, yes, I'll look at

1 it.

2 MR. FIGLIOZZI: Your Honor, I'm going to show  
3 this to defense counsel.

4 THE COURT: Okay.

5 MR. FIGLIOZZI: Your Honor, I'd like to mark  
6 this as Exhibit 19 for identification purposes only.  
7 It's been shown to defense counsel. May I approach  
8 the witness?

9 THE COURT: Is there going to be an objection  
10 to this? Are you going to introduce it?

11 MR. FIGLIOZZI: No.

12 MS. PORTER: I have to see what the question  
13 is. I mean, asked to be allowed to explain it.

14 THE COURT: Well, let's just see what the  
15 question is.

16 BY MR. FIGLIOZZI:

17 Q. Please review this to yourself, Mr. Wingo.

18 A. I can't read it. I'm sorry. This is -- I  
19 literally need glasses, or if somebody could read  
20 this to me, that would be fine. I'm sorry. I'm  
21 sensitive.

22 Q. Mr. Wingo, do you have your glasses with you in  
23 the courtroom today?

24 A. No, I don't.

25 (Witness given glasses.)

1 BY MR. FIGLIOZZI:

2 Q. Can you read it now?

3 A. Yes, I believe so.

4 Q. Okay. Please read that to yourself. Let me  
5 know when you're done.

6 A. Thank you.

7 Q. And does reviewing this document refresh your  
8 memory?

9 A. Yes, it does.

10 Q. Okay. So on April 20, 2016, you told Erin that  
11 she and CJ should keep Drew's removal from Phi Delta  
12 Theta on the down low, right?

13 A. I -- well, I would prefer that you actually  
14 read what I said.

15 Q. I'm not asking you to read it. I'm just asking  
16 if you told them that.

17 A. I basically told them that they needed to keep  
18 it on a down low because ---

19 Q. I'm just asking if you told them to keep it on  
20 the down low.

21 MS. PORTER: Your Honor, I ask that he be  
22 allowed to explain.

23 THE COURT: He's got to ask his question first,  
24 and then he can explain.

25 BY MR. FIGLIOZZI:

1 Q. I'm not asking why you made the statement,  
2 Mr. Wingo. I'm asking if you said -- if you told  
3 Erin and CJ to keep Drew's removal from Phi Delta  
4 Theta on the down low?

5 MS. PORTER: Your Honor, that's -- may we  
6 sidebar?

7 (Sidebar discussion.)

8 BY MR. FIGLIOZZI:

9 Q. Just to be clear, Mr. Wingo, I'm not asking you  
10 why, but you did make the statement to Erin and CJ  
11 on April 20, 2016, they should keep Drew's removal  
12 from Phi Delta Theta on the down low, right?

13 A. It goes on to further explain.

14 Q. Thank you. Do you recall sending an e-mail to  
15 Shawn Wagoner on April 21, 2016?

16 A. Could you refresh my memory?

17 MR. FIGLIOZZI: I'd like to enter this as  
18 Plaintiff's Exhibit 20. I will show defense  
19 counsel.

20 MS. PORTER: Your Honor, we had a pretrial  
21 motion and I believe what was ruled is that ---

22 THE COURT: Hold on -- let's just -- I mean ---

23 MS. PORTER: --- 18 comes in and the rest was  
24 excluded based on 408, but I -- I could be wrong,  
25 but these are all after.

1 MR. FIGLIOZZI: Our understanding was that this  
2 exhibit was specifically sent, and we just ask that  
3 this one part of the exhibit was allowed.

4 THE COURT: I'm not sure what you're talking  
5 about. Let me look at it.

6 (Brief recess.)

7 MR. FIGLIOZZI: May I approach the witness,  
8 Your Honor?

9 THE COURT: You may.

10 BY MR. FIGLIOZZI:

11 Q. And, Mr. Wingo, I'm only asking you to look at  
12 the e-mail on April 21, 2016, from you to Shawn  
13 Wagoner. Can you please review that e-mail?

14 A. Yes.

15 Q. Okay. And is this a true and accurate copy of  
16 the e-mail that you sent to Shawn Wagoner on  
17 April 21, 2016, at 6:56 a.m.?

18 A. It seems to be.

19 MR. FIGLIOZZI: Okay. Your Honor, I'd move to  
20 enter Exhibit 20 into evidence.

21 THE COURT: With redactions and is subject to  
22 the objections of defendants.

23 MS. PORTER: Yes, sir.

24 (Plaintiff's Exhibit No. 20 is received into  
25 evidence, subject to redactions and objections.)

1 BY MR. FIGLIOZZI:

2 Q. And in this e-mail to Mr. Wagoner, you wrote,  
3 "Shawn, thank you again for the e-mail and update,  
4 but could I have a clarification? Does this mean  
5 that Mr. Pampu will no longer be able to live or be  
6 at Phi Delt house or events? My daughter has other  
7 Phi Delt friends and she has avoided these  
8 activities due to the circumstances and asked me if  
9 I could get clarification. Your advice would be  
10 appreciated," right?

11 A. Correct.

12 Q. Mr. Pampu was never arrested for rape by the  
13 police as a result of his sexual encounter with  
14 Erin, right?

15 A. No, he was not.

16 Q. Mr. Pampu was never criminally charged with  
17 rape as a result of his sexual encounter with Erin,  
18 right?

19 A. This was never posed to the DA to have charges.

20 Q. So he was never criminally charged with rape;  
21 is that correct?

22 A. Because it was never posed to the DA.

23 Q. I'm not asking if it was proposed to the DA.  
24 So he was never criminally charged with rape, right?

25 A. Correct.

1 Q. And Mr. Pampu was never convicted of rape  
2 following a criminal trial as a result of his sexual  
3 encounter with Erin, right?

4 A. Since this was never presented to the DA, there  
5 was no criminal charges.

6 Q. But Mr. Pampu was never convicted of rape?

7 A. Correct.

8 Q. And Mr. Pampu has never been sued for civil  
9 rape as a result of his sexual encounter with Erin,  
10 right?

11 A. Correct.

12 MR. FIGLIOZZI: I have no further questions for  
13 this witness.

14 THE COURT: Cross-examination.

15 MS. PORTER: It might take a minute. Do you  
16 want to break for lunch?

17 THE COURT: Yeah, let's go ahead if it's going  
18 to take a while. So, ladies and gentlemen, we're  
19 going to take a break here. I think lunch is ready,  
20 so -- and we're going to probably go about  
21 45 minutes. If that's not enough for everybody.

22 THE FOREMAN: We would respectfully request one  
23 hour.

24 THE COURT: Okay. That's fine. We'll give you  
25 till 1:45.

1 THE FOREMAN: Thank you.

2 THE COURT: All right. Do not discuss the  
3 case. Other than that, go back to your jury room.

4 (At 12:51 p.m., jury exited the courtroom.)

5 THE COURT: All right. Let's -- everybody,  
6 please be seated.

7 (Complying.)

8 THE COURT: Trying to figure out here, we have  
9 several matters we need to go over. Let's take --  
10 let me see the lawyers so we can figure out kind of  
11 a schedule.

12 (Sidebar discussion.)

13 (From 12:52 to 1:46 p.m., lunch recess.)

14 THE COURT: Anything we need to bring up  
15 before? We got everybody thoroughly confused? All  
16 right. That's right. You're back on the stand.

17 THE WITNESS: (Approaching.)

18 THE COURT: All right. So we're ready to bring  
19 the jury in? I guess they're all in.

20 THE BAILIFF: Yes, sir.

21 THE COURT: Okay.

22 (At 1:47 p.m., jury entered the courtroom.)

23 THE COURT: All right. Everybody be seated,  
24 please.

25 (Complying.)

1           THE COURT: All right. Ladies and gentlemen,  
2 remember before lunch, the plaintiff had rested on  
3 direct and now cross-examination by the defendant.

4                                   CROSS-EXAMINATION

5 BY MS. PORTER:

6 Q. Good afternoon, Mr. Wingo.

7 A. Hi.

8 Q. Do you have a learning disability?

9 A. Yes.

10 Q. And does that make it difficult to read?

11 A. Yes.

12 Q. Okay. I'm not going to ask you to read  
13 anything else.

14 A. Thank you.

15 Q. I'm going to read some stuff for you and see if  
16 you'll explain after I've read the passages; is  
17 that -- is that okay?

18 A. Yes.

19 Q. Great. Before we do that though, I want --  
20 again, something got glossed over and I want to go  
21 back. October 27, 2015, you got a phone call from  
22 your daughter?

23 A. Uh-huh.

24 Q. And you were on the phone with her and your  
25 wife; is that correct?

1 A. Correct.

2 Q. Your daughter being Erin Wingo?

3 A. Correct.

4 Q. Your wife being Betsy Wingo?

5 A. Correct.

6 Q. Please tell the jury the effect that phone call  
7 had on you.

8 A. It was shock. It was holy shit. Sorry. It  
9 was oh my god. And then my focus was like, okay,  
10 get it together. Focus. This is crisis. We need  
11 to get her the help and the resources, whatever it  
12 takes to support her in what she wants to do and  
13 where she wants to go.

14 And similar to what I do for a living, it was  
15 to make sure that as a dad I was making sure that  
16 she was going to have the people that she can  
17 confide in and love. Her mother and her are very  
18 close, so I wanted to make sure that Bets was down  
19 there to help her in this moment. Her sister, if  
20 Maggie needed to go, I was ready to get her to pull  
21 out of classes at Ohio State and go down and help  
22 her. And, basically, also, if she needed my brother  
23 or my sister-in-law or even myself. Whatever she  
24 needed, I wanted to make sure she had it.

25 I also wanted to make sure that we were going

1 to go ahead and, you know, talk through this when  
2 she was ready and how she wanted to move forward  
3 with things. She was trying to fit all the pieces  
4 together, and she needed some help and guidance.  
5 And to the extent that we could give it, we wanted  
6 to do that.

7 Q. So your goal at that moment in time was to  
8 support your daughter, correct?

9 A. Correct.

10 Q. And as a part of that, you put your wife on a  
11 plane the very next day, correct?

12 A. Correct.

13 Q. And you got her the resources she needed to  
14 help her through this trauma, correct?

15 A. Correct.

16 Q. And as a father, that's what you wanted to do,  
17 was to support and protect your daughter, correct?

18 A. Correct.

19 Q. All right. As a part of that role as her  
20 father and trying to support and protect your  
21 daughter, did you reach out to the national  
22 headquarters of Phi Delta Theta?

23 A. Yes.

24 Q. And you left them a voicemail and you e-mailed  
25 Shawn Wagoner; is that correct?

1 A. I left a voicemail to the risk manager at Phi  
2 Delt and subsequently an e-mail with Shawn, yes.

3 Q. And I believe what's been marked as Plaintiff's  
4 Exhibit No. 17 for identification purposes, I'm not  
5 going to ask you to read it. I'll take it. All  
6 right.

7 Shawn Wagoner responded to you and he asked you  
8 to provide any details you're willing to share  
9 regarding the incident so that we may investigate  
10 Mr. Pampu and the chapter at Clemson University,  
11 didn't he?

12 A. Correct.

13 Q. And as a result of that request, you gathered  
14 several things together, didn't you?

15 A. Yes.

16 Q. And you drafted a letter dated April 4, 2016?

17 A. Correct.

18 Q. And you sent it to Phi Delta Theta, correct?

19 A. Yes.

20 Q. All right. And that's what has been put into  
21 evidence as Plaintiff's Exhibit No. 18?

22 A. Yes.

23 Q. All right. And so you were asked to read a few  
24 sentences of this letter, but I'd like to talk about  
25 it again in a little bit more detail. All right.

1 You state in the very beginning why you're writing  
2 the letter.

3 "Clemson University Phi Delta Theta member  
4 Andrew Pampu, preyed on my daughter, Clemson  
5 freshman Erin Wingo, severely intoxicated state at a  
6 Phi Delta Theta party. Brought her to a secluded  
7 location and sexually assaulted her."

8 At this point in April of 2016, we're talking  
9 about November, December, January, February. We're  
10 four months into this?

11 A. Correct.

12 Q. All right. And at that time were you made  
13 aware of the location where the sexual occult --  
14 assault occurred?

15 A. Yes. Because it was ---

16 Q. Had you just been made aware ---

17 A. Yes.

18 Q. --- of the location? All right.

19 A. Thank you.

20 Q. Would you agree that an area in between a fence  
21 and a shed in between properties is a secluded area?

22 A. Yes. But also could be public depending  
23 upon ---

24 Q. Well, you're -- you're anticipating my next  
25 question --

1 A. Oh, okay.

2 Q. --- Mr. Wingo. Yes. But yet it's not in a  
3 house where -- or a room or a bathroom or a dorm  
4 room. It's not somewhere where you've got to open a  
5 door or open windows to see what's going on?

6 A. Correct.

7 Q. All right. It's secluded in that it's not in  
8 the -- where everybody's walking back and forth in  
9 front of?

10 A. Right.

11 Q. But it's not in private either?

12 A. No.

13 Q. So that's -- that part's true, right, the  
14 secluded location?

15 A. Yes.

16 Q. All right. Now, the next sentence is, "The  
17 national Phi Delta Theta -- national Phi Delt  
18 fraternity, the housing corporation chapter,  
19 numerous individuals, and alumni face significant  
20 liability for the rape of risk to the Phi Delt  
21 organization if his membership is not swiftly  
22 revoked." You didn't ask for it to be swiftly  
23 revoked, did you?

24 A. No.

25 Q. You just said there's liability if you allow a

1 rapist to remain?

2 A. Correct.

3 Q. Okay. "As per my e-mail, I have outlined what  
4 has occurred and is still in the process. We would  
5 like to resolve this matter with Phi Delt without  
6 the necessity of litigation as outlined in this  
7 letter."

8 A. Correct.

9 Q. All right. And then you go through the details  
10 of what occurred on October 25th as you understood  
11 them; is that correct?

12 A. Correct.

13 Q. All right. "Nine weeks into Erin's college  
14 career at Clemson, she attended a Phi Delta Theta  
15 party at the Phi Delt chapter house where Phi Delt  
16 pledge Drew sexually assaulted her."

17 A. Correct.

18 Q. Okay. "After drinking heavily, Erin went with  
19 friends to a party at the Phi Delt chapter house.  
20 There Erin, although clearly intoxicated, was  
21 offered beer by fraternity brothers, which she  
22 accepted. She was extremely intoxicated at the time  
23 of the assault and has only a nightmare of flashing  
24 images of the sexual assault of being outside and  
25 against the siding of a wall or a shed," correct?

- 1 A. Correct.
- 2 Q. "A slap on her bare butt," correct?
- 3 A. Correct.
- 4 Q. Being told, "Stand up for me"?
- 5 A. Correct.
- 6 Q. Being told, "Put your pants back on. We're  
7 done"?
- 8 A. Correct.
- 9 Q. "And crying hysterically"?
- 10 A. Correct.
- 11 Q. Then you go on to state that, "Erin's friends  
12 found her a mess and crying on the steps of the Phi  
13 Delt chapter house," correct?
- 14 A. Correct.
- 15 Q. "Erin was put in a car and threw up on the way  
16 home," correct?
- 17 A. Correct.
- 18 Q. "Friends had to walk Erin into her dorm room,"  
19 correct?
- 20 A. Correct.
- 21 Q. "When Erin got to her room, she had lost her  
22 key and was unable to stand up or speak with her  
23 R -- her RA to get a key from her RA," correct?
- 24 A. Correct.
- 25 Q. "Erin's friend had to communicate with the RA

1 to get a key," correct?

2 A. Correct.

3 Q. "Erin vomited again and her friends helped her  
4 into bed"?

5 A. Correct.

6 Q. All right. "The following day, Erin vomited  
7 for hours and could barely move," correct?

8 A. Correct.

9 Q. "Later that afternoon, Erin's friend CJ  
10 Gahagan, again pledge at Phi Delt, showed Erin a  
11 text by Drew sent to the entire fraternity pledge  
12 class, which confirmed her worst fear;" is that  
13 correct?

14 A. Correct.

15 Q. "In a response to a text from a pledge which  
16 said, 'Drew killed it on his birthday,' Drew  
17 responded, 'I fucked a chick by a garbing thing  
18 behind Chipotle, so I think I definitely did it with  
19 that alone.' Drew was bragging to his pledge class  
20 about assaulting Erin," correct?

21 A. Correct.

22 Q. All right. Then you went on to state that Drew  
23 has continued to show a lack of remorse or respect  
24 for the seriousness of these violations and is  
25 instead proud of his misconduct?

1 A. Correct.

2 Q. His fraternity brothers have rallied around  
3 him, and to this day continue to verbally harass and  
4 intimidate Erin and CJ?

5 A. Correct.

6 Q. All right. So at this time there's continued  
7 harassment by the members of Phi Delta Theta of your  
8 daughter; is that right?

9 A. Correct.

10 Q. And this was an attempt to get you -- to get  
11 Phi Delta Theta to protect your daughter; isn't that  
12 right?

13 A. Yes. Undoubtedly.

14 Q. All right. I'm going to -- they can read it.  
15 It's in evidence.

16 A. Good.

17 Q. All right. But the e-mail asked you if you  
18 could provide information so they could investigate.  
19 And they did investigate, didn't they?

20 A. Yes, they did.

21 Q. And as a result of their investigation, he was  
22 expelled from the fraternity, correct?

23 A. Correct.

24 Q. And you became aware of that in -- later at the  
25 end of April; is that correct?

1 A. I believe so.

2 Q. All right. I just have one last question.  
3 Well, maybe three, but they keep talking about Drew  
4 was never criminally charged or convicted for  
5 criminal rape?

6 A. Right.

7 Q. Did you want your daughter to report this to  
8 law enforcement?

9 A. I wanted her to weigh the pros and the cons and  
10 evaluate what she wanted to do. She chose not to  
11 report it to the police because of the reason she  
12 gave during her testimony.

13 MS. PORTER: Thank you. Please answer any  
14 questions that Mr. Moore has.

15 THE COURT: Mr. Moore.

16 MR. MOORE: Judge, I have no questions for this  
17 witness.

18 THE COURT: Redirect?

19 MR. FIGLIOZZI: Just a moment, Your Honor.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION

22 BY MR. FIGLIOZZI:

23 Q. Mr. Wingo, your council went over certain  
24 portions of the April 4, 2016, letter to Phi Delta  
25 Theta, which has been entered into evidence as

1 Plaintiff's Exhibit 18. Just want to clarify. When  
2 you wrote this letter, you had no personal knowledge  
3 of the information contained in this letter, right?

4 MS. PORTER: Your Honor, it's improper  
5 redirect.

6 THE COURT: I mean, I think y'all -- you've  
7 gone over that in your direct, so move along.

8 BY MR. FIGLIOZZI:

9 Q. In response to Ms. Porter reading you the  
10 following sentence, "The national Phi Delt  
11 fraternity, the housing corporation chapter,  
12 numerous individual members, and alumni face  
13 significant liability for the rape of risk to the  
14 Phi Delt organization if his membership is not  
15 swiftly revoked." You responded that you were  
16 simply identifying liability -- a liability for Phi  
17 Delta Theta, right?

18 A. Correct.

19 Q. Well, isn't the way that you phrased it the  
20 same as asking to have Mr. Pampu's membership  
21 revoked?

22 A. No. They make that decision themselves.

23 Q. So you'll just identify a liability to a group  
24 that you're not employed for, that you're not  
25 associated with, just out of the goodness of your

1 heart?

2 A. It's like the Pinto situation that people  
3 looked at the Pinto. They knew there was a  
4 liability. Ford continued to manufacture that  
5 model, and subsequently people got killed, and they  
6 subsequently got punitive damages against them.

7 Q. So your intent with this letter was not to have  
8 Mr. Pampu's ---

9 A. It was to raise the issue of the risk of rape  
10 and for him and them to understand that there was  
11 potential liability and for them to make an  
12 appropriate decision on how they wanted to deal with  
13 that risk as I do in my job.

14 Q. Okay. So I just want to make sure your  
15 testimony is clear. You're saying that in writing  
16 this letter, your goal was not to have Mr. Pampu's  
17 membership in Phi Delta Theta revoked?

18 MS. PORTER: Your Honor, asked and answered.

19 THE COURT: I'm going to allow it.

20 THE WITNESS: I said, once again, I was  
21 identifying the liability. It's their choice on how  
22 they actually want to deal with that liability. One  
23 of the options could be expulsion.

24 BY MR. FIGLIOZZI:

25 Q. On the second page of this letter, your

1 attorney read out to you in the first paragraph the  
2 final sentence, "Drew was bragging to his pledge  
3 class about assaulting Erin." That's something you  
4 wrote in this letter, right?

5 A. Uh-huh.

6 Q. Did Mr. Pampu send the GroupMe message that  
7 went to the entire pledge class?

8 A. I'm sorry?

9 Q. Well, Mr. Pampu did not send the GroupMe  
10 message that went out to the entire pledge class,  
11 right?

12 A. Yes. But the thing is is that he never turned  
13 around with the GroupMe and said, no, that's not  
14 correct or make some alternative statement from the  
15 group chat statement. He let it just ride.  
16 Obviously, he wanted to make sure everybody knew  
17 that he got lucky on his birthday.

18 Q. Well, he didn't affirmatively say anything in  
19 the group chat to that effect, right?

20 (Cross-talking.)

21 Would you let me finish my question, please?  
22 He did not affirmatively say anything in the group  
23 chat about his sexual encounter with your daughter,  
24 right?

25 A. He basically said that he fucked a chick.

1 Q. Well, he said that in a text message to one  
2 member of the pledge class, who then subsequently  
3 broadcast it to everybody else, correct?

4 A. Correct. But he also could've then gone --  
5 gone on the GroupMe chat and stated otherwise.

6 Q. Well, he didn't affirmatively say in the  
7 GroupMe chat anything about the sexual encounter  
8 with Erin, right?

9 A. He didn't say anything.

10 MR. FIGLIOZZI: No further questions, Your  
11 Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 THE COURT: Plaintiff, call your next witness.

16 MR. FIGLIOZZI: Yes, Your Honor. We will  
17 Dr. Harrison G. Hope. He will be appearing  
18 remotely.

19 THE COURT: Okay. All right. We're going to  
20 have -- all right. Let's -- let's -- just to make  
21 sure we got everything correct, I'm going to ask  
22 y'all to go back there. Do not discuss the case.  
23 Let's just make sure we have everything set up  
24 correct, so that when y'all come out you can look at  
25 it then.

1 (At 2:07 p.m., jury exited the courtroom.)

2 MR. GRANTLAND: Your Honor, should I put my  
3 motion in limine on the record at this time ---

4 THE COURT: Yeah.

5 MR. GRANTLAND: --- before you begin his  
6 testimony?

7 (From 2:07 to 2:21 p.m., brief recess.)

8 THE COURT: All right. Okay. I'll be glad to  
9 hear -- I'll hear your motions in limine at this  
10 point.

11 MR. GRANTLAND: Thank you, Your Honor. John  
12 Grantland on behalf of Defendant Wingo. We make a  
13 motion in limine to exclude Dr. Pope's testimony in  
14 this case. He has been listed as board certified  
15 psychiatrist. He's been listed as a memory expert  
16 to testify regarding false memories and hindsight  
17 bias. He's never been listed as a toxicologist or  
18 an expert on alcohol and toxicological effects of  
19 alcohol. He has basically four opinions and the  
20 crux of his opinions, Your Honor, all of his  
21 opinions deal with Erin Wingo, her thoughts, her  
22 credibility, her memory, and her own bias, which are  
23 not proper expert testimony from our perspective.

24 His first opinion is whether she exaggerated  
25 the amount of alcohol she consumed. He bases -- he

1 did calculations -- he did some calculations on  
2 Google. Again, based on the testimony that -- that  
3 he has reviewed. He came up with his own opinions  
4 about her alcohol intoxication based on this Court's  
5 ruling regarding Dr. Stolchome. No one's done blood  
6 alcohol tests of Ms. Wingo. And if our expert  
7 cannot give an opinion regarding the blood  
8 alcohol -- the blood alcohol level, neither can this  
9 psychiatrist who's not a forensic toxicologist.  
10 That's one opinion that we would believe he should  
11 not be able to get into.

12 His second opinion, he said it's impossible to  
13 say whether Erin gave consent or did not give  
14 consent to have sex. That is not an expert opinion.  
15 That is an opinion on the ultimate issue. We don't  
16 believe that opinion would be proper.

17 His third opinion is that someone experiencing  
18 an alcohol blackout can give consent. Again, he  
19 assumes an alcohol level that he can't speak to with  
20 certainty. And, again, that's another opinion on  
21 ultimate issue as to whether Erin Wingo gave consent  
22 or not. That's an issue for the jury, not for an  
23 expert. And he's basically giving an opinion on  
24 whether she's telling the truth or not. And that's  
25 not an opinion for an expert.

1           His final opinions deal with false memories and  
2           hindsight bias. Those are terms of art. From his  
3           perspective, Erin Wingo may believe she's telling  
4           the truth, but he believes she's created a false  
5           memory and she has hindsight bias and, therefore,  
6           not telling the truth. That, again, is another --  
7           that's not proper expert testimony, Your Honor. And  
8           he's not a toxicologist, so he should not be allowed  
9           to testify regarding the effects of alcohol and  
10          certainly should not be allowed to testify regarding  
11          Ms. Wingo's credibility.

12           THE COURT: Ms. Lau, anything to say or  
13          Mr. Figliozzi?

14           MR. FIGLIOZZI: Yes. Dr. Pope has in the  
15          course of his research and treatment of psychiatric  
16          patients has a wide experience with individuals who  
17          have drug and alcohol related problems, including  
18          multiple individuals who have suffered from  
19          alcoholic blackouts. Plaintiff would be offering  
20          the testimony from Dr. Pope on the subject of  
21          blackouts, the effects of blackouts on memory, and  
22          the general effects of alcohol, general behavioral  
23          issues related to alcohol.

24           THE COURT: All right. I'm sorry. Didn't mean  
25          to cut you off.

1 All right. And I think as we discussed in  
2 chambers, the actual point that -- I think what's  
3 been provided to me that I've been kind of relying  
4 on is a -- I think it's a discovery response from  
5 the plaintiff to the defendant.

6 MS. LAU: Yes, Your Honor.

7 THE COURT: That's what was provided to me by  
8 defense counsel, and I agree that those opinions  
9 would not be accepted or that I would not allow  
10 those opinions, but that I would allow as to, one,  
11 based on the review whether it was his opinion as to  
12 whether Ms. Wingo was intoxicated, the general  
13 behavioral issues relating to intoxication, but that  
14 it in no way should go to the specifics of this  
15 case, should in no way go to the credibility of  
16 Ms. Wingo in any testimony or statements that she  
17 has made.

18 I think that covers everything we talked about  
19 in chambers, doesn't it?

20 MR. GRANTLAND: Yes, sir.

21 THE COURT: All right. Are we ready for the  
22 jury?

23 MS. LAU: Yes.

24 MR. FIGLIOZZI: Yes, sir.

25 THE COURT: All right.

1           (At 2:27 p.m., jury entered the courtroom.)

2           THE COURT: All right. Let me kind of give you  
3 some preliminary information. First of all, I think  
4 everybody can see that without any trouble, and I  
5 think the volume -- I'm glad we did give y'all a  
6 break. We had to figure out all the little details.  
7 That worked out fine.

8           And I also will tell you at this point that you  
9 are to treat this testimony just like this  
10 individual was here in the witness box.

11           Also, it's my understanding, that plaintiff  
12 plans to present this individual as an expert. And,  
13 normally, a person cannot testify about their  
14 opinions on anything. They can only testify to what  
15 they directly observed, what they heard, what they  
16 smelled, just direct sentences. The exception to  
17 that rule is if somebody has been qualified as an  
18 expert in a particular field, then that person can  
19 testify about their opinions in that field based on  
20 their education, their experience, and their  
21 training.

22           And -- but just like any evidence that's  
23 presented, you are to give it the weight and value  
24 to this testimony just like anything else, the  
25 weight and value that you feel is appropriate. So

1 just because he's an expert, does not change that,  
2 you know, effect on how you are to consider it.

3 So with that being said, I will ask the clerk,  
4 she will go around and have this witness sworn and  
5 identified.

6 THE CLERK: Good afternoon, Mr. Pope.

7 THE WITNESS: Good afternoon.

8 THE CLERK: I'm going to swear you in. If you  
9 would, raise your right hand.

10 THE WITNESS: Yes.

11 THE CLERK: Do you solemnly swear that the  
12 testimony you're about to give in this case to be  
13 the truth, the whole truth, and nothing but the  
14 truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please state your full name for the  
17 record.

18 THE WITNESS: My name is Dr. Harrison Graham  
19 Pope, P-o-p-e, Jr.

20 THE COURT: All right. Plaintiff, you may  
21 proceed.

22 DR. HARRISON POPE,  
23 having been produced and first duly sworn as a  
24 witness on behalf of the Plaintiff, then testified  
25 as follows:

## 1 DIRECT EXAMINATION

2 BY MR. FIGLIOZZI:

3 Q. Good afternoon, Dr. Pope.

4 A. Good afternoon.

5 Q. What is your profession?

6 A. I am a psychiatrist.

7 Q. And where do you work?

8 A. I work at McLean Hospital, which is a teaching  
9 hospital of Harvard Medical School located about ten  
10 miles west of Boston in Belmont, Massachusetts.11 Q. Can you briefly summarize your training and  
12 education?13 A. I graduated from Harvard College in 1969 and  
14 then went onto Harvard Medical School. During the  
15 course of medical school, I obtained a masters  
16 degree in public health from the Harvard School of  
17 Public Health and then obtained my MD from Harvard  
18 Medical School in 1974.19 I then came directly here to McLean Hospital  
20 where I did three years of residency training in  
21 psychiatry. And during the third of those three  
22 years, I won a fellowship and did some training at  
23 the leading psychiatric hospital in the United  
24 Kingdom called the Maudsley Hospital. And then one  
25 of the two leading hospitals in Paris, France,

1           called Hôpital Francais.

2           In 1977, I returned here and began as a  
3           psychiatrist running one of our research wards here  
4           at McLean Hospital. And from that point on,  
5           gradually rose up in the Harvard Medical School  
6           faculty ranks, beginning as an instructor in  
7           psychiatry, and then assistant professor, and then  
8           associate professor. And then finally starting in  
9           the 1990s, I became a full professor in psychiatry.  
10          So, basically, I have what is known as a joint  
11          appointment in that I am a full professor on the  
12          faculty at Harvard Medical School and simultaneously  
13          a practice psychiatrist and researcher out here at  
14          our principle teaching hospital in psychiatry,  
15          McLean Hospital.

16          Q.    Thank you, Dr. Pope. And what does your work  
17          entail?

18          A.    I do a great deal of research in a wide range  
19          of areas of psychiatry. Especially in the last  
20          20 years, I have focused particularly on research of  
21          substance abuse, studies on marijuana, on  
22          hallucinogens, on ecstasy, on anabolic steroids, the  
23          drugs used by weightlifters and bodybuilders, and  
24          other types of drugs as well.

25          In addition, I have published in many other

1 areas of psychiatry, including on the treatment of  
2 various psychiatric disorders, medications used for  
3 treating bipolar disorders and schizophrenia, eating  
4 disorders, studies of memory, studies of individuals  
5 who are victims of trauma, and many other fields.  
6 In all, I have published about 340 peer-reviewed  
7 papers throughout the range of topics in psychiatry.

8 Secondly, I have engaged in private practice  
9 seeing psychiatric patients over the course of the  
10 last 47 years. And in this respect, I have probably  
11 seen or consulted on several thousand patients over  
12 these last four plus decades, including countless  
13 patients with substance abuse problems, including  
14 alcohol problems, of course, and countless patients  
15 who have been victims of traumatic experiences,  
16 patients with all matters of the their psychiatric  
17 disorders.

18 And then finally, third, I do teaching as a  
19 professor on our faculty. I am entrusted with  
20 teaching medical students, residents in training,  
21 fellows, and other junior individuals, teaching them  
22 how to treat patients, how to perform and write-up  
23 research studies, and how to deal with other aspects  
24 of psychiatry.

25 Q. And in your research and treatment of the

1 psychiatric patients, do you have any experience  
2 with drug and alcohol intoxication?

3 A. Absolutely. I have treated countless patients  
4 with alcohol problems and drug problems. Looking  
5 specifically at alcohol, that would number into the  
6 hundreds of patients who I have seen who have had  
7 alcohol abuse. What we now call alcohol use  
8 disorder. In the old days, it used to be termed  
9 alcohol abuse or alcohol dependence, but it's all  
10 the same, and also individuals using illicit drugs,  
11 street drugs, often in combination with alcohol.

12 Q. And other than your research and treatment  
13 experience, do you have any other educational  
14 experience or background on the effects of drugs and  
15 alcohol on blood?

16 A. Well, in the course of my work as a  
17 psychopharmacologist, someone who specializes in  
18 drugs and psychiatric disorders, I am, of course,  
19 very familiar with the metabolism of drugs, blood  
20 levels of drugs, which drugs are metabolized in the  
21 body, side effects of different classes of drugs, so  
22 that all of those aspects of pharmacology go with  
23 the territory as areas where I'm very familiar in  
24 which I have also published.

25 Q. And, Dr. Pope, can you provide us a very brief

1 summary of the highlights of your work?

2 A. Well, it's hard to condense it into a very  
3 brief summary. Let me just tell you one -- one  
4 factor from my curriculum vitae that perhaps would  
5 help to summarize this.

6 In 2003, by way of preface, the measure of  
7 one's scientific impact is measured perhaps best by  
8 the number of times that other scientists have cited  
9 your work, the degree to which your own peers have  
10 cited your papers when they write their papers at a  
11 later time. So your citation count, so-called,  
12 provides something of a quantitative measure of the  
13 impact that you have had as a scientist. And in  
14 2003, I was ranked by the Institute for Scientific  
15 Information as one of the 300 most widely cited  
16 psychiatrists or psychologists in the world. And,  
17 also, I was independently ranked as one of 300  
18 highly cited neuroscientists in the world. And I  
19 was one of only three scientists in the world who  
20 actually ranked in both of those two categories. So  
21 I've had considerable impact in -- in these areas as  
22 a result of my work.

23 Q. Are you're here today to testify on behalf of a  
24 party in this matter?

25 A. Yes.

1 Q. And on whose behalf are you testifying today?

2 A. I'm testifying on behalf of Andrew Pampu.

3 Q. And are you being compensated for your  
4 testimony today?

5 A. Yes, I am.

6 Q. And how much are you being compensated for  
7 today's testimony? What's your hourly rate?

8 A. My hourly rate is \$600 per hour.

9 Q. And is that the standard rate for all cases in  
10 which you're retained?

11 A. Yes. Actually, my current rate has gone up to  
12 \$800 per hour, but your case started before I raised  
13 my rate. As a result, you are grandfathered in at  
14 the old rate.

15 Q. And does the fact that you are being  
16 compensated for your testimony have any impact on  
17 the truthful -- truthfulness of the testimony that  
18 you'll offer today?

19 A. Not at all. I get paid the same -- the same  
20 amount of money regardless of the outcome of the  
21 case, regardless of what happens. It's just a flat  
22 hourly rate.

23 Q. And have you ever been qualified to testify as  
24 an expert by a Court?

25 A. Numerous times. I have never been disqualified

1 to testify as an expert in any case that I have been  
2 involved with.

3 Q. And in those numerous times that you've been  
4 qualified as an expert by a Court, were you  
5 qualified to testify as an expert in psychiatry?

6 A. Yes.

7 Q. Were you ever qualified in any other discipline  
8 by a Court to testify as an expert?

9 A. Again, I'm not sure exactly what terminology  
10 was used in different courts. You know, psychiatry  
11 embraces substance abuse, of course, which is a  
12 subcategory of psychiatry and it involves  
13 neuroscience topics such as the way that the brain  
14 works, the way that our memories work, the way that  
15 biological hypotheses in the brain effect behavior  
16 and other observable phenomena, so those technically  
17 would all come under the large umbrella of  
18 psychiatry and psychology.

19 Q. And I know you've testified just now that  
20 you've never been disqualified as an expert in any  
21 matter, but has your testimony ever been limited in  
22 any matter?

23 A. There have been cases where there were only  
24 certain aspects of the case on which I was asked to  
25 testify, where it is not as if I were prevented from

1           testifying on a particular area because I was judged  
2           unqualified to do so, but where as a result of legal  
3           discussions between the two parties and the judge,  
4           it was determined that I should be allowed to  
5           testify only on specific topics.

6           Q.     And other than those instances -- well, has  
7           your opinion that you sought to enter ever been  
8           limited in any way?

9           A.     Not to my recollection, no.

10           MR. FIGLIOZZI: Your Honor, I move do qualify  
11           Dr. Pope as an expert in psychiatry with experience  
12           with drug and alcohol intoxication.

13           THE COURT: Any objection or voir dire for this  
14           witness?

15           MR. GRANTLAND: No objection, Your Honor.  
16           Reserve my objection previously.

17           THE COURT: Right. And drug and alcohol?

18           MR. FIGLIOZZI: Drug and alcohol intoxication.

19           THE COURT: All right. So qualified.

20           MR. FIGLIOZZI: Thank you, Your Honor.

21           BY MR. FIGLIOZZI:

22           Q.     Dr. Pope, what is a blackout?

23           A.     An alcoholic blackout or actually blackouts can  
24           occur with several different types of drugs, but  
25           looking specifically at the most common type, an

1 alcoholic blackout is a phenomenon where an  
2 individual drinks alcohol and then develops a loss  
3 of memory for a block of time during which they were  
4 intoxicated with alcohol.

5 And it's very important to emphasize, there is  
6 a very common misconception here is that many people  
7 think that if you blackout that that's the same as  
8 passing out, and the two are totally different.  
9 Passing out refers to loss of consciousness and  
10 something that would happen only with very high  
11 levels of alcohol in the bloodstream, but a  
12 blackout, which is simply a loss of memory, can  
13 occur even with fairly modest levels of alcohol and  
14 is characterized by a blank spot in your memory from  
15 what happened while you had been drinking.

16 Blackouts subdivide in two types. There is a  
17 complete blackout where you have no memory at all  
18 from an entire span of time, and that is known in  
19 science as an "en block blackout," an e-n, space  
20 bar, b-l-o-c-k, en block blackout.

21 And then perhaps the more common type is a  
22 so-called "fragmentary blackout" in which an  
23 individual can remember some bits and pieces of what  
24 happened during a period of time, but then has no  
25 memory at all for many of the other elements,

1 usually the majority of the elements.

2 Q. And, Dr. Pope, you said that a blackout can  
3 occur with a minimum amount of alcohol, but  
4 typically does an alcoholic blackout occur when an  
5 individual consumes a large amount of alcohol in a  
6 short amount of time?

7 A. Yes. Especially a short amount of time. If  
8 you drink slowly and gradually rise up to a  
9 graduated higher level of alcohol, the probability  
10 of a blackout is considerably less than if you drink  
11 quite rapidly and very quickly rise up to a high  
12 level, so that it is a factor. It is determined  
13 both by the level of alcohol at the time and the  
14 speed with which you have reached up to that level  
15 and, of course, to your experience with alcohol. If  
16 you have a substantial tolerance to alcohol from  
17 having drunk heavily for some time, you may be less  
18 vulnerable of a blackout at a given level of alcohol  
19 somewhere else.

20 And then, finally, it is determined also by  
21 idiosyncratic factors that some people are more  
22 vulnerable to blackouts than others, even if all of  
23 the other factors are the same.

24 Q. When someone's in an alcoholic blackout, can  
25 they have a completely normal appearance to an

1 outside individual?

2 A. Absolutely. And this is very important to  
3 emphasize, sir. An individual in the -- in the  
4 midst of an alcoholic blackout may be completely  
5 indistinguishable from an ordinary person. And let  
6 me just give you an example of this from -- from a  
7 famous scientific paper written many years ago by  
8 Dr. Goodwin who's one of the most famous alcohol  
9 researchers of the last 50 years.

10 He described a case where a man woke up in a  
11 hotel room in Las Vegas. And he was clean shaven.  
12 His clothes were neatly hung in the closet, but he  
13 had no idea how he had gotten to the hotel room. He  
14 dressed. Went down to the desk clerk, and the desk  
15 clerk told him that he was in Las Vegas, Nevada,  
16 which is 2,000 miles from where he was before the  
17 blackout began. And that he had checked in two days  
18 ago, that he had come down to the desk a couple of  
19 times. The desk clerk told him that he -- he  
20 thought that the man had been drinking, but he  
21 didn't appear particularly drunk.

22 And, in fact, this man found that he had a  
23 complete blank that extended for five days and his  
24 memory left off on an afternoon when he was in a bar  
25 at St. Louis, Missouri. And he then had left the

1 bar, had gotten himself to the airport, booked plane  
2 tickets, flown to Las Vegas, gone to this hotel,  
3 checked in, spent two days there and had total  
4 amnesia for the entire event. And yet he had no  
5 problem flying on a plane, no problem negotiating  
6 the check-in to a hotel room. The desk clerk did  
7 not notice him to be particularly drunk at any time.

8 So this gives you an idea that -- that  
9 individuals in a blackout can form -- can perform  
10 complex behaviors requiring complex judgment to make  
11 social and intellectual judgments, even though  
12 they're in the middle of a blackout. So the fact  
13 that someone's in a blackout does not tell you that  
14 they are severely impaired. They may not be visibly  
15 impaired at all.

16 Q. So can someone who's in an alcoholic blackout  
17 be indistinguishable in appearance from someone who  
18 is sober?

19 A. They may be completely indistinguishable in  
20 appearance in some cases. Absolutely.

21 Q. And can a person in a blackout make judgments?

22 A. I'm sorry. The person in a blackout what?

23 Q. Can a person in a blackout make judgments?

24 A. Absolutely. Yes.

25 Q. Can a person in a blackout walk unassisted

1 while they're in that blackout?

2 A. Absolutely. They may show no visible physical  
3 features that would allow a casual observer to  
4 recognize that they were intoxicated.

5 Q. So, for example, someone in a blackout could be  
6 speaking perfectly clearly, not slurring their  
7 words?

8 A. Correct. That's what we call "dysarthria," is  
9 the d-y-s-a-r-t-h-r-i-a, dysarthria, is a fancy word  
10 for that. And they may have no dysarthria and  
11 nevertheless be in the midst of a blackout.

12 Q. And can a person in a blackout perform normal  
13 cognitive tasks?

14 A. Yes. The presence of a blackout does not  
15 preclude the ability to perform normal cognitive  
16 tasks and make cognitive judgments.

17 Q. And can a person in a blackout perform detailed  
18 and complex cognitive tests?

19 A. In some cases certainly. Yes.

20 Q. And can a person in a blackout perform detailed  
21 and complex social judgments?

22 A. Yes. And I have seen -- I mean, I have told  
23 you an anecdote of the man in Las Vegas, which is  
24 from a scientific literature, but this is something  
25 that I myself have witnessed numerous times in

1           treating patients who have had alcohol disorders.  
2           They can have complete amnesia, but it later emerges  
3           that they left the house, drove a car somewhere,  
4           engaged in conversations, performed various social  
5           judgments, and then eight hours later woke up with  
6           complete amnesia for all of these things that they  
7           have done.

8           Q.    Is it necessary that an individual has an  
9           alcohol use disorder in order for them to display in  
10          this way when in an alcoholic blackout?

11          A.    I'm glad you asked that question because when I  
12          was in medical school back in the 1970s, we were  
13          taught in those days that -- that blackouts were the  
14          mark of an advanced alcoholic, that was late stage  
15          severe alcoholism.  And it turned out that it was --  
16          that information was dead wrong.  That, in fact,  
17          blackouts can easily occur in people with no history  
18          of any serious alcohol problems who just drank a lot  
19          of alcohol, especially if they are relatively  
20          unfamiliar with alcohol or relatively naive about  
21          alcohol.

22                 And it is now recognized that probably more  
23          than 50 percent of ordinary American college  
24          students have experienced at least one blackout at  
25          some time.  So blackouts are very common and they

1 are not necessarily a mark of any actual disease or  
2 serious psychiatric disorder with alcohol.

3 Q. And what is hindsight bias?

4 A. Hindsight bias is a phenomenon of what happens  
5 when we are trying to reconstruct a memory, and this  
6 can occur in any situation where our memory is not  
7 accurate or where there are holes or gaps in our  
8 memory. And that would include a situation where  
9 somebody is having a fragmentary blackout among  
10 others. And it is only human that when there are  
11 gaps in our memory that we instinctively try to fill  
12 them in as best as we can to try to create some sort  
13 of narrative of what happened to us.

14 But, in fact, in an alcoholic blackout and in  
15 many other comparable amnesic states, the memory is  
16 not on your hard drive to speak colloquially. It's  
17 not there. It was never at the -- in technical  
18 terms, it was never actually encoded into your brain  
19 in the first place. And, therefore, you can never  
20 recover the memory because it's not there to be  
21 recovered.

22 So since you have a blank and you can't really  
23 fill in the blank, what happens for all of us human  
24 beings is that we can say that we do our best to try  
25 and fill in the blanks and have to fill in the

1 blanks with what we think we would have done or what  
2 we believe that a person like ourselves would have  
3 done in that situation, and that is fertile ground  
4 for bias to occur in terms of potentially  
5 contaminating our memories.

6 Q. What is "effort after meaning"?

7 A. Effort after meaning is a concept in  
8 psychiatry, which is a little bit related to  
9 hindsight bias. Effort after meaning refers to the  
10 same human tendency to try to create a memory in our  
11 minds to explain what has happened to us.

12 So, for example, suppose that you or I came  
13 down with a severe depression right now. We would  
14 cast about in our minds to think of what we did,  
15 what happened to us, what circumstances could  
16 explain why we have become depressed. And in that  
17 effort after meaning, we may quite unconsciously  
18 embellish various facts, rearrange the temporal  
19 sequence of various facts, exaggerate various items.  
20 And all of these -- or it's a similar phenomenon or  
21 bias occur in an attempt to somehow create a story  
22 to explain why we got depressed.

23 And that's particularly the case if you -- if  
24 you have holes in your memory of what happened, then  
25 you have even less creative information to go on and

1 even -- you become even more vulnerable to bias as a  
2 result of this phenomenon or effort after meaning.

3 MR. FIGLIOZZI: Thank you very much, Dr. Pope.  
4 I have no more questions for you right now. Please  
5 answer any questions that defense counsel may have  
6 for you.

7 THE COURT: Cross-examination?

8 MR. GRANTLAND: Yes. May it please the Court?

9 CROSS-EXAMINATION

10 BY MR. GRANTLAND:

11 Q. Good afternoon, Dr. Pope.

12 A. Good afternoon.

13 Q. I'm John Grantland. I represent Erin Wingo.  
14 You believe Ms. Wingo has amnesia about the events  
15 surrounding her sexual encounter with Mr. Pampu,  
16 don't you?

17 A. She has reported that she has only a few  
18 fragments of memory and the rest is largely blank.  
19 Yes.

20 Q. You relate that to an alcohol induced blackout?

21 MR. FIGLIOZZI: Your Honor, I believe this goes  
22 against ---

23 THE WITNESS: To a reasonable certainty ---

24 THE COURT: Hold on. Hold on.

25 THE WITNESS: --- those holes in her memory

1           were attributable to a so-called alcohol induced  
2           blackout, yes.

3           THE COURT: I've ruled that they couldn't get  
4           into specifics, so just general. So he didn't say  
5           anything about any of the parties here, so I guess  
6           that's where you're ---

7           MR. FIGLIOZZI: Yes, Your Honor.

8           MR. GRANTLAND: Your Honor, may I make a  
9           proffer then of this witness?

10          THE COURT: We'll have to do that outside the  
11          preference of the jury.

12          MR. GRANTLAND: Yes, sir.

13          THE COURT: All right. Ladies and gentlemen,  
14          I'm going to ask that you step in your jury room.  
15          We'll bring you out in just a few minutes.

16          (At 2:54 p.m., jury exited the courtroom.)

17          MR. GRANTLAND: And, Your Honor, in no way am I  
18          trying to go against your -- your ruling, but he has  
19          testified about the effects of blackout -- alcohol  
20          induced blackout. He's testified about this effect  
21          after memory that someone embellishes the facts.  
22          And his testimony in his deposition, Your Honor, is  
23          based on Ms. Wingo's alcohol induced blackout. He  
24          does not believe she -- he does not believe she's  
25          maliciously or deliberately lying. In fact, he

1 doesn't think she's fabricated the story. He thinks  
2 this is all part of the alcohol induced blackout  
3 that she was a part of. And I think it's in his  
4 deposition. It certainly is ---

5 THE COURT: Yeah, but since then, I have  
6 specifically ruled that this has to be a general  
7 discussion. Now, you can go into that in general --  
8 general terms, but, I mean -- but if you -- I  
9 specifically limited them on what they could do.  
10 And as far as the people concerned in this, and then  
11 you're asking his opinion based on his review of the  
12 facts about your -- about Ms. Wingo. So the way I  
13 take it ---

14 MR. GRANTLAND: Well, Your Honor, he's --  
15 he's -- again, he's -- as long as I can ask him  
16 generally without ---

17 THE COURT: Yeah, I don't think you need to --  
18 I mean, yeah, that's what they did. They stuck to  
19 that part of it.

20 MR. GRANTLAND: Okay. Fair enough. I'll  
21 just -- instead of using Ms. Wingo's name or  
22 Mr. Pampu's name, I'm just going to stick to in  
23 general.

24 THE COURT: That's fine. Do you need to  
25 proffer or anything? I guess we got to figure out

1 too since he can't hear me -- what we'll have to do  
2 if somebody objects, you're just going to have to  
3 tell the witness to hold on, the judge has to rule  
4 on that.

5 MR. GRANTLAND: Your Honor, I'll just -- I'll  
6 proceed on with general questions and not specific.

7 THE COURT: Okay.

8 MR. FIGLIOZZI: Yes. And we'd like to have  
9 Dr. Pope's questions and responses to the first two  
10 questions stricken.

11 MS. LAU: It's prejudicial.

12 THE COURT: Yeah, we can actually erase it.  
13 All right. Bring the jury.

14 (At 2:58 p.m., jury entered the courtroom.)

15 THE COURT: All right. And, ladies and  
16 gentlemen, a lot of times we have to send you out,  
17 it's because we have to address certain things and  
18 make sure rulings I've made and rules of evidence,  
19 and so that's kind of why we sent you out. It's a  
20 lot easier to discuss that outside your presence, so  
21 I would say the last two questions and any response  
22 are to be stricken and not be considered by you.

23 And with being said, Mr. Grantland, please  
24 proceed with your cross-examination.

25 BY MR. GRANTLAND:

1 Q. Thank you. Dr. Pope, I'll -- I'm going to ask  
2 you some questions now just in general terms and not  
3 specific to this case. Again, you -- you talked --  
4 you said someone who's been in an alcohol induced  
5 blackout would have amnesia about certain events  
6 that occurred prior -- during that blackout period;  
7 is that correct?

8 A. I didn't quite understand the details of your  
9 question. If you wouldn't mind repeating the  
10 question.

11 Q. Sure. Sure. And I -- and I'm trying not to be  
12 specific to this case, but is your testimony that if  
13 someone that has been in an alcohol induced  
14 blackout, they would have amnesia about the -- about  
15 certain events that occurred during the blackout  
16 period?

17 A. That is correct. Yes.

18 Q. And if someone who's been in an alcohol induced  
19 blackout and has had amnesia, if they speak about  
20 their memory of the events, you believe if they're  
21 speaking about their memory of the events, you do  
22 not believe that they will be maliciously or  
23 deliberately lying about what happened to them?

24 A. Well, they could be, but they are not  
25 necessarily being malicious.

1 Q. Right.

2 A. One of the responsibilities is that an  
3 individual may know perfectly well something that  
4 happened, they may, in fact, have not forgotten it,  
5 but may represent that they forgot it and might do  
6 that from purely a malicious purpose, but  
7 alternatively someone might have forgotten something  
8 and have filled in the blanks with potentially false  
9 material even though they weren't doing it with an  
10 outright intention of evil so-to-speak or cannot  
11 distinguish between those possibilities.

12 Q. Right. And it's your testimony that someone  
13 who's been in an alcohol induced blackout likely  
14 would not be intentionally or maliciously making  
15 something up. They're just doing the best they can  
16 to remember what happened to them while they were in  
17 the blackout; is that correct?

18 MR. FIGLIOZZI: Objection. Mischaracterization  
19 of testimony.

20 THE COURT: He can answer.

21 THE WITNESS: Well, it's not possible in your  
22 hypothetical case to get into the person's head and  
23 to make a judgment that they were doing the best  
24 they can because one has the individual's trouble  
25 with memory; one has outside factors such as

1 suggestive influences coming from peers, from  
2 therapists, from other sources; one has the person's  
3 feelings about public appearances, about how the  
4 story will play with other people around. So there  
5 are countless factors that collectively contribute  
6 to the attempted reconstructed memory.

7 BY MR. GRANTLAND:

8 Q. But you agree it's unlikely that if the person  
9 is trying to reconstruct their memory after a  
10 blackout, that they would be intentionally lying  
11 about something that happened?

12 MR. FIGLIOZZI: Objection. Misrepresenting the  
13 witness's testimony.

14 THE COURT: Well, I mean, he -- he can ask and  
15 he can respond.

16 MR. FIGLIOZZI: Asked and answered. He asked  
17 the same question.

18 MR. GRANTLAND: And I'm just trying to work  
19 within the parameters of the Court.

20 THE COURT: Yes.

21 BY MR. GRANTLAND:

22 Q. Doctor, you -- you've -- I'll move on. You  
23 have never met your client, Mr. Pampu; is that  
24 correct?

25 A. That is correct.

1 Q. You've never talked to him on the phone?

2 A. No, I have not.

3 Q. Never talked to his parents, Mr. and  
4 Mrs. Pampu?

5 A. Mrs. Pampu spent two minutes on the phone with  
6 me to get my bank information so that she could wire  
7 me my -- some money to cover my inputs, but that was  
8 the totality of our conversation.

9 Q. Okay. You've done a fair amount of research on  
10 alcohol and sex, have you not?

11 A. It's an area -- I haven't published a paper  
12 explicitly on alcohol and sex per se, but it's an  
13 area which I'm obviously very familiar because, one,  
14 I couldn't be a practice -- a practicing  
15 psychiatrist with a large practice over 40 years  
16 without seeing countless cases involving alcohol and  
17 sex.

18 Q. In your research, you believe that some men  
19 think that an intoxicated woman is more prone to  
20 have sex than a sober woman; is that correct?

21 A. I think it's a common belief that many people  
22 have that if you're intoxicated you may be more open  
23 to having sex. I'm not sure whether that has been  
24 formally studied in a methodologically sound formal  
25 investigation, but I wouldn't be surprised if it's

1 true.

2 Q. I think you quoted a poem in your deposition,  
3 "Candy is dandy, but liquor is quicker"?

4 A. Yes. I was quoting Ogden Nash in saying that.  
5 Yes.

6 Q. Right. And like -- I'll move on. You agree  
7 that alcohol can cause a person not to have the  
8 ability to consent to sexual activity?

9 MR. FIGLIOZZI: Objection, Your Honor. Goes  
10 against ---

11 MR. GRANTLAND: I'm speaking in general.

12 THE WITNESS: I didn't tell -- I saw someone  
13 stand up in the background. I'm not sure if I have  
14 to pause or not.

15 MR. GRANTLAND: Just pause for a second. Pause  
16 for a second.

17 MR. FIGLIOZZI: Your order indicated we're not  
18 allowed to ask questions like this.

19 THE COURT: Yeah, plus, that wasn't discussed.  
20 I mean, was that gone over in direct?

21 MR. GRANTLAND: I mean, it's cross-examination,  
22 Your Honor.

23 THE COURT: I know that.

24 MR. FIGLIOZZI: It was not addressed on direct  
25 purposefully.

1 THE COURT: Not addressed. I'm going to  
2 sustain the objection.

3 MR. GRANTLAND: Okay.

4 MR. MOORE: And, Your Honor, before we move on,  
5 let me make sure I understand. What was the  
6 objection and what your ruling was on that?

7 THE COURT: That, one, it was not -- I think  
8 it's getting close to following my rule and also it  
9 was not covered on direct examination. It's  
10 improper cross for this.

11 MR. MOORE: My understanding of  
12 cross-examination in this state though is that it's  
13 open. We're not limited as to what he asked on his  
14 direct examination.

15 THE COURT: It is on an expert though. It's  
16 his opinion, isn't it? All right. I've ruled.

17 MR. MOORE: Okay. I understand.

18 BY MR. GRANTLAND:

19 Q. Doctor, you agree that alcohol can affect  
20 someone's ability -- let me make sure I'm clear. So  
21 we're not allowed to go into consent at all, Your  
22 Honor?

23 THE COURT: Correct.

24 BY MR. GRANTLAND:

25 Q. Okay. You agree that someone who's been in an

1 alcohol induced blackout, Dr. Pope, that person's  
2 memory would likely be impaired of what happened?

3 A. The very definition of an alcoholic blackout is  
4 that there is a loss of memory of the events that  
5 had happened. Yes.

6 Q. And you believe that also a fragmentary  
7 blackout means that someone might remember bits and  
8 pieces of an event, but not the entire event?

9 A. Correct.

10 Q. And that could all be based on a lot of alcohol  
11 in a short amount of time?

12 A. It becomes more likely.

13 Q. Right.

14 A. The quicker that you -- that you drink the  
15 alcohol and the higher your level, but it can still  
16 occur at surprisingly low levels in some  
17 individuals, especially if they drink liquor.

18 Q. Now, let me ask you about your experience in  
19 cases, Doctor. You testified as an expert, I  
20 believe you said in your deposition, about 52 times?

21 A. Somewhere around 50 times. Yes.

22 Q. You have never testified for a woman in a case  
23 involving her memory of a sexual assault, have you?

24 A. Testified on the plaintiff's side for a woman  
25 who was acting as a plaintiff in a case involving

1 sexual assault?

2 Q. The question is: Have you ever testified on  
3 behalf of a woman in a case involving her memory of  
4 a sexual assault?

5 A. I don't think -- I cannot immediately remember  
6 a case where -- where I was testifying on the  
7 plaintiff's side and where the plaintiff was a woman  
8 in a case of sexual assault. I don't think -- I  
9 don't think I've testified in a case meeting all of  
10 those criteria.

11 Q. You're testifying on behalf of a plaintiff in  
12 this case, did you know that?

13 A. Yes.

14 Q. Okay. But you've never testified for a woman  
15 who claimed to be a victim of sexual misconduct?

16 A. Not that I can recall as I sit here now, no.

17 Q. In all of your cases about alcohol induced  
18 blackouts, you've testified as an expert for the  
19 male accused of sexual assault against a female?

20 A. I'm trying to think. I believe you are  
21 correct. There may have been one, but as I sit  
22 here, the ones that I can remember were cases where  
23 it was a male plaintiff, yes.

24 Q. And all of your cases you've been involved in,  
25 you were an expert for the man accused of sexual

1 assault against a female victim?

2 A. The ones that I can -- the so-called Title IX  
3 cases that I can remember were all cases where I was  
4 representing the man, yes.

5 Q. And in those cases, you were challenging the  
6 memories of the female victim?

7 A. My testimony extended beyond -- essentially  
8 beyond the area of memory per se, but involved --  
9 involved other aspects of those cases, as well.

10 Q. But you were challenging the testimony of the  
11 female victim; is that correct?

12 A. In every case I was challenging at least some  
13 aspect of the testimony of the female victim, I  
14 believe, yes.

15 Q. So this case fits right in your wheelhouse?

16 MR. FIGLIOZZI: Objection, Your Honor.

17 THE WITNESS: Well, I haven't done that many of  
18 the ---

19 MR. GRANTLAND: Stop. Stop. Stop.

20 MR. FIGLIOZZI: Speaking specifically about  
21 this case, the order they argued for they're  
22 violating.

23 THE COURT: No. I don't think he was giving  
24 the facts of the case.

25 BY MR. GRANTLAND:

1 Q. And, Dr. Pope, you mentioned Title IX. You've  
2 been involved in other cases against universities,  
3 have you not?

4 A. I can think of one. One case was definitely  
5 against the university, but I can't think -- I'm  
6 trying to think if there was any other that was  
7 against a university. I'm involved in one such case  
8 which is in progress, but I have not actually been  
9 deposited or testified at any point.

10 There's only one case that I can recall as I  
11 sit here where I actually was -- and, see, I'm not  
12 even sure if I was deposed in that case, but I  
13 definitely consulted and wrote a report in that case  
14 which was specifically against the university, yes.

15 Q. And, Doctor, if I can refresh your memory, I  
16 asked you specifically about that in your  
17 deposition. And on page 131, we asked, "In all of  
18 the cases, were you involved and hired on behalf of  
19 a male who had been accused of sexual misconduct?"  
20 And you said, "The males were suing the university  
21 for having made an inappropriate Title IX  
22 determination."

23 MS. LAU: Objection. Objection. This question  
24 is getting into -- it's a backdoor way to get around  
25 your order.

1 THE COURT: I think it's just going to the  
2 advice ---

3 MR. GRANTLAND: Into the advice of the witness,  
4 Your Honor.

5 THE COURT: Okay.

6 BY MR. GRANTLAND:

7 Q. And, again, on page 131 of your deposition,  
8 Doctor ---

9 THE COURT: Does he have his deposition?

10 MR. GRANTLAND: I don't know.

11 BY MR. GRANTLAND:

12 Q. Do you have your deposition, Doctor?

13 A. What about my deposition, sir?

14 Q. Do you -- do you have it handy that you can  
15 pull it up and look at it?

16 A. I'm a little -- I probably could eliminate your  
17 screen and bring my deposition up on the screen, but  
18 I'm weary of my technical ability to do that. I'd  
19 be happy to accept at face value what you read from  
20 page 131 rather than lose the connection.

21 Q. Great. The point is, you've been involved in  
22 several cases against -- where you've been an expert  
23 for a male suing a college involving sexual assault,  
24 have you not?

25 A. Only one in which that I can specifically

1 remember where the male was specifically suing a  
2 college.

3 Q. And you never represented a female who's suing  
4 a college in a sexual assault case?

5 A. No. I'm quite certain that I've not  
6 represented a female suing the college.

7 MR. GRANTLAND: Excuse me one second, Doctor.  
8 Thank you, Dr. Pope. I have no further questions.

9 THE WITNESS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. MOORE:

12 Q. Dr. Pope, my name is David Moore. I'm here on  
13 behalf of CJ Gahagan. He's one of the defendants in  
14 this lawsuit. My understanding of your testimony is  
15 that it is primarily related only to alcoholic  
16 blackouts; am I correct on that?

17 A. That what is primarily related to alcoholic  
18 blackouts? I didn't quite get ---

19 Q. Your testimony is primarily related to  
20 alcoholic blackouts; am I correct?

21 A. Yes. The testimony that I just provided on  
22 direct examination was primarily associated with  
23 alcoholic blackouts. Correct.

24 Q. All right. Now, alcoholic blackouts can happen  
25 to any number of people just based upon the

1 consumption of alcohol as I understand your  
2 testimony, correct?

3 A. Yes. That, plus, the rapidity of consumption,  
4 individual biological factors, et cetera. Yes.

5 Q. All right. In other words, the amount of  
6 alcohol they consume is not necessarily related to  
7 blackouts?

8 A. It is partially related, but there are several  
9 other factors that are contributed, as well.

10 Q. Okay. All right. Now, when you have a  
11 blackout, I believe what you're testifying to is it  
12 affects your -- basically your short-term memory, am  
13 I right, the development of your short-term memory?

14 A. It may well affect your short-term memory  
15 because that is a form of memory that is quite  
16 vulnerable to -- to alcohol, but it may not be  
17 visible. If you're in a visible blackout, I might  
18 not be able to detect any obvious abnormalities in  
19 your short-term memory or any other aspect of your  
20 behavior as I testified on my direct examination.

21 Q. Okay. So that someone can have a blackout and  
22 they appear to be performing normally according to  
23 your testimony?

24 A. Correct.

25 Q. Okay. Now, isn't it also true that someone can

1 be having a blackout and based upon the amount of  
2 consumption they have, they may not be performing  
3 normally; am I right?

4 A. Certainly. Not just as a consequence of a  
5 blackout, but if you drink a very, very large amount  
6 of alcohol, then obviously you will stop performing  
7 normally.

8 Q. Okay. And that is true with regard to  
9 someone's judgment, is it not? You may be able to  
10 make judgments while you're in a blackout or you may  
11 not be able to make a judgment?

12 A. Correct.

13 Q. And there's no rhyme or reason? In other  
14 words, there's no correlation necessarily between a  
15 blackout and someone making a decision or making a  
16 judgment call on anything; am I correct?

17 A. That people in a blackout can perform  
18 completely normally and be indistinguishable from a  
19 normal person, or they may be visibly intoxicated  
20 and visibly distinguishable from a normal person.  
21 Correct.

22 Q. And not be able to make a judgment; am I  
23 correct?

24 A. And may be visibly impaired in their ability to  
25 make a judgment if they have enough alcohol in their

1 system. Yes.

2 MR. MOORE: Thank you. Appreciate it.

3 THE COURT: Redirect?

4 MR. FIGLIOZZI: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. FIGLIOZZI:

7 Q. Dr. Pope, Mr. Grantland went over some of your  
8 prior case testimony with you on his  
9 cross-examination, and my question for you is, did  
10 the gender of the party that you previously  
11 testified for affect your expert opinion in those  
12 cases?

13 A. No. The science is the same science regardless  
14 of the gender of the party being discussed.

15 Q. And is the gender of the plaintiff in this  
16 case, does that have any affect of your expert  
17 opinion in this case?

18 MR. MOORE: Objection.

19 THE WITNESS: Again, the science is ---

20 THE COURT: Hold on.

21 MR. MOORE: He's getting in the particulars of  
22 this case at this point in time. He's asking about  
23 this case and how it affects his opinion. I think  
24 that violates your rule.

25 THE COURT: Well, I think that's appropriate

1 based on the questions that you asked as to his  
2 bias.

3 BY MR. FIGLIOZZI:

4 Q. So, Dr. Pope, I'll just ask it again so we have  
5 a clear record. Does the gender of the plaintiff in  
6 this case have any impact on your expert opinion in  
7 this case?

8 A. No.

9 Q. And with regard to alcoholic blackouts, is it  
10 your testimony that the lack of memory or claimed  
11 lack of memory doesn't mean that a person was  
12 visibly intoxicated in that blackout?

13 A. That is correct. As was established earlier in  
14 my testimony with you, the fact that someone has a  
15 lack of memory does not allow you to conclude that  
16 the person would have been visibly abnormal at the  
17 time of a blackout.

18 MR. FIGLIOZZI: Thank you, Dr. Pope.

19 THE COURT: All right. You can tell him that  
20 he's -- that ends his testimony because I can't tell  
21 him. Tell him he can step down.

22 MR. FIGLIOZZI: You can step down, Dr. Pope.  
23 Thank you for your time today.

24 THE WITNESS: Thank you. And my thanks to the  
25 Court for allowing me to testify virtually. I

1 greatly appreciate it.

2 (Witness excused.)

3 THE COURT: All right. Are you ready to call  
4 your next witness?

5 MS. LAU: Can we take a five-minute bathroom  
6 break?

7 THE COURT: Yeah, we can get all this stuff out  
8 of here.

9 (At 3:19 p.m., jury exited the courtroom.)

10 (From 3:19 to 3:30 p.m., brief recess.)

11 THE COURT: Are you ready?

12 MS. LAU: Yes.

13 THE COURT: Defense ready?

14 MR. MOORE: Yes, sir.

15 THE COURT: All right. If the jury is ready,  
16 bring them on in.

17 (At 3:30 p.m., jury entered the courtroom.)

18 THE COURT: All right. Plaintiff, call your  
19 next witness.

20 MR. FIGLIOZZI: Your Honor, plaintiff calls  
21 Steven Shedlin.

22 THE COURT: All right.

23 THE WITNESS: (Approached.)

24 THE COURT: Would you raise your right hand?

25 THE WITNESS: (Complying.)

1 THE COURT: Do you solemnly swear to tell the  
2 truth, the whole truth, and nothing but the truth so  
3 help you God?

4 THE WITNESS: I do.

5 THE COURT: Would you please state your full  
6 name for the record?

7 THE WITNESS: My name is Steven D. Shedlin,  
8 Steven with a "v," S-h-e-d-l-i-n.

9 STEVEN SHEDLIN,  
10 having been produced and first duly sworn as a  
11 witness on behalf of the Plaintiff, testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. FIGLIOZZI:

15 Q. Good afternoon, Mr. Shedlin.

16 A. Good afternoon.

17 Q. Please walk me through your educational  
18 background.

19 A. Yes. I have a bachelors of arts degree in  
20 psychology and political science that I earned at  
21 Kent State University in 1977.

22 I have a masters degree in rehabilitation  
23 counseling that I also earned at Kent State  
24 University in 1981.

25 I have postgraduate work in catastrophic case

1 management and life care planning that I earned a  
2 certificate through the University of Florida in  
3 1995.

4 Q. And can you please also walk me through your  
5 professional background?

6 A. Sure. I have been a rehabilitation counselor  
7 working with individuals, assisting them in finding  
8 employment, making any modifications on the basis of  
9 their having any type of disabling condition. I've  
10 been doing that since 1978. I was working full-time  
11 while I was attending graduate school on a part-time  
12 basis. I've done it in some different venues. I  
13 was living in Ohio when I was in graduate school.  
14 I've been in the Washington, DC, metro area since  
15 1981 and I've been working with individuals and  
16 assisting them in finding employment.

17 In recent years as I've gotten older, my career  
18 has been more doing types of things in which I'm  
19 being asked to do today, which is rendering opinions  
20 about individual's ability to work and earn and if  
21 there's been anything that's been affecting it in  
22 cases that are pending in court.

23 Q. And are you here testifying on behalf of a  
24 party in this matter?

25 A. Yes. Well, I've been retained by the

1 plaintiff, Andrew Pampu, in this matter.

2 Q. And are you being compensated for your  
3 testimony here today?

4 A. I am.

5 Q. And how much are you being compensated for  
6 today's testimony?

7 A. Well, I'm paid for my time, not my testimony.  
8 So I'm paid 400 per hour regardless of what comes  
9 out of my mouth, so I bill for my time.

10 Q. And is this the standard rate you charge for  
11 your time in all of your cases?

12 A. Yes, it is.

13 Q. And does the fact that you're being compensated  
14 have any impact on the truth of your opinions?

15 A. It does not.

16 Q. And other than the educational and professional  
17 background that you've provided, do you have any  
18 other training in your area of expertise?

19 A. Well, I do. I'm a certified rehabilitation  
20 counselor. That's a national certification, and  
21 I've held that certification since 1981 when I got  
22 my graduate degree. And in order to maintain that,  
23 I have to have 100 hours of continuing education  
24 every five years. So I take courses on things about  
25 the labor market, on medical information, and on

1 counseling issues, and a lot having to do with  
2 employment and earning capacity and types of work  
3 and jobs and what they pay and where there are  
4 openings and things like that. And I've been doing  
5 that since 1981 and I'm so certified to this point  
6 in time today.

7 Q. Have you ever been qualified to testify as an  
8 expert by a Court?

9 A. Yes, I have. This is my first time testifying  
10 in South Carolina, but through my career, I've  
11 probably testified in courts over 300 times. And  
12 I've testified mostly in the Maryland, DC, Virginia  
13 area in which I live and work. But I was just  
14 tallying it in my mind the other night, and I  
15 believe this is tenth state in which I've been asked  
16 to provide testimony.

17 Q. Do you know approximately how many cases you've  
18 been qualified as an expert by a Court in?

19 A. Probably about 300. It's different types of  
20 areas, rehabilitation counseling, employment  
21 earnings, things of that nature, but those would be  
22 the general areas in which I've qualified. I've  
23 never failed to qualify as an expert.

24 Q. And have you ever been qualified to testify as  
25 a vocational expert by a Court?

1 A. Yes. And so when I say "rehabilitation  
2 counseling," that would be under the heading of  
3 vocational rehabilitation. So I've been qualified  
4 as a vocational expert, essentially in one form or  
5 other, every time I've provided testimony in court.

6 Q. And can you provide a little bit more  
7 background on what exactly a vocational expert is?

8 A. Sure. Vocational experts render opinions about  
9 a person's ability to work and to earn. They base  
10 that on a number of different factors -- what kind  
11 of work experience they have, if they're younger,  
12 what kind of educational background have they had.  
13 So we take a look at, you know, what is the skill  
14 set that they have, what's transferrable, what are  
15 the things that they know that they can utilize in a  
16 different type of job.

17 Then they take a look at where they might be  
18 working. Once we figure out what it is that they  
19 can do, where geographically are they going to work?  
20 Are they going to be up in New York? Are they going  
21 to be here in Pickens County? Are they going to be  
22 in Florida? So different areas have different rates  
23 of pay and what people do, and, of course, different  
24 occupations as well, you know, whether someone's  
25 going to be a doctor or a barista at Starbucks or

1           whether they're going to be a teacher. Depending on  
2           what they do, there are different levels of salary  
3           that they're likely to earn. And, of course, at  
4           different stages of their career, they'll have  
5           different earnings too. In the beginning as a rule  
6           of thumb, it's going to be less than when they get  
7           more experience and they've been on the job for a  
8           while. So these are types of things that a  
9           vocational expert looks at in assessing what a  
10          person can do -- their education, their work  
11          experience, their geographic location, their  
12          work-life expectancy, how long they're going to  
13          work, and how that's going to change.

14         Q.     Thank you. And I know you testified that you  
15         have never been disqualified as an expert in any  
16         matter, but has your testimony ever been limited in  
17         any matter?

18         A.     Well, there are times I've said something and  
19         the other side has objected and the judge has  
20         sustained and the jury's been instructed not to  
21         listen to what my answer has been. There was one  
22         case in Washington, DC, in which my opinions were  
23         predicated on a doctor's opinion and the doctor's  
24         testimony was struck, and then my opinion was  
25         limited because I didn't have the doctor's opinion

1 in which to base my opinions on. But as far as I  
2 know, those are the only matters in which my  
3 opinions have been -- have been limited.

4 MR. FIGLIOZZI: Your Honor, I wish move to  
5 qualify Mr. Shedlin as a vocational expert in this  
6 matter.

7 THE COURT: Any objection or voir dire for this  
8 witness?

9 MS. LAU: No, Your Honor.

10 MR. MOORE: None.

11 THE COURT: All right. Proceed.

12 MR. FIGLIOZZI: Thank you.

13 THE COURT: Oh, let me -- I forgot. Ladies and  
14 gentlemen, as I told you previously, an expert has  
15 the ability different than a regular lay witness and  
16 they can testify based on their experience, their  
17 training, and their education in that field. And in  
18 this case, it's a vocational expert and you're to  
19 give that the same weight and value that you do  
20 every piece of evidence, and that's the weight and  
21 the value that you feel is appropriate. So please  
22 proceed.

23 MR. FIGLIOZZI: Thank you, Your Honor.

24 BY MR. FIGLIOZZI:

25 Q. Mr. Shedlin, do you know where Mr. Pampu

1 started his college education?

2 A. I do.

3 Q. And where did he start his college educations?

4 A. At Clemson University.

5 Q. Did he finish his college education at Clemson?

6 A. He did not.

7 Q. Do you know why Mr. Pampu didn't finish his  
8 college education at Clemson?

9 A. He was -- I do know why. He was suspended from  
10 Clemson and transferred to the College of  
11 Charleston.

12 Q. And do you know if Mr. Pampu attended graduate  
13 school?

14 A. I do. He did attend graduate school. He has  
15 an MBA, a masters in business administration that he  
16 earned from the College of Charleston, as well.

17 Q. And was Mr. Pampu required to self-report his  
18 removal from Clemson when applying to that graduate  
19 school?

20 A. He -- he -- he was not. It's my understanding  
21 that because he was a legacy there, he had completed  
22 his undergraduate studies at the College of  
23 Charleston, that his suspension was not an issue in  
24 his receiving his graduate studies at the same  
25 university.

1 Q. Do you know if Mr. Pampu ever applied to any  
2 other graduate school besides or type of graduate  
3 school besides business school?

4 A. I want to make sure I'm understanding your  
5 question. I believe the answer is "yes." It's my  
6 understanding he did not apply for another MBA  
7 program elsewhere, but that he has applied to get  
8 into dental school and was unsuccessful in being  
9 able to do so.

10 Q. What were you asked to do in this case?

11 A. I was asked to render an opinion about  
12 Mr. Pampu's employability, his placability, and his  
13 earning capacity. By that I mean, I was asked to  
14 assess his employability. What type of work can  
15 this gentleman do? His placability. Is someone  
16 going to hire him? You know, not just that. There  
17 have to be job openings of course, but is there  
18 anything that's going to deter or assist somebody in  
19 hiring Mr. Pampu himself. And then his earning  
20 capacity would be, assuming that he's employable,  
21 assuming that he can work, what can he do and what  
22 can he earn? I was also asked to asses whether a  
23 suspension from Clemson impacted upon his ability to  
24 work and to earn.

25 Q. And have you formed any opinions related to

1           this case?

2           A.     I have.

3           Q.     What are those opinions?

4           A.     My opinion is that but for the suspension from  
5           Clemson, that Mr. Pampu would have been able to get  
6           into dental school. He applied to nine dental  
7           schools. He was rejected by nine dental schools.  
8           It's my opinion that his scores that he took on the  
9           DAT, the test that you have to take to get into  
10          dental school, were sufficient to enable him to get  
11          into dental school. In fact, when you take a look  
12          at what his scores were on the DAT and his grade  
13          point average, his GPA, which was 3.85, that put him  
14          not at the tiptop, but it put him in the top  
15          25 percent. So that means better than 75 percent of  
16          others applying for dental school that he would be  
17          able to get in.

18                 It's my opinion that year in which Mr. Pampu  
19                 applied to get into dental school that there were  
20                 approximately 11,000 applicants across the country  
21                 and approximately 57 percent of those were accepted  
22                 into dental school programs. So it's my opinion  
23                 that under a different set of circumstances in which  
24                 there was not a suspension, which he had to  
25                 self-report that's on an application and he is

1 obligated to report that he had been suspended  
2 from -- from Clemson, that he would've gotten in.  
3 Which the notion that if 57 percent are accepted and  
4 he was in the top 25 percent, it's my opinion that  
5 that matches up, that he would be someone who  
6 would've gotten in.

7 Also, he knew that he wanted to be a dentist  
8 for a while, so he, of course, being Mr. Pampu, so  
9 he took steps in which to get himself ready for  
10 that. He worked for an orthodontist during the  
11 summer. And as a matter of fact, he did very well  
12 during that. He -- he was there for a couple of  
13 months where he was essentially a janitor, and they  
14 quickly promoted him to actually do some assistance  
15 and such. Not saying that that experience in and of  
16 itself would make him a successful dentist or  
17 orthodontist, but it indicates to a school that this  
18 is a guy who is interested, who was trying, who was  
19 doing well. It's sort of an extra little piece to  
20 the puzzle that in my opinion would lead him to be  
21 accepted to dental school.

22 So it's my opinion that he would've been  
23 accepted to dental school, he would've completed  
24 dental school, and then Mr. Pampu expressed an  
25 interest in being an orthodontist. He would've had

1 to have two to three more years of training, let's  
2 say three on the outside to be conservative. The  
3 average is about 30 months, but let's say -- let's  
4 say 36 months. Then at that point, he would've had  
5 the earnings that are associated with being an  
6 orthodontist through the remainder of his work life  
7 expectancy out to about, say, age 67 when he  
8 would've been eligible for social security  
9 retirement. A gentleman his age, 67, right now  
10 according to the government, 67 is the age in  
11 which -- in which people will be able to retire.  
12 We'll see what happens, but that's what it is right  
13 now.

14 It's my opinion that as a result of his not  
15 having gotten into dental school, that he's a  
16 gentleman with an MBA. He's a bright guy. He got a  
17 4.0 while he was in graduate school. He has a job.  
18 He's selling medical supplies, that's the tiptop  
19 sales-type of job. And those guys make a fair  
20 amount of money because that's a hard type of sales  
21 job. He has been doing it for a few months, but  
22 he's already earning at the 75 percentile. Only 25  
23 percent of people working in that field are making  
24 more than him, so he's right at the high end of the  
25 median range already. I would expect him to be

1           successful in that for the rest of his career,  
2           making between the 75th, maybe even up to the 90th  
3           percentile, the top 10 for instance. I expect he'll  
4           do that throughout his work-life expectancy, but  
5           salespeople selling medical supplies do not earn as  
6           much as an orthodontist, so it's my opinion that he  
7           has lost earning capacity. The money that he  
8           would've earned as an orthodontist throughout his  
9           career is more than he will earn in what he's doing  
10          now.

11                 Paradoxically, he is earning money now while he  
12          would've been in dental school and not earning  
13          money. And then while he would've been in  
14          orthopedic residence -- orthodontic -- I say  
15          orthopedic periodically and I apologize. I mean  
16          orthodontic each and every time. I'm not testifying  
17          that he could be an orthopedist. While being an  
18          orthodontic resident, those guys make in the 60s.  
19          He makes more than that. So during those years,  
20          he'd make more than that too. So for about a  
21          seven-year period of time, Mr. Pampu was earning  
22          more now for about seven years than he would've  
23          earned while being a dental student and while being  
24          an orthodontic resident. But once he could've begun  
25          working as an orthodontist, his earnings would've

1           been much higher than they would've been doing the  
2           type of work he's doing now.

3                       So even though I expect him to be very  
4           successful in the type of work that he's doing, it's  
5           my opinion that over his work life expectancy that  
6           he has sustained a loss of earning capacity.

7           Q.     And other than the explanation that you just  
8           provided for each of your opinions, are there any  
9           additional bases for your opinions?

10          A.     Well, the basis for my opinion, I did look at  
11          data as to what orthodontists earn and to what  
12          individuals earn who are doing medical sales.

13          Mr. Pampu right now is residing in Raleigh, North  
14          Carolina. So I took a look at what people in his  
15          area are earning, and I relied upon a salary survey  
16          to provide me with information. And I took it out  
17          as far as it goes for about 14 years, which is as  
18          far as the survey went. And I looked at it from the  
19          75th to the 90th percentile. Since as a rookie he's  
20          already very successful, I'd expect that he'll  
21          continue to be successful.

22                       Regarding being an orthodontist, I looked at  
23          the same salary information. That one went out  
24          18 years. And I looked at that. I was much more  
25          conservative. I looked at that from the 25th

1 percentile to the 50th percentile to the median. I  
2 didn't know that he was -- if he would be a super  
3 duper orthodontist or not, so I took a look at, you  
4 know, people in the lower end of the median range  
5 and I figured that out.

6 And then beyond that, I just kept it at  
7 whatever the highest number was for the number of  
8 years. Not the highest number, but like for an  
9 orthodontist, let's say, since it went out to 18  
10 years, I just took that to his work-life expectancy  
11 through age 67. For being a medical sales person, I  
12 did the same type of thing. I looked at it for 14  
13 years and then just factored that out again until he  
14 retired.

15 And then I looked at the difference in what he  
16 did career-wise. Again, factoring that he's making  
17 money now where he wouldn't have otherwise been  
18 making money and looked at what the losses would've  
19 been over his lifetime.

20 Q. And did you use any specific methodology in  
21 order to form your opinions?

22 A. Yes. An ancient one. I used arithmetic. What  
23 I did was, I looked at what the data was and I added  
24 it up to come up with lifetime earnings for both  
25 areas, for both fields, and then I subtracted one

1 from the other. So I didn't factor in inflation.  
2 Likely both sellers, orthodontist and sales, will go  
3 up over the course of the years due to inflation,  
4 and I didn't factor in any kind of reduction to  
5 present value. I didn't take a look at what it  
6 would be worth now once it's a loss to see what --  
7 what the number would actually be. That's a little  
8 more esoteric. A reduction to present value would  
9 be something like, if you say somebody's owed  
10 \$100,000 over the course of their life, what would  
11 you give them now to make it \$100,000? I didn't do  
12 that. I just took a look at here's what the numbers  
13 are. There's no inflation. Here's what it would be  
14 over the course of a lifetime, and that -- that's  
15 what I did.

16 Q. Can you please explain what the "RAPEL" method  
17 is?

18 A. Yes. RAPEL is -- it's cap -- in caps,  
19 R-A-P-E-L. It's a methodology that rehabilitation  
20 counselors, vocational counselors use in making an  
21 assessment of what someone can earn. Ours is a  
22 rehabilitation plan. Didn't really do that with  
23 Mr. Pampu because I wasn't -- I wasn't assisting him  
24 with career choices. He's already got a career and  
25 such.

1           "A" is his access to the labor market and  
2 employability. I did take a look at what is he  
3 capable of doing now in terms of work and what would  
4 he have been capable of doing if he had gotten into  
5 dental school and then an orthodontic residency.

6           "P" is placability. Who's going to hire this  
7 guy? A lot of people are going to hire this guy.  
8 He's -- he's articulate. He's -- he's bright. He  
9 makes a good presentation. He's going to be  
10 successful in his life. He would've been more  
11 successful monetarily as an orthodontist than he  
12 will be now, but he's still going to be successful  
13 so I looked at his placability.

14           "E" is earning capacity. That's what I've  
15 spent time telling you about. I looked at what it  
16 is I expect that he would be able to earn in both  
17 occupations, orthodontist and in medical sales.

18           And "L" is -- I forget what it stands for, but  
19 it's access to the -- access to the -- excuse me --  
20 it's lifetime, so it would be what is his work-life  
21 expectancy is supposed to be. So, again, I put it  
22 at age 67 because for right now, that is the  
23 retirement rate for a gentleman who is born in the  
24 year that Mr. Pampu was born for full retirement,  
25 when one can get their full social security.

1           The REPEL method is utilized by vocational  
2 experts such as myself. It's taught in graduate  
3 schools. It's a peer reviewed methodology. People  
4 all across the country who do what I do, can't say  
5 100 percent use it, but the vast majority of them  
6 use that method in making that determination.

7           Q.    So is the -- you're saying that the RAPEL  
8 method is generally accepted in your field?

9           A.    Yes. It's always been accepted in the courts  
10 in which I have provided testimony. It's also  
11 accepted in terms of the way someone would be doing  
12 case management. If I was assisting somebody in  
13 finding employment, I would use the same methodology  
14 that I just described to you, except I would be more  
15 hands-on in assisting them in finding employment.

16          Q.    Did you make any assumptions in forming your  
17 opinions in this case?

18          A.    I did.

19          Q.    And what assumptions did you make?

20          A.    The assumptions I made actually I've testified  
21 to, but just to summarize, they would be that  
22 Mr. Pampu wanted to go to dental school. I made the  
23 assumption or offered the opinion that he would've  
24 gotten into dental school, that he would've been --  
25 he wanted to be an orthodontist, that he would've

1           been able to get an orthodontic residency, and that  
2           as such, he would've had the earnings of an  
3           orthodontist.

4           The other assumption I made is that, he has an  
5           MBA. He's working in the field of medical sales.  
6           He's very successful. He's already in the 75th  
7           percentile, so I would assume that he would continue  
8           to be successful and earn at the 75th to 90th  
9           percentile at the top end of that throughout his  
10          work-life expectancy.

11          Q.     And are you able to express your opinions that  
12          you're offering here today with a reasonable degree  
13          of professional certainty?

14          A.     I am.

15          Q.     And what does a reasonable degree of  
16          professional certainty mean?

17          A.     Well, it's my understanding -- I won't -- I  
18          won't say it from the legal standpoint when we have  
19          all of these attorneys sitting here who can -- who  
20          can say that, but it's my understanding that it's  
21          more likely than not and using my professional  
22          judgment. And in my professional judgment, the  
23          opinions that I've offered to you are more likely  
24          than not going to occur.

25          Q.     And in your opinion, what is the cause of

1 Mr. Pampu's lost earnings?

2 A. His inability to get into dental school  
3 resulting from his suspension from Clemson.

4 Q. And have you calculated the total amount of  
5 lost earnings that Mr. Pampu suffered as a result of  
6 his need to self-report his removal from Clemson  
7 that led to his in -- sorry -- excuse me --  
8 inability to gain admittance to dental school?

9 A. I did.

10 Q. And what is the total amount of lost earnings  
11 that Mr. Pampu suffered?

12 MR. MOORE: Your Honor, object to the extent of  
13 this testimony. He has been qualified as a  
14 rehabilitation expert. He is not an economist. And  
15 by his own testimony, he has not followed the  
16 methodology that an economist would use in  
17 calculating this loss.

18 MR. FIGLIOZZI: Your Honor, he's already  
19 explained that his calculation does not factor  
20 inflation and does not factor in reduction of  
21 present value. And if -- you know, I was getting to  
22 clarifying these issues and I believe that, you  
23 know, there is still a way for Mr. Shedlin's  
24 testimony to be -- to assist the jury.

25 THE COURT: I don't believe there's been a

1 proper foundation. You're going to have to lay a  
2 better foundation for what you're asking.

3 BY MR. FIGLIOZZI:

4 Q. Mr. Shedlin, did you calculate the amount of  
5 money that Mr. Pampu would've earned as an  
6 orthodontist versus a salesman on a year-by-year  
7 basis?

8 A. I did.

9 MR. MOORE: Your Honor, this is the same area  
10 we just objected to. He's talking from an economist  
11 standpoint. He's asking him to render an economic  
12 estimate as to what he would earn over his work-life  
13 expectancy. He has not testified as to how he's  
14 going to reduce it to present value. He's testified  
15 he has not reduced it with regard to inflation. He  
16 hasn't testified as to how he calculated his  
17 work-life expectancy. There are a lot of gaps here  
18 with regard to how he came up with these numbers  
19 before he puts those numbers before a jury.

20 MR. FIGLIOZZI: Your Honor, this goes to the  
21 weight that the jury would decide.

22 THE COURT: Still you have to lay a foundation  
23 for this expert to be able to testify.

24 BY MR. FIGLIOZZI:

25 Q. Mr. Shedlin, is there a resource that contains

1 information related to the earnings that an  
2 orthodontist could expect to earn on a year-by-year  
3 basis?

4 A. Yes. I utilized a resource called the Economic  
5 Research Institute. I'll just refer to it as the  
6 ERI so I don't have to keep giving you that mouthful  
7 every time I refer to it. And what this does is, it  
8 looks at an occupation. It looks at years of  
9 experience that someone has in the occupation. And  
10 it looks at the geographic area in which I've asked  
11 it to show me what people earn in that geographic  
12 area.

13 And then it also gives me information based on  
14 what do people earn at the 10th percentile, which  
15 means their bottom 10 percent of what people earn.  
16 And then it gives the median, the middle 50th  
17 percent, which is the 25th percentile, the 50th  
18 percentile, and the 75th percentile. And then it  
19 looks at outliers, the ones who are making a ton of  
20 money, the 90th percentile, the top 10 percent.

21 And as a rule and certainly what I did in  
22 looking at the orthodontist was, I forgot about the  
23 outside. I didn't even consider what the 10 percent  
24 and the 90th percent were. I just looked in the  
25 middle, the middle 50 percent, which is where most

1 of us fall regardless of what occupation we have.  
2 Typically, we're between the 25th and the  
3 75th percentile.

4 Then to be extra conservative in trying to make  
5 a determination as to what Mr. Pampu would be able  
6 to earn as an orthodontist, I just looked at it from  
7 the 25th percentile to the 50th percentile.

8 Now, numbers that this survey gave me are based  
9 on figures from 2022, and it doesn't give me -- it  
10 does show what people earn based upon years in which  
11 they've been in the field one year, two year, three  
12 years, et cetera, but it doesn't factor inflation so  
13 I didn't factor inflation. The gentleman who  
14 objected before said I didn't discount inflation.  
15 Inflation wouldn't discount. Inflation would  
16 expand, inflation which would mean that somebody  
17 would earn more, so I didn't factor that in. I  
18 didn't add to it in any way in which to show what  
19 the inflation might've been and I also didn't  
20 discount it. I didn't bring it back to what is the  
21 present value.

22 Q. And does the ERI contain the similar  
23 information -- or the same information for sales  
24 representatives, how much they might earn on a  
25 year-by-year basis?

1           A.     It does.  The difference that I did was because  
2           Mr. Pampu has -- has already demonstrated an ability  
3           to earn well in his field, he's already at  
4           approximately the 75th percentile, I -- I -- I was  
5           not conservative in my looking at it.  I looked  
6           at -- even though I told you before that I throw  
7           away the 10th and the 90th, I didn't do that for him  
8           in this case because he's already in his first year  
9           making in the 75th percentile.  I took a look at  
10          what he makes -- could make between the 75th and the  
11          90th percentile.  Same thing, I didn't add it in for  
12          inflation that would be expected to grow and I  
13          didn't discount it.

14          Q.     And the information contained within ERI's  
15          database for lack of a better term contains what  
16          someone expecting to earn at the first year in their  
17          career as an orthodontist or a sales representative  
18          might make, and then includes increases essentially  
19          on a year-by-year basis as to what they can expect  
20          to earn; is that correct?

21                 MR. MOORE:  Your Honor ---

22                 THE COURT:  I'm going to send -- let me send  
23          the jury out so we can discuss this.  All right.  
24          Ladies and gentlemen, I'm going to ask that you go  
25          in your jury room.  Don't discuss the case and we'll

1 bring you back out as soon as we are through.

2 (At 3:59 p.m., jury exited the courtroom.)

3 THE COURT: Okay. Let's just -- I want to hear  
4 all the ---

5 MR. MOORE: Your Honor, he is presenting  
6 Mr. Shedlin -- or he's already qualified him as a  
7 rehabilitation expert.

8 THE COURT: Vocational expert.

9 MR. MOORE: Well, a vocational expert which is  
10 included. He's certainly qualified to testify as to  
11 his transferrable skills, what he's able to do, and  
12 how that meets up with a particular profession.  
13 That's what that particular type expertise is  
14 involved with. He also can testify as he's done  
15 here as to what he might earn, the range of earnings  
16 he might have, but then he cannot take it beyond  
17 that because that takes the qualifications of an  
18 expert witness.

19 He, as an expert witness on economics, he has  
20 to reduce it down to present value. Our case law  
21 requires that. He has to take into account the  
22 affect of inflation or deflation if we had that. He  
23 has to take into account how to calculate the  
24 work-life expectancy. And all he stated was, "Well,  
25 I take it up to age to 67 because that's the age of

1 retirement right now."

2 He's not qualified as an expert witness with  
3 regard to economics. He is not an economist. He's  
4 already testified to that. His training is as a  
5 rehabilitation expert only. And he can only go so  
6 far with regard to his testimony with regard to  
7 that, and he cannot try to add onto that what an  
8 economist is supposed to testify to.

9 THE COURT: Yeah, I mean, he even said that he  
10 did not reduce it to present day value or factor in  
11 inflation. I mean, aren't those things that he has  
12 to -- I mean, a jury can't come up with that on  
13 their own.

14 MR. FIGLIOZZI: Well, Your Honor, Mr. Shedlin's  
15 testimony would be based on generally accepted  
16 research regarding what people in certain jobs could  
17 expect to earn over the course of multiple years as  
18 he testified. The earnings information only goes  
19 out to year 18 for an orthodontist and year 14 for a  
20 sales representative. And then it's capped for all  
21 intents and purposes for his evaluation at that  
22 point. So even if he cannot discount present value,  
23 it's still very, very conservative estimate of what  
24 the potential earnings would be.

25 THE COURT: I mean, how did he know that? How

1 do we know what an economist is able to say what  
2 present day value would be? I mean, he can't just  
3 come in here and say, well, this is -- I'm going to  
4 do a conservative estimate so I have to do present  
5 day value.

6 MR. FIGLIOZZI: Well, I mean, we could go line  
7 by line for the years that salary ---

8 THE COURT: Why is it capped at 18?

9 MR. FIGLIOZZI: Oh, that's ---

10 THE COURT: I'm not asking you.

11 MR. FIGLIOZZI: Yeah. That's all the data that  
12 they have that would allow them to perform those,  
13 for lack of a better word, extrapolation up to that  
14 point under -- at ERI.

15 THE COURT: Okay.

16 MR. MOORE: That explanation basically says,  
17 well, he can go to the internet or some book and  
18 look up this information irrespective of what his  
19 expertise is. We allow witnesses such as  
20 Mr. Shedlin to testify based upon their experience  
21 and expertise. He has no expertise with regard to  
22 being an economist. All he's doing is repeating and  
23 regurgitating what's in a book or on the internet.  
24 I can do that.

25 So, basically, you know, he is not qualified to

1 give this information or this testimony to a jury at  
2 this point. Our case law requires that he reduce it  
3 down to present value. He's already said I can't do  
4 that.

5 MR. FIGLIOZZI: Well, Your Honor, Mr. Shedlin  
6 has provided testimony explaining how he got to the  
7 percentiles that he is estimating the salary or  
8 testimony on the salaries for. And to the extent  
9 that defendants wish to cross-examine him on this  
10 issue, they're free to do so. He's provided an  
11 explanation, and their questions really go to weight  
12 more than admissibility at this point.

13 MS. PORTER: I'm going to join in with  
14 Mr. Moore and I've got some case law for you.

15 THE COURT: I want to hear it.

16 MS. PORTER: It's *Pearson v. Bridges*, which is  
17 a 2001 case. It's 344 S.C. 366. *Smith v. Wells*,  
18 258 S.C. 316 (1972). *Hawkwire v. Barr*, 258 S.C. 27.  
19 *Ford v. AAA Highway Express, Incorporated*, 204 S.C.  
20 433. And I can keep going, but it also -- we're  
21 going into Am Jur, Your Honor, 22 Am Jur ---

22 THE COURT: But what do they say?

23 MS. PORTER: They all say that it has to be --  
24 you know, future expenses must be discounted to  
25 present value. In order to get in testimony

1           regarding future damages, you've got to reduce it to  
2           present value.

3           THE COURT:   Okay.

4           MR. FIGLIOZZI:  Just repeat, Your Honor, that  
5           it goes to weight rather than admissibility.

6           THE COURT:  Well, and I -- I agree with  
7           defense.  I was really surprised it went this,  
8           but...

9           MS. PORTER:  Well, I don't mind the  
10          methodologist.

11          THE COURT:  If he can't discount it and he's  
12          not an economist, he can go on the training, I mean,  
13          based on his expertise as a vocational expert, but  
14          it's going to be limited to that.  I'm going to take  
15          a short break, so y'all can get your thoughts  
16          together.  You're in the witness bubble, so you  
17          can't talk to them about your testimony.

18          THE WITNESS:  I understand.  Thank you.

19          (From 4:05 to 4:10 p.m., brief recess.)

20          THE COURT:  Ready for the jury to come in?

21          MS. LAU:  Yes.

22          MR. MOORE:  Yes.

23          THE COURT:  Okay.  Bring the jury in.

24          (At 4:10 p.m., jury entered the courtroom.)

25          THE COURT:  All right.  Everybody be seated.

1 You may proceed.

2 BY MR. FIGLIOZZI:

3 Q. Mr. Shedlin, even as a successful sales  
4 representative, will Mr. Pampu earn significantly  
5 less over his lifetime as compared with what he  
6 could've earned as an orthodontist?

7 A. Yes.

8 MR. MOORE: Objection, Your Honor. Still  
9 getting in this area.

10 THE COURT: All right. I mean, I'm going to  
11 limit to that only. I'm not sure you can go any  
12 further than that.

13 MR. FIGLIOZZI: Should I repeat the question?

14 THE COURT: No.

15 MR. FIGLIOZZI: Okay. No further questions.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MS. PORTER:

19 Q. Good afternoon, Mr. Shedlin.

20 A. Good afternoon. Nice to see you in person.

21 Q. It is. Thank you for coming in person.

22 A. My pleasure.

23 Q. What -- you've given a lot of opinions here  
24 today. Can you please tell this jury what you  
25 relied on to form those opinions?

1 A. Sure. Well, I relied upon taking a look at  
2 Mr. Pampu's background in terms of his -- his  
3 grades, both as an undergraduate and as a graduate,  
4 what he had done (A) vocationally or outside of his  
5 student work in terms of the way in which he  
6 expresses interest in terms of working for a  
7 dentist, working for an orthodontist.

8 I relied upon studies by -- information by  
9 Kaplan, K-a-p-l-a-n. They're a school that helps  
10 individuals in getting their scores up if they want  
11 to get into graduate school, medical school, dental  
12 school in terms of what are the types of grades and  
13 scores that are necessary in which to get into  
14 dental school.

15 I've relied upon an article by a dentist  
16 writing for the American Dental Association reciting  
17 data from the American Dental Association regarding  
18 the number of applicants that were made in the year  
19 in which Mr. Pampu applied to dental schools and --  
20 and -- and how many applied and how many were -- the  
21 percentage that was accepted.

22 And I relied upon data regarding earnings from  
23 ERI.

24 Q. Okay. So let's -- thank you for that. I want  
25 to slow you down, back you up, and ask you about

1 individual ---

2 A. Absolutely.

3 Q. --- things that you reply upon. Let's first  
4 take this -- well, first of all, you spoke with  
5 Mr. Pampu via zoom. So you interviewed him; is that  
6 correct?

7 A. I did.

8 Q. All right. So a lot of this information about  
9 where he wants to work, what he wanted to do came  
10 from him; is that correct?

11 A. Yes. That would be a standard methodology of  
12 interviewing the person about whom I'm going to be  
13 ultimately expressing opinions.

14 Q. Okay. And you wrote some notes about that,  
15 correct?

16 A. I did.

17 Q. And then you supplied a copy of the articles --  
18 excuse me -- on which you relied. So the first  
19 article is by a dentist, correct?

20 A. Yes.

21 Q. All right. And so he took the total number of  
22 applications from dental school for the year -- for  
23 the 2020-2021 year?

24 A. Yes.

25 Q. And then formed a percentage on how many people

1 got into school, correct?

2 A. That's correct. Yes.

3 Q. All right. Did he make sure -- because you can  
4 apply to -- like I, as a dental school applicant,  
5 can apply to 12 schools, right?

6 A. Yes.

7 Q. All right. So the total number of  
8 applications, did he discount it to determine who  
9 applied to multiple schools?

10 A. No. It's my understanding from having read the  
11 article, that it was -- that was the number of  
12 applicants.

13 Q. So number of applicants versus how many spots  
14 there were and who was accepted, correct?

15 A. Yes.

16 Q. So that number could be significantly inflated  
17 if every applicant applied to more than one school,  
18 correct?

19 A. I don't know that it could. It's still --  
20 still a finite number of applicants, and they may  
21 have made multiple applications. So one could say  
22 that number of applications could be inflated, but  
23 not the number of ---

24 Q. Well, that's what I'm asking.

25 A. Yes. Those applications could be. Yes.

1 Q. All right. So and according to his article,  
2 57 percent of the applicants for the year of 2020 to  
3 2021 were accepted into dental school?

4 A. Yes.

5 Q. All right. And since -- and then you look --  
6 and then that -- and then you went to Kaplan who  
7 said, "These were the mean scores." And if you had  
8 these scores, it put you in these percentiles in  
9 that applicant pool; is that correct?

10 A. Yes.

11 Q. So -- and you looked at the defendant -- I  
12 mean, excuse me -- the plaintiff provided you with  
13 his DAT score, which is the dental exam to get in  
14 like the SAT or the ACT, correct?

15 A. Yes.

16 Q. All right. So he provided you with that score?

17 A. Yes.

18 Q. And he provided you with his GPA?

19 A. Yes.

20 Q. And he provided you with his resume of all the  
21 things that he had done for extracurricular  
22 activity?

23 A. Yes.

24 Q. And he provided you with a copy of the dental  
25 school application?

1 A. Yes.

2 Q. And that dental school application is a common  
3 application, so the basic parts of it go to all the  
4 dental schools, correct?

5 A. Yes.

6 Q. And individual dental schools may ask for a  
7 little bit more information, but, typically, it's  
8 that common application, correct?

9 A. Yes.

10 Q. Okay. And your testimony here today is that  
11 because he -- his scores put him in the 25th  
12 percentile that he should have gotten into one of  
13 the nine schools he applied to; is that correct?

14 A. Yes.

15 Q. Okay. And let's talk specifically about those  
16 particular schools. He applied to the University of  
17 Florida; is that correct?

18 A. He applied to a school in Florida. I  
19 apologize. I don't have my specific -- my notes in  
20 front of me.

21 Q. All right. I'll tell you what, I'll just lead  
22 if that's alright with you.

23 A. Please.

24 Q. Okay. He applied to the University of Florida.

25 A. Okay.

1 Q. He applied to the University of Florida and  
2 Nova Southeastern University.

3 A. Yes.

4 Q. All right. Were you aware that the University  
5 of Florida had 93 spots available and there were  
6 1,563 applicants ---

7 A. Yes.

8 Q. --- in the year of '20 to 2021?

9 A. I cut you off and I apologize.

10 Q. No worries.

11 A. I'm aware of it now. Yes.

12 Q. So that's under 6 percent acceptance rate?

13 A. Yes. For that individual school.

14 Q. Right. And are you aware that there were  
15 applicants from South Carolina to the University of  
16 Florida Dental School, but not one South Carolina  
17 applicant was admitted?

18 A. Well, I know there was one applicant from South  
19 Carolina.

20 Q. But he was not admitted?

21 A. He was not admitted, but I don't know if there  
22 were other applicants from South Carolina.

23 Q. But you didn't do any research to ascertain  
24 that?

25 A. I don't know that -- well, I didn't. No.

1 Q. Are you aware that the American Dental  
2 Association has a website that all of this  
3 information is available for anyone to view?

4 A. They have the information regarding -- yes, I  
5 am aware. And they had the information regarding  
6 who was accepted. I'm not -- not individuals who  
7 were accepted, but the numbers.

8 Q. We can pull it up if you'd like, but it breaks  
9 down to gender, race, where they applied from.  
10 There's like 12 tabs in an excel spreadsheet. Would  
11 you like to pull it up?

12 A. If you'd like to show me, that's perfectly ---

13 Q. Well, I've already done the research. I'm  
14 asking what you did.

15 A. I didn't look at that. No.

16 Q. Okay. So you're unaware -- well, let's talk  
17 about Nova Southeastern University. In that  
18 university, there were 2,000 -- well, let's simplify  
19 it. 6.2 acceptance rate and only one South Carolina  
20 applicant was given admission. Were you aware of  
21 that when you made your opinion?

22 A. I'm aware of -- when I rendered the opinion, I  
23 have been aware today, but, again, I don't know how  
24 many applicants were from South Carolina.

25 Q. Okay. But only one got in, correct?

1 A. There may have been two who applied, but only  
2 one got in.

3 Q. Okay. Well, you know at least one applied and  
4 didn't get in?

5 A. Right. As far as I know, there were two.

6 Q. Right. Could've been over a thousand. We  
7 don't know?

8 A. Could have.

9 Q. We don't know?

10 A. We don't.

11 Q. Okay. All right. Well, let's talk about  
12 Harvard. Harvard had a 4.1 percent acceptance rate.  
13 Zero from South Carolina were given admission. Were  
14 you aware of that when you made your opinion?

15 A. No.

16 Q. All right. He applied to Indiana University.  
17 Again, 14.7 percent, so higher percentage. Still  
18 not top 25. And, again, zero South Carolinians  
19 gained acceptance. Were you aware when you made  
20 your opinion?

21 A. No. I was aware that Indiana University  
22 interviewed him and asked to talk to Clemson and  
23 then he was rejected.

24 Q. Okay. The University of Iowa. And we're going  
25 to get back to that in a minute. University of

1 Iowa, 9.6 percent acceptance rate. Again, zero  
2 South Carolinians accepted. Were you aware of that  
3 when you made your opinion?

4 A. No.

5 Q. All right. University of Michigan, 7.3 percent  
6 acceptance rate. Zero South Carolinians gained  
7 admission. Were you aware of that when you made  
8 your opinion?

9 A. I was not.

10 Q. Okay. We've already done Nova Southeastern  
11 University. Tufts University, 6.9 percent  
12 acceptance rate. Only two South Carolinians were  
13 given admission. Were you aware of that when you  
14 made your opinion?

15 A. No.

16 Q. University of North Carolina, 29.4 percent  
17 acceptance rate. Only two South Carolinians given  
18 admission. Were you aware of that at the time of  
19 your opinion?

20 A. No.

21 Q. All right. And then MUSC here in South  
22 Carolina. 38.2 percent acceptance rate. All right.  
23 So your testimony here today is he should have been  
24 able to get into MUSC because his scores place him  
25 above the 38.2 percent acceptance rate?

1 A. I wasn't looking at that school specifically,  
2 but that's a good example.

3 Q. Okay. Well, let's talk about that. Do you  
4 know when he applied?

5 A. I believe it was to get into this academic  
6 year. This academic year meaning the 2021-2022  
7 academic year, but I don't know when he made  
8 application.

9 Q. Okay. And it makes a big difference when they  
10 make application, doesn't it?

11 A. Well, as long as when it has their application  
12 in by the deadline, there should be someone  
13 considered for acceptance.

14 Q. All right. Let's -- let's back up and talk  
15 about Indiana real quick. You're aware that Indiana  
16 asked Mr. Pampu for an interview because Mr. Pampu  
17 told you, correct?

18 A. Yes.

19 Q. All right. And he's the one that told you they  
20 said, "Can we contact Clemson," correct?

21 A. Yes.

22 Q. Did they ask to contact my client, Erin Wingo?

23 A. I wouldn't know.

24 Q. Because you got the information from Mr. Pampu?

25 A. Yes.

1 Q. You didn't call Indiana University, did you?

2 A. I did not, but that would be atypical and I  
3 don't imagine that they would've spoken with me.  
4 When I did try to call another university in South  
5 Carolina, I was shot down so I didn't try to call.  
6 I tried to contact by internet. I want -- I want my  
7 testimony to be accurate, so I would just be  
8 surprised if they would've spoken with me about  
9 Mr. Pampu specifically.

10 Q. But, Mr. Shedlin, you didn't even try, did you?

11 A. I did not.

12 Q. Okay. And when you did try to contact MUSC,  
13 they declined to comment?

14 A. Yes.

15 Q. Okay. So we don't know why nobody's talked to  
16 a dental school and we have no idea why Mr. Pampu  
17 didn't get in, do we?

18 A. We don't know definitively why he didn't get  
19 in, but to not have been accepted to any of the nine  
20 schools, in my opinion, with the academic record  
21 that he has and the DAT scores he has, would be  
22 atypical, that he should've gotten in somewhere.  
23 And the fact that he was rejected by nine schools,  
24 even though they have smaller acceptance rates, to  
25 me is revealing and in my opinion is indicative of

1           there being a reason that goes beyond academics and  
2           goes beyond aptitude scores.

3           Q.     But that's pure speculation.  You don't have an  
4           article that addresses that, do you?

5           A.     No.  I don't have an article, but it's not -- I  
6           wouldn't say it's speculation.  I've worked on cases  
7           like this before.  I've been a rehabilitation  
8           counselor, a vocational counselor since 1978.  I do  
9           have experience in looking at individuals who've  
10          applied to medical school, law school, dental  
11          school, other graduate types of programs.  So I have  
12          an understanding of the qualifications and the  
13          qualities that it takes to get into programs like  
14          that.

15                 It is my opinion that someone with Mr. Pampu's  
16          background, he should have been accepted, but for a  
17          reason other than academics and other than his test  
18          scores.

19          Q.     And you have reviewed his applications?

20          A.     Yes.

21          Q.     And is there a question in particular on the  
22          application that asked about prior disciplinary  
23          actions at schools?

24          A.     There's a question about disciplinary action  
25          that would include suspension, yes.  And they note

1 that, that a suspension would be a category.

2 Q. Okay. Do you have the application in front of  
3 you?

4 A. I do not.

5 Q. All right. I'm going to hand you page 3 of the  
6 plaintiff's application. And it is the question  
7 that you are testifying here today that this is the  
8 reason he didn't get into dental school. All right.  
9 And I don't want you to read the explanation.  
10 Simply want you to read the question and the answer.  
11 Not the explanation.

12 A. No. I understand. Thank you.

13 Q. Sure.

14 A. Okay. Have you ever been disciplined -- the  
15 question is: "Have you ever been disciplined for  
16 student conduct violations, in parentheses, e.g.  
17 academic probation, dismissal, suspension,  
18 disqualification, et cetera, by any college or  
19 school?" And the answer is "yes."

20 Q. Okay. Now, anywhere in that explanation does  
21 it contain my client Erin Wingo's name?

22 A. There's no specific reference to Ms. Wingo.

23 Q. Is there any specific reference to Defendant  
24 Colin Gahagan?

25 A. No. Their names are not mentioned specifically

1 as part of the explanation.

2 Q. Is there any specific mention to my client  
3 David Wingo?

4 A. There is not.

5 Q. All right. Now, as a part of this application,  
6 is it known that he went to -- I mean, is it  
7 provided to them that he went to Clemson briefly?

8 A. Yes.

9 Q. And then is it also provided to them that he  
10 went to the College of Charleston and received an  
11 MBA from the College of Charleston?

12 A. Yes.

13 Q. Okay. But we don't know if Clemson or the  
14 College of Charleston was contacted by any of these  
15 dental schools?

16 A. Contacted directly by the dental schools, we  
17 don't know.

18 Q. Okay.

19 A. I have to amend that, I don't know. I can't be  
20 the "we."

21 Q. Okay. You don't know?

22 A. I don't know.

23 Q. You didn't base your opinion on the fact that  
24 any of these dental schools have been contacted by  
25 Clemson or had contacted Clemson and spoken with

1           them?

2           A.     Correct.

3           Q.     And you don't know if any of them contacted the  
4           College of Charleston and spoke with them?

5           A.     I do not.

6           Q.     All right.  And you testified a moment ago that  
7           it's your opinion that Mr. Pampu got into the  
8           College of Charleston MBA program because College of  
9           Charleston already knew -- tell me about that?  You  
10          said the suspension was not an issue because he was  
11          a legacy.  What do you mean by that?

12          A.     He graduated as an undergraduate of the school.  
13          He was a known -- a known quantity for them.  He had  
14          been there for number of years.  He had a 3.85 GPA  
15          at their school and they accepted him into their MBA  
16          program.  It's also less of an ethical barrier to  
17          get into a business program as opposed to a medical  
18          or dental school.

19          Q.     Okay.  My question is, but he got into the  
20          College of Charleston and was allowed to remain  
21          after self-reporting about this incident, wasn't he?

22          A.     I want to clarify your question before I answer  
23          it if I may.

24          Q.     Sure.

25          A.     Are you asking me as an undergraduate or as a

1 graduate?

2 Q. I'm talking about as an undergraduate. The  
3 information that was provided to you by the  
4 plaintiff is that he self-reported to College of  
5 Charleston; is that correct?

6 A. It's my understanding that he got into College  
7 of Charleston before the suspension had become  
8 official.

9 Q. Okay.

10 A. So that it did not have to be disclosed at that  
11 time.

12 Q. All right. And then once it became official,  
13 they confronted him, he self-reported, and he was  
14 allowed to remain, correct?

15 A. I just know that he graduated from the College  
16 of Charleston.

17 Q. Okay. So it didn't affect his ability to earn  
18 a college education and to then subsequently earn a  
19 masters in business with the concentration in  
20 finance?

21 A. That's correct. And that's been consistent  
22 with my testimony regarding his educational level  
23 and the career opportunity.

24 Q. All right. Now, he did do very well, did he  
25 not in MBA school?

1 A. Yes.

2 Q. Okay. He got a 4.0?

3 A. Yes.

4 Q. And based on that alone, your opinion is that  
5 he would have done well enough in dental school to  
6 get an orthopedic -- ortho --- you got me saying it.

7 A. I got you saying it.

8 Q. --- orthodontist residency?

9 A. Let's see what else I can get you to say.

10 Q. Yeah, right. It's not that hard these days.  
11 I'm tired.

12 A. And I was being silly, so let me make sure I  
13 understand your question and I can -- would you mind  
14 asking it again?

15 Q. I'll be happy to.

16 A. And I'll answer it seriously.

17 Q. All right. Based on his performance at the MBA  
18 level, you have opined that he would have received  
19 an orthodontic residency?

20 A. In part. Not 100 percent solely on that, but  
21 in part.

22 Q. Right.

23 A. He also did well as an under grad. He had a  
24 3.85. Again, he did have a 4.0. He had done the  
25 orthodontic -- I'll call it -- work. He worked in

1 the orthodontist office while he was an under grad.  
2 He's been successful in everything that he's done.  
3 So lumping that all together, that because it's my  
4 opinion that he would have been able to get an  
5 orthodontic residency.

6 Q. Okay. Now, here's my next question. Forming  
7 that opinion you did not look at or consider the  
8 number of applicants and the percentage of dental  
9 graduates who received orthodontics residency, did  
10 you?

11 A. I did not.

12 Q. Okay. So the fact that less than 4 percent of  
13 all dental school graduates get into an orthodontic  
14 residency was not considered?

15 MS. LAU: Objection. Where is this  
16 information? I'd like see the basis of these  
17 questions.

18 MS. PORTER: The American Dental Association  
19 website.

20 MS. LAU: Is there a document you'd like to  
21 present to this witness? We'd all like to see where  
22 this is coming from, including all the statistics  
23 that were provided earlier with respect to the  
24 percentages to the multiple dental schools.

25 THE COURT: Do you have some information?

1 MS. PORTER: I mean, I can print it off. It's  
2 the American Dental Association website. It's an  
3 excel spreadsheet. It was discussed ad nauseam  
4 during his deposition.

5 THE COURT: Can you refer to his deposition  
6 then?

7 MS. PORTER: Sure. Beg the Court's indulgence.  
8 All right. On page 92.

9 THE COURT: Does he have his deposition?

10 THE WITNESS: I don't. If I'd be allowed to --  
11 I'm a very fast reader. If I can refresh my memory.

12 MS. PORTER: We began talking about this at  
13 line 11.

14 THE WITNESS: Okay. If you'd like to ask me  
15 questions, I'm ready.

16 BY MS. PORTER:

17 Q. Let's just read it. I think I only have one  
18 more question and then we'll move on. Just you  
19 didn't look at any of these -- I mean, you found two  
20 articles online which you relied upon which provides  
21 statistics regarding dental school admittance, but  
22 you really didn't do any research online to form an  
23 opinion on the percentages of getting into not only  
24 dental school, but a little bit on dental school,  
25 but you didn't drill down and really look into what

1 it would take to get into the schools he applied to  
2 and then how to get an orthodontics residency after  
3 the fact, correct?

4 A. So you've asked me several questions here. So  
5 the first question you're asking me is regarding  
6 getting into dental school, did I look at the  
7 percentages of each individual school.

8 Q. Let me rephrase and break it down. How about  
9 that? That was bad question. I agree.

10 A. Okay. I do too.

11 Q. Okay. Told you I'm tired. You took a  
12 bird's-eye view, did you not?

13 A. I did.

14 Q. You did not drill down and look at each  
15 individual dental school, did you?

16 A. Each individual dental school that he applied  
17 to, I did not.

18 Q. And you did not drill down and look at the  
19 statistics regarding how many dental graduates  
20 obtain orthodontic residencies?

21 A. I did not. I looked at him as an individual.  
22 I looked at his scores. What I've testified to  
23 already. And I looked at his background. I looked  
24 at his level of success in whatever he's done, and I  
25 did render my opinions on that basis.

1 Q. And you've testified that he is currently  
2 making as a medical equipment salesman in the  
3 75th percentile of salaries; is that correct?

4 A. Yeah. Just to clarify though.

5 Q. Help me ---

6 A. No, no, I did. I did.

7 Q. Yes.

8 A. That is my testimony, but I want to make sure  
9 the jury understands for a first-year person. He's  
10 not making in the 75th percentile of what all guys  
11 can sell, but still an accomplishment. He's doing  
12 it for a first-year person.

13 Q. Okay. And I think you've even said that he is  
14 -- and let me quote you -- articulate, correct?

15 A. Yes.

16 Q. Bright?

17 A. Yes.

18 Q. Good presentation?

19 A. Yes.

20 Q. Successful?

21 A. Yes.

22 Q. Okay. He has -- and you talk about this. Your  
23 career has been helping people with physical and  
24 mental impairments obtain employment, correct?

25 A. Yes.

1 Q. He has no physical or mental impairment,  
2 correct?

3 A. No. He'd be easier because you'd do the same  
4 thing, but I wouldn't have to modify it on the basis  
5 of any limited conditions. So I do help people who  
6 are -- who do not have disabling conditions, but it  
7 would be easier for Mr. Pampu.

8 Q. Okay. Now, when you looked at -- and you --  
9 you've said that as a medical equipment salesman, he  
10 can't make as much money as an orthodontist,  
11 correct?

12 A. Correct.

13 Q. Okay. But the medical sales -- equipment sales  
14 is a big umbrella, is it not?

15 A. Yes.

16 Q. Okay. So a person that sells medical equipment  
17 like masks or gloves or IVs, it's not as lucrative  
18 as someone who sells high-end medical equipment, is  
19 it?

20 A. Typically not. I mean, you know, when you're  
21 selling a smaller item like what you've identified,  
22 it's volume, volume, volume. You got to sell a heck  
23 of a lot of gloves and masks and IVs, as opposed to  
24 selling a CAT scan machine or an MRI machine.

25 Needless to say, you make one or two sales a

1 week doing that, you're doing quite well. Whereas,  
2 if you're selling the other stuff, you got to sell a  
3 lot. So you could be successful in both areas, but  
4 Mr. Pampu is in the more high-end of what he's  
5 selling to hospitals and surgical centers and things  
6 like that. So in my identifying that he's in the  
7 upper echelon of earnings already, I've taken that  
8 into consideration as part of my opinion.

9 Q. He is selling diagnostic radiological equipment  
10 such as CT scans and MRIs, correct?

11 A. Yes.

12 Q. Much more lucrative than the umbrella of  
13 medical equipment sales?

14 A. Well, and that's why there are ranges that  
15 indicate what people earn at the 25th percentile,  
16 75th percentile, and the 90th. Yes.

17 MS. PORTER: Beg the Court's indulgence. No  
18 further questions, Your Honor. Please answer any  
19 questions Mr. Moore has.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Mr. Shedlin, in your area of expertise, my  
23 understanding with particular regard to this case is  
24 you're actually looking at employability; am I  
25 right?

1 A. Yes.

2 Q. And what you're looking at employability, what  
3 you're looking at are any roadblocks he might have  
4 or any advantages he might have with regard to  
5 obtaining a particular job.

6 A. It's slightly different. The employability has  
7 to do with what skills does he bring to the table  
8 based upon his education and training.

9 Placability, which is a term in our -- in my  
10 field, we go more to are there any roadblocks or  
11 stumbling blocks a person might have, or are there  
12 jobs available. To give an example, you could be a  
13 great oil rigor in Oklahoma and then move to Detroit  
14 and not be -- you're still employable because you  
15 have that skill, but you're not placeable anymore  
16 because they don't the oil rigs for you to work on  
17 in Detroit. So that's just an example so it's  
18 not -- so I'm just trying to clarify.

19 Q. Yeah, and you've already hit on this a little  
20 bit, but you also talked about transferrable skills?

21 A. Yes.

22 Q. What are transferrable skills?

23 A. Transferrable skills are the skills that  
24 someone develops from a job that they can use  
25 elsewhere. Sales is a good example. If a guy is a

1 good salesman selling medical supplies and he knows  
2 how to sell, he can learn the product line of  
3 something else. He could probably sell you a car,  
4 he could probably sell you a cell phone, and maybe  
5 even a corrugated box if he knows how to sell. So  
6 that would be an example of a transferrable skill.  
7 You learned how to do something in one job, and you  
8 can apply it to another job.

9 Q. And Mr. Pampu has a lot of transferrable  
10 skills, does he not?

11 A. Well, he's developing them. You know, he's a  
12 young man so his transferrable skills are  
13 developing.

14 Q. Well, let's explore it a little bit. As an  
15 undergraduate of College of Charleston, what was his  
16 degree in?

17 A. Biochemistry.

18 Q. Biochemistry. So it's a science-type major; am  
19 I right?

20 A. Yes.

21 Q. That opens up to the doors to various types of  
22 jobs that are scientifically based; am I correct?

23 A. It does. Let's say as an under grad, but, yes,  
24 there's certain research positions that one could  
25 get with additional education.

1 Q. Sales positions?

2 A. Without question. We've seen that.

3 Q. All right. Then on top of that, he has an MBA  
4 from College of Charleston, as well?

5 A. Yes.

6 Q. Masters in business; am I correct?

7 A. Masters in business administration.

8 Q. And that is obviously a little bit different  
9 from what he has as an undergraduate degree, but now  
10 he's got these two combined; am I right?

11 A. Yes.

12 Q. Those are both transferrable skills?

13 A. The skills that developed from the classes he  
14 took are transferrable skills, yes.

15 Q. All right. Then in addition to that, he -- I  
16 think he's run his own business, has he not?

17 A. I'm ---

18 Q. While he was either an undergraduate or  
19 graduate in Charleston, did he not run a business as  
20 a sideline?

21 A. I don't recall.

22 Q. You don't know. Did you explore that at all?

23 A. I don't remember our having discussed that.

24 Q. Okay. So and the more he works, the more he  
25 develops these transferrable skills; am I right?

1 A. Yes.

2 Q. Okay. Now, in your evaluation, what you've  
3 done is you looked at what he's doing right now,  
4 correct?

5 A. Yes.

6 Q. Because those transferrable skills may enable  
7 him to move into other businesses, could it not?

8 A. They can enable him to move into other  
9 businesses, but in term of sales, he's essentially  
10 pretty top-of-the-line. Individuals who are selling  
11 medical equipment, particularly the type that he's  
12 selling, those are among the highest paid sales  
13 persons in the United States, irrespective of the  
14 community in which they choose to reside and work.  
15 So while we could look at his transferrable skills  
16 in a sales occupation, it's not going to help him  
17 make more money likely.

18 In terms of other things he can do, I didn't  
19 look at other opportunities because this is what  
20 he's doing right now. And as with any of us,  
21 interests and such are important too. So you want  
22 to do something that you're skilled at and something  
23 that you're interested in.

24 Q. But we're not limiting him to just sales  
25 positions, are we?

1 A. I am not. For the purposes of the evaluation,  
2 I did note what he is doing as a sales person and  
3 what he could do, but there would be other  
4 occupations he could do.

5 Q. But in your evaluation, you did limit him to  
6 sales positions, did you not?

7 A. I did.

8 Q. All right. Now, somebody with an MBA can make  
9 it well beyond a sales position. For example, don't  
10 we have a number of people who are presidents of  
11 large corporations or higher up in corporations who  
12 have MBAs?

13 A. Yes. But I can't extrapolate that he would've  
14 been president of a corporation. I would -- you  
15 know, many people who do that, do have MBAs, but --  
16 and it also depends upon what their -- their  
17 concentration is. His was in finance. Most people  
18 who are heads of corporations usually, their  
19 directions are not finance per se. Those are your  
20 financial advisors and people who are working on  
21 Wall Street and doing things like that, so that's  
22 where that skill tends to ---

23 Q. And did you compare how much they might make in  
24 those various positions to what he might makes as a  
25 salesperson in the medical field?

1           MR. GRAHAM: Objection, Your Honor. It's  
2 vague.

3           MR. MOORE: Your Honor, number one, he's not  
4 examining. The objection needs to come from whoever  
5 is doing the examination.

6           MR. FIGLIOZZI: Objection. It's vague, Your  
7 Honor.

8           THE COURT: All right. I'm going to let him go  
9 into that.

10          THE WITNESS: It's overruled?

11          THE COURT: Yes.

12          THE WITNESS: Okay. I did not. He was living  
13 in South Carolina. He's working in Raleigh. Those  
14 positions are in New York. He hasn't expressed a  
15 desire to move to New York. That's where most of  
16 the money is made in those areas of finance and  
17 such. Not that one can't do it here, not that one  
18 can't do it in Raleigh, but the ones that are really  
19 making the dough, that's where they're living. He  
20 hasn't expressed a desire to be living in that part  
21 of the country.

22 BY MR. MOORE:

23 Q.     So you just ruled it out because he didn't say  
24 he wanted to move there possibly later on down the  
25 road?

1 A. I think that's a big deal. Yes, that's why I  
2 ruled it out. You know, where someone wants to live  
3 and work is rather important. You know, I'm a New  
4 Yorker. Yeah, I like living in the northeast. It's  
5 cool, but it's not for everybody. And, you know,  
6 people make a decision as to -- as to where they  
7 want to be and where they want to work and that does  
8 have impact on their ability to earn. Maybe they  
9 like the quality of life where they are.

10 Q. Now, what you've done in making your evaluation  
11 as I understand is, you've compared what he's doing  
12 now and assumed that he would stay in that position  
13 basically for the remainder of his work life; am I  
14 correct?

15 A. I did.

16 Q. Okay. And then you compared that to what he  
17 might be able to do as an orthodontist; am I correct  
18 on that?

19 A. Well, yes. You know, he's not -- he's not  
20 qualified to be an orthodontist now, so I couldn't  
21 say that that's what he would be doing now. But,  
22 yes, as I've testified, it's my opinion that that's  
23 what he wanted to do and that he would've been able  
24 to do that, yes.

25 Q. Okay. We talked about employability and

1 roadblocks. The roadblock, in your opinion, has to  
2 do with his ability to get into dental school as I  
3 understand?

4 A. Yes.

5 Q. And he applied to nine dental schools and  
6 couldn't get in?

7 A. Yes.

8 Q. Okay. And you looked at two factors in  
9 acceptance, and that had to do with whether -- what  
10 his GPS or his grade point average was in  
11 undergraduate and also with regard to his MBA; am I  
12 right?

13 A. No.

14 Q. That's one factor?

15 A. To get into dental school? I'm sorry?

16 Q. One factor?

17 A. One factor was his GPA at the time he applied,  
18 yes.

19 Q. Okay. Now, the second thing is that you looked  
20 at was his DAT I believe, correct?

21 A. Yes.

22 Q. Tells us what DAT is.

23 A. I think it's a dental aptitude test.

24 Q. Okay. Is it kind of like the SATs that you  
25 take to get into college?

1 A. Yes.

2 Q. Okay. Something similar. It's just a  
3 basically way to weed people out from getting into  
4 school?

5 A. Yes.

6 Q. Okay. What you're saying is, based upon those  
7 two factors alone, he could've -- he should've  
8 gotten into all nine of those schools?

9 A. No. No. Absolutely not. It's my opinion that  
10 he should've gotten into at least one of those  
11 schools.

12 Q. Okay.

13 A. I would never render an opinion that -- well,  
14 I'm sure there's some people who could apply to  
15 school and get in anywhere. I'm not saying that  
16 that was Mr. Pampu. He wasn't in the top 10 level  
17 of someone who would get in. He was in the top 25  
18 level of someone who should've been able to get in.

19 Q. But there would be other factors that these  
20 schools might also consider; isn't that correct?

21 A. Yes.

22 Q. For example, we've gone over this before. That  
23 has to do with where he's from, where his residency  
24 is?

25 A. Perhaps.

1 Q. And that residency impacts if he tries to get  
2 into, for example, the University of North Carolina  
3 and he is from Charleston, South Carolina, correct?

4 A. Perhaps.

5 Q. Okay. That's going to lower the percentage and  
6 the likelihood of him getting into dental school?

7 A. Perhaps.

8 Q. You can't rule that out, can you?

9 A. I don't really have an opinion about that.

10 Q. Now, based upon your opinion, my understanding  
11 what you're saying is that he had to go ahead and  
12 report that he had been the subject of a Title IX  
13 hearing and that he had been expelled from Clemson?

14 MR. FIGLIOZZI: Objection.

15 THE COURT: Yeah, hold on an objection here.

16 MR. FIGLIOZZI: Going into details that  
17 were ---

18 THE COURT: Yeah, sustained and that question  
19 is to be stricken and not to be considered in your  
20 deliberations.

21 BY MR. MOORE:

22 Q. Let me rephrase it. Your opinion is that these  
23 schools would've contacted Clemson University as to  
24 this hearing that he made reference to in his  
25 application?

1 A. Not -- not necessarily.

2 THE COURT: Hold on.

3 MR. FIGLIOZZI: Objection. Same. Going into  
4 the details.

5 THE COURT: I don't think that -- I'm going to  
6 overrule that one.

7 THE WITNESS: Not necessarily contacted  
8 Clemson, but taken his response on his application  
9 into consideration.

10 BY MR. MOORE:

11 Q. Did he explain his response on the application?

12 A. Yes.

13 Q. And he explained that they're not going to take  
14 his explanation at face value or they're going to go  
15 ahead and contact the school?

16 A. I'm permitted to answer?

17 Q. Yeah. It's on the table.

18 MR. FIGLIOZZI: Your Honor, this may be  
19 something outside the jury.

20 THE COURT: All right. I'm going to ask y'all  
21 to step back in your jury room. Don't discuss the  
22 case.

23 (At 4:52 p.m., jury exited the courtroom.)

24 THE COURT: All right. Mr. Moore, you just are  
25 dancing all around and on what I ruled that you

1           could not do, so...

2           MR. MOORE: Well, I'm trying to avoid it.

3           THE COURT: You even asked about Title IX.

4           MR. MOORE: I'm sorry?

5           THE COURT: You even asked about Title IX.

6           MR. MOORE: But I didn't ask and I understand  
7 what your ruling is that we're not to get into the  
8 specifics of the ruling by Clemson.

9           THE COURT: I think that's where you're --  
10 that's what you're trying to get to in a backdoor  
11 way. I'm sure that's what your objection is.

12          MR. FIGLIOZZI: Yes, Your Honor. He said  
13 "hearing," "Title IX." He asked a question that ---

14          THE COURT: We beat this dead horse to death  
15 already anyway, but, I mean, ask what you're going  
16 to ask.

17          MR. MOORE: My understanding though is that his  
18 opinion is, okay, he can't get into dental school  
19 because of either a response he's made on his  
20 application or because of what they found out when  
21 they went to Clemson. Now, he said that he didn't  
22 know if they went to Clemson or not, but the next  
23 question I asked him was whether he had a response  
24 on his application as to what happened at that  
25 hearing. And I think that's already in evidence.

1 THE COURT: No. I think she -- she didn't --  
2 she put that up there, but she strictly stayed away  
3 from that on her application -- when she was  
4 questioning him about -- Ms. Porter questioned him  
5 on his response, she specifically said, don't go  
6 into the explanation.

7 MR. MOORE: And I didn't ask for the  
8 explanation from Clemson. Maybe I misunderstood  
9 what you were saying.

10 THE COURT: Well, the application that  
11 Mr. Pampu filled out. She's -- I mean, he looked at  
12 it and she said, "Do not state what the explanation  
13 was." I'm not sure what -- what are you asking him?

14 MR. MOORE: What I'm asking him is, he -- my  
15 understanding of his -- his basis -- his opinion is  
16 that he can't get into school and it's because of  
17 what happened with regard to this hearing. Okay. I  
18 think I'm entitled to ask him that, and that's what  
19 I'm trying to ask him. And then I'll go from there.  
20 I'm not even going to talk about the school hearing  
21 from that. I'll ask about the particular  
22 individuals involved.

23 MR. FIGLIOZZI: Your Honor, the testimony has  
24 been that it's a result of the suspension. That's  
25 why Mr. Pampu cannot get into dental school. That's

1           been established, and anything beyond that goes  
2           against your order.

3           THE COURT: I agree.

4           MR. MOORE: All right. I'll stay away from it.

5           THE COURT: You're not adding anything else.

6           MS. PORTER: I'm not.

7           THE COURT: Okay. Are y'all ready for the  
8           jury? It's five o'clock. We've got to get going.

9           (At 4:56 p.m., jury entered the courtroom.)

10          THE COURT: All right. Ladies and gentlemen, I  
11          apologize for it being too hot in here. Ready to  
12          go? You may proceed.

13          BY MR. MOORE:

14          Q. All right. Mr. Shedlin, can you testify to a  
15          reasonable degree of professional certainty that CJ  
16          Gahagan had anything to do with Mr. Pampu's  
17          inabilities to get into dental school?

18          A. It's my understanding that comments that were  
19          made by the defendants contributed to Mr. Pampu's  
20          suspension. That's the length that I can make.

21          Q. All right. And you don't know anything about  
22          the comments that were made or what was considered  
23          there?

24          A. I'm not a liability expert, sir, so I do not.  
25          You know, I stayed away from knowing what may have

1           been said and what may have contributed to things.  
2           It's -- respectfully, that's not why I believe that  
3           I'm here today, so I know nothing about your  
4           clients.

5           Q.     I understand.  Again, I want to make clear  
6           though that you cannot testify that CJ Gahagan had  
7           anything to do with Mr. Pampu's inability to get  
8           into dental school.

9           A.     Only to the degree that his comments may have  
10          contributed to his suspension from -- from Clemson.

11          Q.     And you don't know anything about that?

12          A.     For the same reason I just told you, sir, I  
13          stayed away from that.  I'm not a liability expert.  
14          I was very careful not to ask what anything that the  
15          defendants may or may not have said.

16          Q.     Okay.  And the same thing is true with regard  
17          to Erin Wingo?

18          A.     Same thing.  It's my understanding that  
19          comments that Ms. Wingo may have made may have  
20          contributed to Mr. Pampu having been suspended from  
21          Clemson, but I stayed away from knowing what  
22          comments have been made.

23          Q.     And same with David Wingo?

24          A.     I won't go through the long explanation other  
25          than to say "yes."

1 Q. Now, in order to get into orthodontic --  
2 orthodontic school, he's got to go through dental  
3 school as I understand it?

4 A. Yes, sir.

5 Q. But you had made the assumption in making your  
6 analysis that -- that he would get into orthodontic  
7 school?

8 A. An orthodontic residency.

9 Q. Residency. I'm sorry.

10 A. Yes, I did.

11 Q. And the likelihood of that is much less than  
12 his getting into dental school, is it not?

13 A. As you go up the funnel, it gets harder to get  
14 into different things, so, yes, it is, but it  
15 remains my opinion that he would've been able to get  
16 an orthodontic residency.

17 Q. And your evaluation is not on dental -- what he  
18 would make as a dentist, but as an orthodontist as I  
19 understand it?

20 A. I guess it's neither because I can't testify to  
21 it today, but, yes, it is based on from what he  
22 would've made as an orthodontist.

23 Q. Now, my understanding is, this is the first  
24 time you testified in litigation where a rape victim  
25 was sued?

1 A. Yes.

2 MR. FIGLIOZZI: Objection, Your Honor. It's  
3 characterizing the defendant as a rape victim.

4 THE COURT: Sustained.

5 MR. MOORE: Thank you. I appreciate it.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. FIGLIOZZI:

9 Q. Mr. Shedlin, Mr. Pampu was required to self  
10 disclose his removal from dental school, right? His  
11 removal from Clemson to the dental schools he  
12 applied to, right?

13 A. Yes.

14 Q. Okay. So there was no need for Clemson to  
15 contact these dental schools about the suspension  
16 because Mr. Pampu would've self-reported himself,  
17 right?

18 A. Yeah, it would've probably been the other way,  
19 somebody contacting Clemson, but, correct. He was  
20 required to do it and he did.

21 Q. Are MBA programs less competitive than dental  
22 schools?

23 A. Yes.

24 Q. Is getting into an MBA program, even with a  
25 self disclosure as a legacy applicant, easier than

1 getting into a dental school as a new applicant?

2 A. Yes. And, again, I think I testified earlier,  
3 the ethics involved in being in an MBA program  
4 are -- I don't know if it's less ethical, but are  
5 less involved than being involved in a medical  
6 profession such as being a physician or a dentist or  
7 an orthodontist.

8 Q. And Ms. Porter asked you about you reviewing  
9 the data from a bird's-eye view versus individual  
10 schools' statistical view. Do you remember that?

11 A. Yes.

12 Q. Okay. Do you still believe that your opinion  
13 that Mr. Pampu would've gotten into one of the nine  
14 dental schools he applied to can be stated with a  
15 reasonable degree of professional certainty?

16 A. Yes. I'm very comfortable with that. I am  
17 stating that opinion to a reasonable degree of  
18 professional certainty in my field.

19 Q. And Ms. Porter also asked you some questions  
20 about -- or made some commentary about how  
21 successful Mr. Pampu was. Do you remember that?

22 A. Yes.

23 Q. Do you remember if Mr. Pampu told you how he  
24 obtained his current position?

25 A. Yes. He had applied -- you're talking about as

1 a salesperson?

2 Q. Yes.

3 A. He had applied for over 20 jobs and this is the  
4 one he received.

5 Q. And do you know if he obtained that through a  
6 family connection?

7 A. There was someone that he knew that assisted  
8 him in getting that. That's a good way to put it,  
9 through networking. That's an appropriate way in  
10 which to put that.

11 Q. And does that impact your opinion in any way?

12 A. It's a good way to find work. I mean, my  
13 opinion remains the same.

14 Q. Well, was it easier to obtain his current job  
15 through that connection with the suspension that he  
16 has on his record as compared to a candidate who had  
17 a suspension from college that didn't have that kind  
18 of connection?

19 A. It's always easier to find -- yes, it is. It's  
20 always easier to find a job if you know somebody who  
21 can personally vouch for you.

22 MR. FIGLIOZZI: I have nothing further.

23 THE COURT: All right. You can step down.

24 (Witness excused.)

25 MS. PORTER: May we have a sidebar?

1           THE COURT: Y'all want to come over here so we  
2 can talk about scheduling?

3           (Sidebar discussion.)

4           THE COURT: All right. Ladies and gentlemen, I  
5 was talking about scheduling here. I think we're  
6 moving along today, but a lot of times it's very  
7 difficult for judges and attorneys to determine how  
8 long cases are going to be, how long witnesses are.  
9 That's sometimes, you know, no matter how  
10 experienced you are, that's just a very difficult  
11 thing.

12           I want to leave -- the reason I'm saying all of  
13 that is, I want to leave -- we've got to finish this  
14 case this week. I know none of y'all want to come  
15 back next week to do this, so I'm throwing this out  
16 as a possibility that we may go a little bit later  
17 tomorrow if needed, possibly until 7:00. All right.  
18 We may be fine anyway, but we'll make that decision.  
19 I just want to go ahead and let you know that that  
20 could be a possibility.

21           And, of course, what we'll do is, we'll -- I  
22 just want to give you that possibility so that you  
23 know we can finish this case up Friday, but I just  
24 want to let you know that was a possibility and  
25 y'all need to make any arrangements or possible

1 arrangements, and then we'll kind of -- I'll keep  
2 you posted tomorrow as we go further into it. And  
3 thank you for your patience in that in the  
4 scheduling, but y'all have done a great job as far  
5 as letting us work our schedule here. With people  
6 coming in from all over the place, sometimes it's  
7 more difficult.

8 Other than that, it's -- you're going home.  
9 Again, the four rules: Don't discuss the case among  
10 yourselves or your family members. Don't do any  
11 type of research. Don't do any type of paying  
12 attention to any type of media coverage or anything  
13 like that. And, finally, if anybody contacts you  
14 other than the clerk's office, then let the bailiffs  
15 know when you get here. We still good for nine  
16 o'clock?

17 (Affirmative responses.)

18 THE COURT: All right. We'll see you at nine  
19 o'clock.

20 (At 5:06 p.m., jury was excused for the day.)

21 THE COURT: Anything else before we break?

22 MS. PORTER: I'd like to put on the record,  
23 Your Honor, that we were denied an opportunity to  
24 recross this expert on specific new information that  
25 was brought up on redirect regarding how it was

1 easier to get employment and gain employment based  
2 on family connections. The plaintiff's parents own  
3 and operate a multi-million dollar company, Big John  
4 Sports. I think that makes a significant amount of  
5 money. I think based on my internet research, in  
6 the fourth quarter of a recent year, they made  
7 \$10 million. I think we were denied an opportunity  
8 to go into that further based on new information  
9 that came out.

10 THE COURT: Well, first of all, there was no  
11 objection to it being new information during  
12 redirect and I just felt -- and in the direction of  
13 this Court, I did not feel it was appropriate at  
14 this time so we will see.

15 MR. MOORE: Second thing, I think everybody is  
16 in agreement with this. I think they're going  
17 designate some portions of depositions that they  
18 want to introduce into evidence. We haven't seen  
19 those yet, so what we thought we might want to do is  
20 meet with you at 8:30 tomorrow morning to kind of go  
21 over that.

22 THE COURT: Okay. And make sure you exchange  
23 that because the rules do provide for that, so make  
24 sure we don't have any issues. 8:30 we'll plan on  
25 discussing it and there may not be any issues.

1 MR. MOORE: There may not.

2 THE COURT: I anticipate there won't be. All  
3 right. See everybody in the morning.

4 (At 5:08 p.m., court proceedings were concluded  
5 for the day.)

6 March 24, 2022

7 THE COURT: Plaintiff ready?

8 MS. LAU: Yes, Your Honor.

9 THE COURT: Defense ready?

10 MS. PORTER: Yes, sir.

11 THE COURT: All right. Bring the jury in.

12 (At 9:10 a.m., jury entered the courtroom.)

13 THE COURT: All right. Good morning, ladies  
14 and gentlemen. I hope everybody had a good evening.  
15 We had a few things we needed to go over first thing  
16 this morning, so that's why we're here a few minutes  
17 late.

18 As you will recall when we broke yesterday, the  
19 plaintiff was still in their case in chief. And,  
20 Ms. Lau, you may call your next witness.

21 MS. LAU: Your Honor, plaintiff calls Rachel  
22 Corbin via virtual stream.

23 THE COURT: Oh, okay.

24 MS. LAU: Sorry. I should've mentioned it.

25 THE COURT: Yeah, that's okay.

1 (From 9:11 to 9:17 a.m., brief recess.)

2 THE CLERK: Good morning, Ms. Corbin.

3 THE WITNESS: Good morning.

4 THE CLERK: I'm going to swear you in, so if  
5 you'd raise your right hand.

6 THE WITNESS: (Complying.)

7 THE CLERK: Do you solemnly swear that this  
8 testimony you're about to give in this case to be  
9 the truth, the whole truth, and nothing but the  
10 truth so help you God?

11 THE WITNESS: I do.

12 THE CLERK: State your full name for the  
13 record.

14 THE WITNESS: Rachel M. Corbin.

15 THE COURT: All right. And for the lawyers  
16 too, remember this: If there is an objection,  
17 whoever's asking the question, just instruct them to  
18 stop.

19 MS. LAU: Will do, Your Honor.

20 THE COURT: All right.

21 RACHEL CORBIN,  
22 having been produced and first duly sworn as a  
23 witness on behalf of the Plaintiff, then testified  
24 as follows:

25 DIRECT EXAMINATION

1 BY MS. LAU:

2 Q. Good morning, Ms. Corbin.

3 A. Good morning.

4 Q. Thank you for appearing for trial this morning.

5 I wanted to ask you a few questions about an  
6 incident that occurred in October 24, 2015, while  
7 you were a student at Clemson University.

8 A. Okay.

9 Q. In 2015, were you a freshman at Clemson  
10 University?

11 A. Yes.

12 Q. And in fall 2015, were you friends with Erin  
13 Wingo?

14 A. Yes.

15 Q. And in fall 2015, were you friends with  
16 Colin J. Gahagan?

17 A. No.

18 Q. But you knew who he was?

19 A. Yes, I did.

20 Q. Did he have a relationship to Ms. Wingo?

21 A. Yes, he did.

22 Q. Do you know if it was a physically intimate  
23 one?

24 A. I can't speak to that.

25 Q. In fall of 2015, were you friends with Andrew

1 Pampu.

2 A. No.

3 Q. Did you know who he was?

4 A. Yes.

5 Q. Did you rush a sorority during your freshman  
6 year?

7 A. Yes.

8 Q. And what sorority was that?

9 A. Gamma Phi Beta.

10 Q. Were you sorority sisters with Ms. Wingo?

11 A. At the time of this, no. We weren't initiated.

12 Q. But you were both pledging for Gamma Phi Beta?

13 A. Yes.

14 Q. And what dorm did you live in in October of  
15 2015?

16 A. McCabe, I think.

17 Q. And do you know what dorm Ms. Wingo lived in at  
18 the time?

19 A. I know she was in a high rise. I don't know  
20 the names of them.

21 Q. If I told you Manning Hall, would that refresh  
22 your recollection?

23 A. I still don't know the names.

24 Q. That's okay. On October 24, 2015, there was  
25 party at Phi Delta Theta's premises known as the

1 "Compound," right?

2 A. Yes.

3 Q. And before that -- the party that night, did  
4 Ms. Wingo come to your dorm room?

5 A. Yes.

6 Q. Do you know what time she came to your dorm  
7 room that night?

8 A. It's been seven years. I can't recall.

9 Q. Ms. Corbin, did you attend a deposition in this  
10 case?

11 A. I have. Yes.

12 Q. Okay. And in that deposition, you provided  
13 sworn testimony under oath?

14 A. Yes.

15 Q. And that was on December 16, 2019?

16 A. I don't know the exact, but I know you have it  
17 on record, but that sounds right.

18 Q. But you would not dispute that it was on  
19 December 16, 2019?

20 A. Yes.

21 Q. Okay. On page 12 of your deposition, I'm just  
22 going to, you know, since the witness is virtual,  
23 I -- I'm going to read to you what the question was  
24 and your answer if that's okay?

25 MR. MOORE: At this point, does she have a copy

1 of that deposition?

2 MS. LAU: She doesn't, but we could give her  
3 one. I mean, if you guys have one to follow along.

4 MR. MOORE: Yes.

5 BY MS. LAU:

6 Q. Okay. So on line 18, I asked, "Okay. After  
7 reviewing this document, do you recall what time  
8 Ms. Wingo came to your room on October 24, 2015?"

9 And on line 21, you said, "Yes."

10 And on line 22, I asked, "What time was that?"

11 And on line 23, you said, "Around 9:30." Does that  
12 refresh your memory as to what time Ms. Wingo came  
13 to your room that night?

14 A. I -- I don't exactly, but if that's what I said  
15 at the time of my statement, it sounds about  
16 accurate.

17 Q. Okay. Well, you would not dispute the accuracy  
18 of that statement today, right?

19 A. Correct.

20 Q. Do you know who else was in your room that  
21 night?

22 A. I believe it was Haley, Olivia, and myself.

23 Q. Did you observe Ms. Wingo consume any alcohol  
24 while she was in your dorm room?

25 A. Yes.

1 Q. Do you know how much alcohol she consumed in  
2 your dorm room?

3 A. No.

4 Q. Did you consume any alcohol while you and your  
5 friends were in your dorm room?

6 A. Yes.

7 Q. And how much alcohol did you consume?

8 A. Three-ish drinks I would say.

9 Q. At any point while she was in -- Ms. Wingo was  
10 in your dorm room, was she slurring her words?

11 A. No.

12 Q. Was she unable to walk?

13 A. No.

14 Q. Did she stumble?

15 A. No.

16 Q. Was she unsteady on her feet?

17 A. No.

18 Q. Did she vomit?

19 A. No.

20 Q. At some point, did you leave McCabe Hall to  
21 attend the party at the Compound?

22 A. Yes, we did.

23 Q. About what time did the four of you leave  
24 McCabe?

25 A. I'm unsure. Again, that's been a few years

1           ago.

2           Q.     Okay.  On page 15 of your deposition taken on  
3           December 16, 2019, in this case, I asked you on line  
4           4, "Why did you leave your dorm room?"  And you  
5           said, "To go to the party at the Compound."

6                     And I asked, "Do you recall what time you left  
7           your dorm room?"  And you said, "I couldn't give you  
8           an exact -- like, exact time.  I have a rough  
9           estimate."

10                    And I asked, "What's your rough estimate?"  And  
11           you said, "10:45 to 11:15, somewhere around there."  
12           Does that -- do you dispute the accuracy of those  
13           statements?

14           A.     No.  I stand by that.

15           Q.     Did the four of you walk from McCabe to the  
16           Compound?

17           A.     We did walk there.  Yes.

18           Q.     Do you know how long that walk took?

19           A.     I know we stopped along the way, so it probably  
20           wasn't a direct route, so 30 minutes, maybe a little  
21           longer.

22           Q.     Okay.  Did you take any pictures with Ms. Wingo  
23           during your walk from your dorm room to the  
24           Compound?

25           A.     I did.  Yes.

1 MS. LAU: I'd like to mark this document as  
2 Plaintiff's 21. I apologize, Ms. Corbin. We'll get  
3 that over to you in a minute. Showing Plaintiff's  
4 21 to defense counsel.

5 BY MS. LAU:

6 Q. Ms. Corbin, I'm holding up to the screen to you  
7 what's been marked as Plaintiff's 21. Can you see  
8 that?

9 A. Yes, I can.

10 Q. And it's a two-page document. I'm going to  
11 give you the second page now. Can you see that?

12 A. Okay. I can't read anything on that, but I  
13 remember that.

14 Q. Okay. And what is this two-page document?

15 A. That is a picture of the four of us on our walk  
16 to the Compound, and then the second one is the map  
17 location that I screen shot of my phone with facial  
18 identification.

19 Q. True and accurate copy?

20 A. Yes.

21 MS. LAU: At this time we move to enter  
22 Plaintiff's 21 into evidence.

23 THE COURT: Any objection?

24 MR. MOORE: None.

25 MS. PORTER: No.

1 THE COURT: All right. In without objection,  
2 21.

3 (Plaintiff's Exhibit No. 21 was received into  
4 evidence.)

5 BY MS. LAU:

6 Q. So this was the photo that you had just  
7 referenced that you had taken on your walk from  
8 McCabe to the Compound, correct?

9 A. Yes.

10 Q. Okay. Did -- did Ms. Wingo appear normal to  
11 you on the walk over to the compound?

12 A. Yes.

13 Q. You said you took this photograph, right?

14 A. Correct. Yes. I believe so.

15 Q. Okay. And on the photograph at the top, it  
16 says October 24, 2015, at 11:32 p.m. Did you -- do  
17 you dispute the accuracy of the time stamp and the  
18 date stamp?

19 A. No. That's correct.

20 Q. So does this help -- this -- this date stamp  
21 and time stamp, does that help refresh your memory  
22 as to what time you would've been walking from the  
23 Compound to -- I'm sorry -- from McCabe to the  
24 Compound that night?

25 A. Yes.

1 Q. Okay. So somewhere around 11:32 p.m., correct?

2 A. Correct. We were on our walk, yeah.

3 Q. And do you recall if this photograph was taken  
4 before you made this stop or after you made this  
5 stop?

6 A. Can I ask location? Was that outside of  
7 Holsomdorf (phonetic)?

8 THE REPORTER: Outside of where?

9 BY MS. LAU:

10 Q. Can you just repeat what you just said? Was  
11 that outside of what dorm?

12 A. It's not a dorm. It's a building on campus  
13 called Holsomdorf on the corner.

14 Q. Okay. On the second page of this document, it  
15 says "places" and there's an address, 198 Old  
16 Greenville Highway, Clemson, South Carolina, and ---

17 A. Okay. That was after.

18 Q. Okay. It was after that?

19 A. That was after.

20 Q. Okay. And the stop that the four of you made  
21 was at Johnstone Hall?

22 A. Correct.

23 Q. Okay. And who are the individuals depicted in  
24 this photograph just for the record from -- from the  
25 left to the right?

1 A. Okay. Sorry. It's a little blurry on my end,  
2 but that's myself and then Erin, Olivia, and Haley.

3 Q. Okay. How would you describe Ms. Wingo's  
4 behavior during your walk from the dorm to the  
5 Compound?

6 A. She was normal, happy, excited. Just a typical  
7 night out. Ready to get there and see people.

8 Q. Okay. Did Ms. Wingo state that she wanted to  
9 give Mr. Pampu a birthday kiss at the party?

10 A. Yes.

11 Q. At any point during the walk from your dorm to  
12 the Compound, was Ms. Wingo slurring her words?

13 A. No.

14 Q. Did she require assistance to walk?

15 A. No.

16 Q. Did she stumble?

17 A. No.

18 Q. Was she unsteady on her feet?

19 A. No.

20 Q. Did she vomit?

21 A. No.

22 Q. Did you, Ms. Wingo, and your other friends  
23 eventually arrive at the party at the Compound on  
24 October 24th?

25 A. Yes.

1 Q. What time did you arrive?

2 A. Probably right before midnight.

3 Q. And do you know what Ms. Wingo did when the  
4 four of you arrived at the party?

5 A. I don't remember.

6 Q. Do you know if she went to go find Mr. Gahagan?

7 A. I can't speak to that at this time.

8 Q. Okay. On your deposition on December -- or in  
9 your deposition on December 16, 2019, page 20, I  
10 asked you -- I'm sorry. This is page 21 of the  
11 document. It starts -- sorry. It starts at the end  
12 of page 20 and goes to 21.

13 And I asked you on line 23, "Can you please  
14 review Exhibit 2?" And then I asked, "It's the  
15 seventh bullet point down." And then I asked on the  
16 next page on 21, "Do you remember what Ms. Wingo did  
17 when you arrived at the party?" And you said, "Yes.  
18 She went to go find CJ."

19 And I asked, "Did you eventually find  
20 Mr. Gahagan -- or I'm sorry. "Did she eventually  
21 find Mr. Gahagan?" And you said, "Yes." Does  
22 that -- do you dispute the accuracy of your  
23 statements from December 16, 2019?

24 A. No. I stand by that.

25 Q. Okay. And do you know if Ms. Wingo did, in

1 fact, find Mr. Gahagan?

2 A. Yes, she did.

3 Q. Okay. And do you know if they spoke?

4 A. Yes, they did.

5 Q. How do you know?

6 A. She came back and found me later in the night.

7 Q. Did she tell you what they spoke about?

8 A. Not the details, but high level.

9 Q. Did she seem upset?

10 A. Yes.

11 Q. Did she tell you why?

12 A. Yes.

13 Q. What did she say?

14 A. She said CJ kind of blew her off and told her  
15 to go find Drew.

16 Q. Okay. At some point during the party, did you  
17 become separated from Ms. Wingo?

18 A. Yes.

19 Q. Do you know when that occurred?

20 A. No.

21 Q. Were you separated for most of the party after  
22 she had come back to talk to you about what she  
23 discussed with CJ?

24 A. I don't recall.

25 Q. Okay. Well, were you concerned for Ms. Wingo

1 when she became separated from you at the party?

2 A. No.

3 Q. Did you observe her slurring her words?

4 A. Not that I recall.

5 Q. Unable to walk?

6 A. No.

7 Q. Stumbling?

8 A. No.

9 Q. Unsteady on her feet?

10 A. No.

11 Q. Vomiting?

12 A. No.

13 Q. At some later point, did you observe Ms. Wingo  
14 with Mr. Pampu at the party?

15 A. I can't recall. I don't recall.

16 Q. At your deposition on December 16, 2019, page  
17 25, I asked on line 2, "Do you recall whether  
18 Ms. Wingo -- did you ever observe Ms. Wingo and  
19 Mr. Pampu together at any point during the party?"  
20 And you said, "Yes."

21 And I asked, "When did you observe this?" And  
22 you said, "I can't recall my own record."

23 And I asked, "What were Mr. Wingo and Mr. Pampu  
24 doing when you observed them together?" And you  
25 said, "They were walking around the backyard." Do

1           you dispute those statements?

2           A.     I stand by that.

3           Q.     While you were observing Ms. Wingo and  
4           Mr. Pampu, was Ms. Wingo unable to walk?

5           A.     No.

6           Q.     Stumbling?

7           A.     No.

8           Q.     Unsteady on her feet?

9           A.     No.

10          Q.     Vomiting?

11          A.     No.

12          Q.     Did you speak with Ms. Gahagan at any time  
13          during the party?

14          A.     I can't remember. I know this was in the  
15          deposition though.

16          Q.     It's okay. It was a few years ago. Okay. On  
17          page 26 of your deposition, I asked on line 12, "Did  
18          you speak with Mr. Gahagan at any time during the  
19          party?" And you said, "Yes."

20                 I asked, "What was the sum and substance of  
21          that conversation?" And you said, "He asked where  
22          Erin was."

23                 I asked, "What did you say in response?" And  
24          you said, "I don't remember off the top of my head.  
25          Sorry." Do you dispute those statements?

1 A. No. I stand by that.

2 Q. At some point later that night, did you meet up  
3 with Ms. Wingo again while at the Compound?

4 A. Yes. Yes.

5 Q. And do you know when you met up with her again?

6 A. Not exact timing, but right before we left the  
7 party.

8 Q. Okay. On page 26 of your deposition on line  
9 21, I asked or I said, "It's okay." And then I  
10 asked, "At some point later that night, did you meet  
11 up with Ms. Wingo again while you were still at the  
12 Compound?" And you said, "Yes."

13 I asked, "Do you recall what time that was  
14 approximately?" You said, page 27, line 2, "A  
15 little before 1:00." Do you dispute the accuracy of  
16 those statements?

17 A. No. I stand by that.

18 Q. And do you know where you met up with Ms. Wingo  
19 again at the Compound?

20 A. I was in the front yard.

21 Q. Okay. Do you know if she was on the front  
22 steps?

23 A. She was. Yes.

24 Q. Okay. And is the front yard right in that  
25 general vicinity of the front steps?

1 A. Yes. That's essentially the area. I was in  
2 the front yard. She was on the steps.

3 Q. Understood. Was anyone else with Ms. Wingo at  
4 the front steps?

5 A. Yes.

6 Q. Who?

7 A. His name is Benji.

8 Q. Did Ms. Wingo say anything about Mr. Gahagan?

9 A. I'm sorry. Can you repeat that?

10 Q. Did Ms. Wingo say anything about Mr. Gahagan  
11 while at the front steps?

12 A. I can't recall.

13 Q. On page 27 of your deposition, line -- oh, did  
14 we lose her?

15 THE COURT: Just wait a minute. She may come  
16 up.

17 MS. LAU: Okay. Rachel, are you still there?

18 THE WITNESS: (Affirmative response.)

19 BY MS. LAU:

20 Q. Okay. On page 27 of your deposition, line 12,  
21 I asked, "Okay. After you met up with her again,  
22 did you speak with Ms. Wingo?" And you said, "Yes."

23 And I asked, "Do you recall what she said to  
24 you?" And you said, "I remember she was crying and  
25 then asking why CJ didn't love her." Do you dispute

1 the accuracy of those statements?

2 A. No.

3 Q. At the front steps, did Ms. Wingo mention  
4 Mr. Pampu?

5 A. No.

6 Q. I'm sorry. I didn't catch your answer.

7 A. Not that I recall, no.

8 Q. At the front steps, was Ms. Wingo slurring her  
9 words?

10 A. Not that I can recall.

11 Q. Was she unable to walk?

12 A. She was sitting.

13 Q. Was she stumbling?

14 A. She was sitting.

15 Q. Okay. Did she vomit?

16 A. No.

17 Q. What time did you leave the party at the  
18 Compound?

19 A. Shortly after that. Not sure exact time, but  
20 shortly after.

21 Q. Someone drove you home from the party at the  
22 Compound?

23 A. Yes.

24 Q. Was Ms. Wingo in the car with you?

25 A. Yes.

1 Q. Was anyone else besides the driver, you, and  
2 Erin in the car?

3 A. I don't recall.

4 Q. On page 29 of your deposition on line 13, I  
5 asked, "Do you recall who else was in the car with  
6 you?" And on line 15 you said, "Ben, Haley, and  
7 Olivia." Do you dispute the accuracy of those  
8 statements?

9 A. No. I stand by that.

10 Q. By "Ben," you were referring to Ben Zboray?

11 A. Correct.

12 Q. And by "Haley," you were referring to Haley  
13 Sinclair?

14 A. Yes.

15 Q. And by Olivia, you were referring to Olivia  
16 Pescatore?

17 A. Yes.

18 Q. And Haley and Olivia were with you and Erin  
19 earlier in the evening at McCabe, right?

20 A. Yes.

21 Q. Do you know if Ms. Wingo was in the front or  
22 the back of the car?

23 A. I don't remember.

24 Q. On page 30 of your deposition, I asked on line  
25 3, "How were -- how was everybody arranged?" And

1           you said, "I know I was on Ben's lap in the front  
2           seat, and then the three girls were in the back."  
3           Do you dispute the accuracy of those statements?

4           A.     No.

5           Q.     The car stopped at the horseshoe first?

6           A.     Yes.

7           Q.     And is -- withdrawn. Is Manning Hall in the  
8           horseshoe, do you know?

9           A.     Yes.

10          Q.     Okay. During the car ride, did Ms. Wingo  
11          vomit?

12          A.     I don't recall.

13          Q.     Did Ms. Wingo say anything in the car?

14          A.     I don't recall.

15          Q.     Okay. At some point, did you learn that  
16          Ms. Wingo had a sexual encounter with Mr. Pampu  
17          during the party on October 24th?

18          A.     Yes.

19          Q.     When did you learn this?

20          A.     I don't remember the exact time.

21          Q.     On page 3 of your deposition, the question  
22          starts on line 9, "At some point, did you learn that  
23          Ms. Wingo had sex with Mr. Pampu during the party  
24          that took place at the Compound on October 24,  
25          2015?" And you said, "Yes."

1           And the question asked, "How did you learn  
2 this?" And line 14 says, "My boyfriend Ben Zboray  
3 at the time had told me." Do you dispute the  
4 accuracy of that statement or those statements?

5           A.    No.  No.

6           Q.    Was there a time that you had an in-person  
7 conversation with Ms. Wingo about the sexual  
8 encounter with Mr. Pampu?

9           A.    Yes, but not detailed.

10          Q.    Okay.  And was this in-person discussion on  
11 your way to a sorority new member meeting?

12          A.    I believe so.  I know we were going to a  
13 sorority event, yes, like a meeting.

14          Q.    Okay.  And on the way to the sorority meeting,  
15 did Ms. Wingo say that Mr. Pampu raped her?

16          A.    No.

17          Q.    Or that he sexually assaulted her?

18          A.    No.

19          Q.    Did she tell you anything about the sexual  
20 encounter with Mr. Pampu?

21          A.    No.  No details.

22          Q.    On page 34 of your deposition, the question is:  
23 "What did you say to Ms. Wingo during that  
24 conversation?"  Line 25, you answer, "I asked her if  
25 she realized what happened the other night, and she

1 said yes. And I was like, do you know where? And  
2 she told me where."

3 And the next line says, "What did she say as to  
4 where it was?" And you say, "Behind the dumpster  
5 near Chipotle." Do you recall those statements?

6 A. Yes. I recall the details of the location.  
7 Yes.

8 Q. Okay. All right. And do you dispute the  
9 accuracy of those statements?

10 A. No.

11 Q. Was there anything you observed the night of  
12 October 24th that made you -- that made you believe  
13 Mr. Pampu raped her?

14 A. No.

15 Q. Was there anything that Ms. Wingo said to you  
16 the night of October 24th that made you believe  
17 Mr. Pampu raped her?

18 A. No.

19 Q. Did you ever believe that the sexual encounter  
20 between Erin and Drew became an issue?

21 A. Can you elaborate on that? An issue how?

22 Q. An issue with CJ.

23 A. Yes.

24 Q. Were you confused that the sexual encounter  
25 between Erin and Drew became an issue?

1 A. I wasn't confused it became an issue, no.

2 Q. Okay. Why weren't you confused?

3 A. They were brothers and she was talking to CJ  
4 and ended up having encounters with Drew, and it got  
5 announced to all of the pledge brothers.

6 Q. If something bad had happened to Ms. Wingo that  
7 night on October 24th, do you believe she would've  
8 told you about it?

9 MS. PORTER: Objection. Calls for speculation.

10 THE COURT: Yeah. Sustained.

11 THE WITNESS: I believe she would, yes. Sorry.

12 MS. LAU: Withdrawn.

13 BY MS. LAU:

14 Q. Ms. Corbin, there came a time when Ms. Wingo  
15 characterized the sexual encounter as nonconsensual.  
16 Do you recall that?

17 A. I don't recall her having that conversation  
18 with me.

19 Q. Did she ever tell you at any point that she  
20 believed she had been raped by Mr. Pampu?

21 A. I don't remember if there was a conversation.

22 Q. Did you come to that understanding in any other  
23 way that Ms. Wingo believed ---

24 MS. PORTER: I'm going to object. This is ---

25 THE COURT: Let her finish the question.

1 MS. PORTER: Okay.

2 THE COURT: Tell her not to answer.

3 BY MS LAU:

4 Q. Did you come to that understanding that  
5 Ms. Wingo believed that the sexual encounter was  
6 rape?

7 MS. PORTER: Objection.

8 MS. LAU: Okay.

9 MS. PORTER: Objection. It calls for  
10 speculation. If she wants to rephrase, but...

11 THE COURT: Right. I think that -- yeah ---

12 BY MS. LAU:

13 Q. I'm going to read page 58 of your deposition,  
14 Ms. Corbin. Line 2, we asked, "Did you -- did  
15 Ms. Wingo ever tell you that Mr. Pampu raped her?"  
16 And on line 4, you said, "Not in the words 'rape,'  
17 but more the words of not consensual sex." Do you  
18 dispute the accuracy of that statement?

19 A. No.

20 Q. Did you find that characterization confusing?

21 A. No.

22 Q. Did you ever make a statement that members of  
23 your friend group were confused as to why the sexual  
24 encounter became an issue?

25 MS. PORTER: Objection, Your Honor.

1 THE WITNESS: I really don't recall.

2 MS. PORTER: It calls for speculation. Her  
3 friend group confused?

4 MS. LAU: Did she ever make a statement? She  
5 made a statement.

6 THE COURT: But it still relates to the stuff  
7 that the people in the friend group would've thought  
8 or said, so I'm going to sustain the objection.

9 BY MS. LAU:

10 Q. Okay. Ms. -- Ms. Corbin, were you confused as  
11 why the sexual encounter between Ms. Wingo and  
12 Mr. Pampu became an issue?

13 MS. PORTER: Your Honor, asked and answered.

14 THE COURT: All right. I'm going to let it go  
15 in.

16 THE WITNESS: I don't recall. Are you asking  
17 current timing or what?

18 BY MS. LAU:

19 Q. At the time?

20 A. At the time, I don't recall.

21 Q. Did you ever -- did you believe that there was  
22 sexual tension between Ms. Wingo and Mr. Pampu?

23 A. Yes.

24 Q. Okay. Do you believe Ms. Wingo was sexually  
25 assaulted?

1 MS. PORTER: Objection.

2 THE COURT: Yeah, sustained.

3 MS. LAU: Okay. No further questions for this  
4 witness. Thank you, Ms. Corbin.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MS. PORTER:

8 Q. Good morning, Ms. Corbin. How are you today?

9 A. I'm good. How are you?

10 Q. I'm good. Thanks. I think this is going to be  
11 short and sweet.

12 A. Okay.

13 Q. I know it's been seven years, but you have  
14 given several statements regarding what you observed  
15 on the evening of October 24th and the morning of  
16 October 25th; is that correct?

17 A. Yes, ma'am.

18 Q. All right. So you've given statements  
19 previously on December 8, 2015, February 26, 2016,  
20 and then again in your deposition on December 6,  
21 2019; is that correct?

22 A. I believe so. Yes.

23 Q. Okay. And on October 24, 2015, you threw a  
24 party in your dorm room and invited your pledge  
25 sisters over, correct?

1 A. I did not throw a party. No.

2 Q. Well, what do you define as a party?

3 A. A party is a large group of individuals at a  
4 place for a long time without the intention of  
5 moving locations.

6 Q. Okay. Fair enough. Did you have Erin Wingo,  
7 Haley Sinclair, and Olivia Pescatore over to your  
8 dorm room to drink alcohol before attending the Phi  
9 Delta Theta party?

10 A. Yes, ma'am. Yes.

11 Q. All right. And I believe that on December 8,  
12 2015, you stated that you had a fifth of Fireball  
13 liquor; is that correct?

14 A. I did have a fifth in my dorm. Yes.

15 Q. Okay. And that when Erin Wingo arrived, it was  
16 three-fourths of the way full, correct?

17 A. I can't speak to that right now.

18 Q. Well, if -- if that's what's recorded from your  
19 December 8, 2015, statement, do you have any reason  
20 to dispute that?

21 A. I believe I had a fifth a bottle, so it's  
22 somewhere half. Yes.

23 Q. Well, I think your testimony at that time or  
24 your statement at that time was it was three-fourths  
25 full when you started and one-fourth full when you

1 left. Does that ring a bell?

2 A. If that's what I said.

3 Q. Okay. And then you went on to say that Erin  
4 Wingo drank most of it because you don't like  
5 Fireball; isn't that correct?

6 A. Correct.

7 Q. All right. And you also said that there was  
8 vodka there and that you had some vodka as well,  
9 correct?

10 A. Correct.

11 Q. All right. Then y'all walked to the Compound  
12 and there's this photograph that you were shown  
13 documenting the time that y'all stopped and took a  
14 photograph on the way from your dorm to the  
15 Compound, correct?

16 A. Yes, ma'am.

17 Q. All right. Now, you didn't remember you had  
18 taken that photograph until the plaintiff's private  
19 investigator came and approached you; isn't that  
20 correct?

21 A. I had no reason to go back. Correct.

22 MS. LAU: Objection. I don't know what the  
23 relevance is to who actually showed her the  
24 photograph.

25 MS. PORTER: Trying to establish everybody's

1 ability to remember what occurred that night after  
2 consuming this liquor.

3 THE COURT: All right. I'll -- I'll overrule  
4 the objection.

5 BY MS. PORTER:

6 Q. You had testified previously that you did not  
7 even recall taking that photograph until asked by a  
8 private investigator; is that correct?

9 A. I don't -- is there -- like, is that on record?

10 Q. It is. Would you like me to pull it up?

11 A. Yes, please.

12 Q. Okay. Give me just a second.

13 A. Thank you.

14 Q. Beg the Court's indulgence. All right. On  
15 page 107 of your deposition, starting at line 8, I  
16 say, "We're back to Exhibit No. 2. Earlier you  
17 testified that y'all stopped in two different places  
18 on the way to the Compound." And then I referred  
19 you back to a previous statement you had made on  
20 December 8th.

21 "Bullet point No. 4 says that you did not stop  
22 anywhere on the way to the party, which is correct?"  
23 Your answer, "The one I just stated. After this  
24 testimony was given, Erin had told me we stopped in  
25 Johnstone, and then I found the picture in my phone

1 later on because the PI brought it to my attention,  
2 that one of us could've taken a picture because he  
3 asked -- because no one had ever asked me if there  
4 was any pictures or anything done that night that  
5 had been taken, so that's when I found out about  
6 that." Does that refresh your memory?

7 A. Yes, ma'am. Thank you.

8 Q. All right. So you didn't remember stopping at  
9 Johnstone and you didn't remember taking the  
10 photograph, correct?

11 A. I wasn't requested to go into my phone to give  
12 an update. Yes, I didn't remember.

13 Q. Great. Okay. Now, when you are at the  
14 Compound -- well, let me back up. You and Ben  
15 Zboray were dating, were you not?

16 A. We were. Yes.

17 Q. Okay. And you -- he was pledge brothers with  
18 CJ Gahagan and Drew Pampu, correct?

19 A. Yes.

20 Q. Okay. And so you're headed over to this party  
21 to see Ben, correct?

22 A. Yes.

23 Q. And when you get to the party, y'all walk into  
24 the front house to the bar and get a beer, correct?

25 A. Yes.

1 Q. Okay. And then you go on the porch on the side  
2 of the front house and you hang out with Ben,  
3 correct?

4 A. Yes.

5 Q. You weren't really concerned what was going on  
6 with your friends because you were hanging out with  
7 your new boyfriend, correct?

8 A. That wasn't the reasoning, but, no, I was not  
9 concerned.

10 Q. Okay. All right. And at some point, Erin  
11 comes to you and she's upset because she's been  
12 blown off by CJ, correct?

13 A. Correct.

14 Q. And then she goes off to find Drew and to wish  
15 him or kiss him for his birthday, correct?

16 A. She went to go find Drew. Yes.

17 Q. Okay. And then you observe them and I believe  
18 your testimony was, "I observed Drew walking at the  
19 back of the Compound with Erin following him." Do  
20 you recall saying that?

21 A. Yes.

22 Q. Okay. And then you don't know where they went  
23 or what they did, correct?

24 A. No.

25 Q. All right. And when you're observing this,

1           you're on the porch, correct?

2           A.     Correct.

3           Q.     And they're at the backyard of the Compound,  
4           correct?

5           A.     They're by the tree.   Yes.

6           Q.     By the tree?

7           A.     That's kind of middle back.

8           Q.     Middle back.   And they're walking away from  
9           you, correct, towards the doll house?

10          A.     Don't remember exact location.   They're  
11          walking, but...

12          Q.     They're walk -- are they walking towards you?

13          A.     I don't recall.

14          Q.     Are you close enough to hear their  
15          conversation?

16          A.     No.

17          Q.     All right.   So you don't know if she was  
18          slurring her words, do you?

19          A.     Not when she was talking to Drew, no.

20          Q.     Okay.   And you're observing them from a  
21          distance; is that correct?

22          A.     Twenty feet.   Yes.

23          Q.     And you gave this jury the definition of a  
24          party a moment ago.   This is a party, right?

25          A.     Yes.

1 Q. And they're playing loud music, right?

2 A. I don't remember what the music situation was.

3 Q. Okay. And there are a lot of people there,  
4 right?

5 A. A decent crowd.

6 Q. Okay. And you've been drinking liquor in your  
7 dorm room and then beer at the Compound, correct?

8 A. Yes.

9 Q. All right. Now, some time elapses and you end  
10 up in the front yard with Ben taking you home  
11 because you were sick, correct?

12 A. I was nauseous, yes.

13 Q. Okay. And you -- as a matter of fact, you  
14 vomited, did you not?

15 A. I did. Yes.

16 Q. Okay. And you see Erin sitting on the steps  
17 crying hysterically, correct?

18 A. Yes.

19 Q. All right. As a matter of fact, on page 125,  
20 lines 3 through 13 in your deposition, you describe  
21 it as a drunk cry, do you not?

22 A. I don't recall if that's in my statement. I  
23 stand by it.

24 Q. Okay. You also testified during your  
25 deposition that she was crying and repeating, "Why

1 doesn't CJ love me" over and over; is that correct?

2 A. I remember the CJ part, yes.

3 Q. All right. And Ben's there with you, correct?

4 A. Yes.

5 Q. All right. Now, you've testified in the  
6 past -- well, strike that. Today you don't really  
7 recall the car ride back to the dorm room taking  
8 Haley, Olivia, and Erin back to her dorm room at  
9 Manning, do you?

10 A. I apologize. Did you say today I cannot  
11 recall?

12 Q. Correct. Today you -- you don't have an  
13 independent memory of that car ride, do you?

14 A. Not the actual car ride, no. I remember when  
15 we got out, yes.

16 Q. Okay. You remember getting out and throwing up  
17 again?

18 A. I remember Erin getting out. Yes.

19 Q. Would you -- are you disputing that you got out  
20 at the three-way stop and vomited again, that the  
21 car had to pull over so you could vomit?

22 A. No. If I said that, I'm going to stand by it.

23 Q. Okay. All right. And you -- well, strike  
24 that. You went home with Ben and spent the night  
25 with him, correct?

1 A. Yes.

2 Q. All right. Now, the next morning -- well, let  
3 me -- let me back up. In that car ride from the --  
4 from the time you picked Erin up off the steps  
5 crying hysterically until you dropped them off at  
6 Manning, nobody said anything about Erin and Drew  
7 having sex, correct?

8 A. I was in the front seat. I don't recall.

9 Q. Okay. You -- you have no knowledge of them  
10 having sex -- being told they had sex on that car  
11 ride, correct?

12 A. Correct.

13 Q. All right. Now, the following morning, Sunday,  
14 October 25, 2015, Ben Zboray and you wake up and he  
15 tells you Erin and Drew had sex last night, didn't  
16 he?

17 A. The next day I believe. I don't -- I think it  
18 was within the day, but, yes, he did tell me.

19 Q. All right. Well, do we want -- you know, we  
20 can go back over your deposition. Do we need to do  
21 that?

22 A. I stand by my statement from the deposition if  
23 there's a time there.

24 Q. Okay. So he told you the next morning and  
25 referenced his GroupMe with the pledge brothers,

1 correct?

2 A. Correct.

3 Q. So the first time you find out Erin and Drew  
4 had sex was from your boyfriend, Ben Zboray,  
5 correct?

6 A. Correct.

7 Q. And it was Sunday morning, correct?

8 A. I believe so. If I said it in my deposition, I  
9 stand by it.

10 Q. Okay. Now, Erin didn't go -- y'all had -- let  
11 me back up. Y'all had two weekly sorority meetings,  
12 correct? One with all the sorority and one with  
13 just the pledge sisters, correct?

14 A. Correct.

15 Q. And one was on Sunday night and one was on  
16 Monday night, correct?

17 A. I know chapter was Sunday. It was early  
18 mornings.

19 Q. It was early morning?

20 A. Early in the week. Sorry. I don't know if it  
21 was Monday, that second one. It could've been  
22 Monday or Tuesday. It was just early in the week.

23 Q. All right. This conversation that Ms. Lau  
24 discussed with you between yourself and my client,  
25 that occurred on Monday, October 26th, didn't it?

1 A. (Affirmative response.)

2 Q. Is that a "yes"?

3 A. Yes.

4 Q. Sorry. Head nods are hard for the court  
5 reporter to record, so I apologize.

6 A. No. You're fine.

7 Q. So you didn't talk physically face to face or  
8 over the phone to Erin Wingo on Sunday the 25th,  
9 correct?

10 A. No.

11 Q. Okay. Now, on Monday, October 26th, you asked  
12 Erin, "Are you aware of where you had sex," right?

13 A. Yes, I did.

14 Q. All right. And when you asked her that, and I  
15 can pull up the section. Tell you what, let me just  
16 go ahead and do that. You asked her in front of  
17 other sorority sisters, didn't you?

18 A. The same girl that I went to the party with,  
19 yes.

20 Q. All right. And it's on page 137 of your  
21 deposition. I just want to read your -- your  
22 answer. We're talking about this in the deposition  
23 and I just want to read your answer, lines 8 through  
24 15, okay?

25 A. Okay.

1 Q. I asked, "Why didn't you ask it that way?"  
2 Well, let me back up. You -- you said -- I asked,  
3 "Did you realize where you had sex?" That's how you  
4 phrased it to Erin. And you said, "I did because  
5 how else am I supposed to be like, you effed behind  
6 the Chipotle, like, dumpster? Like, that's kind of  
7 gross."

8 And I said to you on line 7, "Why didn't you  
9 ask it that way?" And you responded, "Because it  
10 was around three other girls and I really didn't  
11 want to out her if she didn't want it. I was just  
12 asking if she realized so she could provide the  
13 information of the Chipotle dumpster if she wanted  
14 to because I'm not going to go in front of, like,  
15 four girls in a sorority who are super judgmental  
16 and say that because it's just going to get to the  
17 entire sorority"; is that correct?

18 A. Yeah.

19 Q. All right. So you asked Erin in front of four  
20 super judgmental girls 48 hours after this event  
21 about it; is that correct?

22 A. I did.

23 MS. PORTER: Okay. Now, you've also  
24 testified -- you know what? I think I'm done.  
25 Thank you so much for your time, Ms. Corbin. Please

1 answer any questions that Mr. Moore may have of you.

2 MR. MOORE: Judge, I don't have any questions.

3 THE COURT: Any redirect?

4 MS. LAU: Yes, Your Honor.

5 THE COURT: All right.

6 REDIRECT EXAMINATION

7 BY MS. LAU:

8 Q. Ms. Corbin, you were asked whether -- rather  
9 you were -- it was pointed out that you didn't  
10 remember initially stopping at Johnstone. Do you  
11 recall your testimony to that effect?

12 A. I do. Yes.

13 Q. But did the photograph refresh your memory as  
14 to the stop at Johnstone?

15 A. No.

16 Q. Well, did you ---

17 A. That wasn't.

18 Q. Sorry. Go ahead, please.

19 A. Sorry. I was going to say that wasn't why I  
20 remembered. Erin told me.

21 Q. Understood. And when you were asked about not  
22 initially remembering taking the photograph, you had  
23 testified that you didn't recall because nobody  
24 asked; is that correct?

25 A. Yes.

1 Q. So once you were asked about taking photographs  
2 that night, you did recall you did, correct?

3 A. Yes. Yes.

4 Q. You were asked -- you were asked whether you  
5 weren't concerned with Erin because you were with  
6 your boyfriend, Mr. Zboray, that night at the party.  
7 Do you recall that testimony?

8 A. Yes.

9 Q. Well, were you concerned with Erin's safety at  
10 the party at all?

11 A. No. No.

12 Q. Earlier you were asked about making a statement  
13 as to the type of cry that you characterized  
14 Ms. Wingo's cry at the front steps. Do you recall  
15 that?

16 A. Yes.

17 Q. Do you recall saying a "drunk cry"?

18 A. I don't recall, but if it was in my deposition,  
19 then, yeah.

20 Q. Do you also recall saying it wasn't like a  
21 hysterical cry because she was still able to talk?

22 A. No. Those details weren't provided that I said  
23 that.

24 Q. Well, if I told you that that's the testimony  
25 you provided on page 125 of your deposition, lines

1 12 to 13, would you dispute the accuracy of that  
2 statement?

3 A. No.

4 Q. Was it unusual for Ms. Wingo to cry about CJ?

5 A. No.

6 MS. PORTER: Objection, Your Honor. Outside  
7 the scope of cross.

8 THE COURT: Sustained.

9 BY MS. LAU:

10 Q. Okay. Thank you. No -- oh, actually, you  
11 know, I'm sorry. I do have one more question.

12 You were asked about the discussion you had  
13 with Ms. Wingo in person on the walk to the sorority  
14 event on Monday the 26th. Do you recall that  
15 testimony?

16 A. Yes.

17 Q. Do you recall the tone of voice that Ms. Wingo  
18 used when she provided her answer in response?

19 A. I don't recall.

20 Q. Was she nonchalant?

21 A. I remember the question in my deposition, so I  
22 stand by my answer.

23 Q. Okay. So if I told you that that's what your  
24 testimony was in your deposition, you wouldn't  
25 dispute the accuracy of that?

1 A. No.

2 MS. LAU: Thank you very much, Ms. Corbin. No  
3 further questions. That concludes your testimony  
4 today. We really appreciate you appearing.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 (From 10:17 to 10:38 a.m., brief recess.)

8 THE COURT: Let's bring the jury in.

9 (At 10:38 a.m., jury entered the courtroom.)

10 THE COURT: All right. Ladies and gentlemen, I  
11 think we are ready. We decided to take a break too.  
12 I think we've got the -- I think the plaintiff's --  
13 make sure she's on there.

14 THE CLERK: Ms. Hafner?

15 THE WITNESS: Yes.

16 THE CLERK: Okay. I just want to make sure  
17 you're in.

18 THE COURT: Make sure she turns on her video.

19 THE CLERK: Can you turn on your video?

20 THE WITNESS: Yes, I can.

21 THE CLERK: Okay. Thank you.

22 THE COURT: All right. Plaintiff, you may call  
23 your next witness.

24 MR. FIGLIOZZI: Plaintiff calls Jami Hafner.

25 THE CLERK: Ms. Hafner, if you would, raise

1 your right hand.

2 THE WITNESS: (Complying.)

3 THE CLERK: Do you solemnly swear that the  
4 testimony you're about to give in this case to be  
5 the truth, the whole truth, and nothing but the  
6 truth so help you God?

7 THE WITNESS: Yes.

8 THE CLERK: Please state your full name for the  
9 record.

10 THE WITNESS: Jami Nicole Hafner.

11 JAMI HAFNER,  
12 having been produced and first duly sworn as a  
13 witness on behalf of the Plaintiff, then testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. FIGLIOZZI:

17 Q. Good morning, Ms. Hafner. Thank you for being  
18 here today. As you're appearing virtually, please  
19 wait until I complete my question before you provide  
20 your answer. The technology might not pick up both  
21 of us speaking at the same time, so I want to make  
22 sure the court reporter can take everything done,  
23 alright?

24 A. Yes.

25 Q. I want to ask you a few questions today about

1 an incident that occurred in October of 2015, while  
2 you were a student at Clemson University. What year  
3 did you begin attending Clemson?

4 A. Also 2015.

5 Q. And in 2015, were you a freshman?

6 A. Yes.

7 Q. During your freshman year at Clemson, were you  
8 friends with Colin Joseph Gahagan, also known as CJ?

9 A. Yes.

10 Q. And during your freshman year at Clemson, were  
11 you friends with Erin Wingo?

12 A. Yes.

13 Q. During your freshman year at Clemson, did you  
14 know Andrew Pampu?

15 A. Not as well as I did know CJ, but know of, yes.

16 Q. Were you friends with him?

17 A. I mean, freshman year, you like really make  
18 friends with everybody, so I would say, yes. Just  
19 not as close as I was with the other two.

20 Q. At some point on October 25, 2015, did you go  
21 to Ms. Wingo's dorm room?

22 A. The exact date, I don't know, but at one point,  
23 I did, yes.

24 Q. Okay. Do you recall giving a deposition on  
25 November 25, 2019?

1 A. Yes.

2 Q. And since you're not here and appearing  
3 virtually, I'm going to read some of the questions  
4 and responses from your deposition, and I'm just  
5 going to ask you to tell me whether those are  
6 accurate or not or whether you dispute their  
7 accuracy. Excuse me.

8 A. Okay.

9 Q. Okay. So on page 14 of your deposition, I  
10 asked you, "Do you recall whether you went to  
11 Ms. Wingo's room at any time on the morning of  
12 October 25, 2015?" Your answer, "Yes. So after we  
13 had spoken on the phone, I went to her room I guess  
14 around 11:30 or so." Do you dispute the accuracy of  
15 that testimony?

16 A. I don't.

17 Q. Was anyone in Ms. Wingo's room when you  
18 arrived?

19 A. Not that I remember, besides her.

20 Q. Do you remember what Ms. Wingo's emotional  
21 state was when you arrived at her room?

22 A. I mean, she was upset.

23 Q. Did Ms. Wingo tell you why she was upset?

24 A. She didn't tell me about -- from what I  
25 remember, it wasn't like, I'm upset because of this.

1 It was just kind of like a recap of things that had  
2 happened in the previous night.

3 Q. What did she tell you about what happened on  
4 the previous night?

5 A. I mean, honestly, today, I couldn't tell you in  
6 detail what we talked about, but I remember her  
7 being upset about like going to a party and it not  
8 going the way that she had envisioned it going.

9 Q. Well, if I read you your deposition testimony,  
10 would that refresh your memory?

11 A. Yeah.

12 Q. On page 15 of your deposition, starting at line  
13 6, I asked you, "Did Ms. Wingo tell you why she was  
14 upset?" Your answer was, "She did."

15 I then asked you, "Why was she upset?" Your  
16 answer was, "She was upset that she had sex with a  
17 boy who wasn't CJ. She was afraid that CJ was going  
18 to be upset with her in turn."

19 I then asked you, "Did she tell you who that  
20 boy was?" Your answer was, "Yes."

21 Then I asked you, "Who was that boy?" And your  
22 answer was, "Andrew Pampu." Do you dispute the  
23 accuracy of that testimony?

24 A. I do not.

25 Q. Did Ms. Wingo say that Mr. Pampu sexually

1 assaulted her the previous evening while you were in  
2 her room?

3 A. She -- the previous evening in her room?

4 Q. I'll rephrase my question. I can see how that  
5 could be confusing.

6 A. Okay.

7 Q. While you were in her room on October 24, 2015,  
8 did Ms. Wingo tell you that Mr. Pampu sexually  
9 assaulted her on October 24, 2015?

10 A. She did not in those words.

11 Q. While you were in her room on October 25, 2015,  
12 did Ms. Wingo say -- or tell you that Mr. Pampu  
13 raped her on October 24, 2015?

14 A. She did not.

15 Q. While you were in her room on October 25, 2015,  
16 did Ms. Wingo tell you that she had spoken to anyone  
17 earlier that morning about her sexual encounter with  
18 Mr. Pampu?

19 A. That's not something I remember ---

20 Q. If I read you ---

21 A. --- if I said that or not. Sorry.

22 Q. It's okay. If I read you your deposition  
23 testimony, would that refresh your memory?

24 A. Yes.

25 Q. So on page 25 of your deposition, starting at

1 line 3, I asked you, "Did Ms. Wingo tell you whether  
2 she had communicated with anyone else on the morning  
3 of October 25, 2015, regarding the events of the  
4 previous evening before you arrived at her." And  
5 then you answered, "Before I arrived, no." Do you  
6 dispute that testimony -- the accuracy of that  
7 testimony? Excuse me.

8 A. No. What I interpret that as is, I said that  
9 before I had gotten to her, she hadn't told me that  
10 she had talked to anybody. Is that what I had said?

11 Q. Well, I'll read it again for you.

12 A. Okay. Thank you.

13 Q. Sure. So page 25, line 3, my question is, "Did  
14 Ms. Wingo tell you whether she had communicated with  
15 anyone else on the morning of October 25, 2015,  
16 regarding the events of the previous evening before  
17 you arrived at her?" And then there's a gap in the  
18 transcript. I don't know if the court reporter  
19 didn't get it down, but my question ends there. And  
20 then your answer was, "Before I arrived, no." Do  
21 you dispute the accuracy of that testimony?

22 A. I do not.

23 Q. To your knowledge, did Ms. Wingo speak to  
24 Mr. Gahagan about her sexual encounter with  
25 Mr. Pampu before you arrived at her room on the

1 morning of October 25, 2015?

2 A. Umm, the timeline of everything is just a  
3 little bit hazy for me right now. I apologize. I  
4 don't think -- I mean, I remember when she called  
5 me, it wasn't like discussed a lot until I had  
6 gotten to her room. So I think at that point, they  
7 had spoken, but that wouldn't be something I would  
8 remember for sure.

9 Q. Well, if I read you your deposition testimony,  
10 would that refresh your memory?

11 A. Yes. Sorry.

12 Q. It's okay. So we're still on page 25, starting  
13 at 8, I asked you, "So on the morning of October 25,  
14 2015, Ms. Wingo had not communicated with  
15 Mr. Gahagan about the events of the previous night  
16 before you arrived at her room?" And then there was  
17 a discussion clarifying that between the attorneys  
18 present. Your answer, "If I know that CJ?"

19 And then I clarified the question by saying,  
20 "If Erin had contacted CJ about the events of the  
21 previous evening?" And your answer was, "Not that I  
22 remember through the conversation, like our actual  
23 conversation." Do you have any reason to dispute  
24 the accuracy of that testimony?

25 A. I don't.

1 MR. FIGLIOZZI: Thank you, Ms. Hafner. I have  
2 no more questions, but please answer any questions  
3 that defense counsel has.

4 THE WITNESS: Okay. Thank you.

5 MR. GRANTLAND: May it please the Court?

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MR. GRANTLAND:

9 Q. Good morning, Ms. Hafner.

10 A. Good morning.

11 Q. I'm John Grantland. I represent Erin Wingo and  
12 I have a few questions for you. This event that  
13 you've been asked -- this incident that you've been  
14 asked about happened over seven years ago, correct?

15 A. Yes.

16 Q. And your memory of the incident or your memory  
17 of your discussion with Erin is probably not as  
18 fresh now as it was seven years ago, correct?

19 A. Yes. On the deposition that I gave a couple of  
20 years ago.

21 Q. Sure. You were not with Erin or Mr. Pampu on  
22 the night of their sexual encounter?

23 A. No.

24 Q. You were not present when the sexual assault  
25 occurred?

1 MR. FIGLIOZZI: Objection.

2 THE WITNESS: I was not.

3 MR. FIGLIOZZI: Objection, Your Honor.

4 Improper characterization. Present on the night the  
5 sexual assault occurred. He's referring to it as a  
6 sexual assault.

7 THE COURT: Yeah, I'm going to overrule it.

8 BY MR. GRANTLAND:

9 Q. You don't know what Mr. Pampu said or what Erin  
10 said to each other?

11 A. I don't.

12 Q. You don't know whether Erin consented or didn't  
13 consent to sex?

14 A. I don't. I was not there.

15 Q. You don't know how much alcohol Erin had to drink  
16 before the sexual assault occurred?

17 A. No. I was not there.

18 Q. You don't know how intoxicated she was when the  
19 sexual assault occurred?

20 A. No. I was not there.

21 Q. You didn't see her until Sunday morning?

22 A. Yes.

23 Q. And when you went to Erin's dorm to follow-up  
24 on your questions with Mr. Pampu's attorney, when  
25 you went to Erin's dorm, she was ill -- I think you

1           said in your deposition she was ill and crying; is  
2           that correct?

3           A.     Yes.

4           Q.     And I think you also said she was upset; is  
5           that correct?

6           A.     Yes.

7           Q.     And you got in bed with her to be her friend  
8           that morning, didn't you?

9           A.     I did.

10          Q.     And Erin told you she thought she had sex with  
11          Mr. Pampu; is that correct?

12          A.     Yes.

13          Q.     You don't know if Erin used the word "sex" or  
14          how she worded it; is that correct?

15          A.     I don't know the exact wording, no.

16          Q.     And may I fresh your recollection with your  
17          deposition testimony?

18          A.     Sure.

19          Q.     Okay. I think on page 76, the question was,  
20          "So she used the word 'sex'?" And your answer, "I  
21          don't know exactly what word she had used, but, I  
22          mean?" Does that -- is that what you said in your  
23          deposition?

24          A.     Yes.

25          Q.     And then later another question on page 76,

1 line 14, "So you don't remember exactly what she  
2 said, but it left you with the impression that she  
3 had sex with Drew? And your answer, "I don't  
4 remember the wording that she had used." Was that  
5 your testimony?

6 A. Yes, sir.

7 Q. Okay. And what you said in your deposition was  
8 true; is that correct?

9 A. Yes, it is.

10 Q. Erin said Mr. Pampu took her behind a shed to  
11 have sex?

12 A. Yes. Shed or the dumpster was used at one  
13 point.

14 Q. And you don't know exactly what happened behind  
15 this shed?

16 A. I don't.

17 Q. You have no idea whether the sex was consensual  
18 or not, do you?

19 A. I don't. I was not there.

20 Q. In fact, Erin never told you that the sex was  
21 consensual, did she?

22 A. She didn't say it was or wasn't.

23 Q. And I can refer you to page 49 of your  
24 deposition, line 1.

25 A. Okay.

1 Q. Question, "Did Ms. Wingo ever tell you that she  
2 and Mr. Pampu had consensual sex on October 24,  
3 2015?" Your response, "Not that I can recall." Is  
4 that your testimony?

5 A. Yes.

6 Q. Erin did tell you she was intoxicated when the  
7 sexual encounter with Mr. Pampu occurred, didn't  
8 she?

9 A. She -- yes.

10 Q. You have no idea how intoxicated she was?

11 A. I don't.

12 Q. Erin told you she wanted to say no, but  
13 couldn't. Do you remember that testimony?

14 A. Yes.

15 Q. And you assumed Erin could not say no because  
16 she was intoxicated?

17 A. Can you repeat the question?

18 Q. You assumed from the conversation that Erin did  
19 not want to have sex with Mr. Pampu? I'm sorry. I  
20 skipped a question. The question I first asked you  
21 and I apologize. Can you hear me okay?

22 A. Oh, yeah. I can hear you.

23 Q. Okay. You assumed Erin could not -- could not  
24 say no because she was intoxicated?

25 MR. FIGLIOZZI: Objection. Speculation.

1 THE WITNESS: Umm ---

2 MR. GRANTLAND: Stay right there. Stop. Stop.

3 THE WITNESS: Sorry. I can't hear anyone, but  
4 you. I'm sorry.

5 THE COURT: Okay.

6 MR. GRANTLAND: I'm asking her -- I'm asking  
7 the witness if she assumed from -- from her  
8 discussions with Erin that Erin -- Erin told her she  
9 could not say no. And I'm asking her if it was her  
10 assumption that Erin could not say no because she  
11 was intoxicated.

12 MR. FIGLIOZZI: He's asking about what  
13 her understanding of Erin's mental ---

14 THE COURT: I think that goes -- that's  
15 speculating, so I'm going to sustain the objection.

16 BY MR. GRANTLAND:

17 Q. Are you there? Can you hear me?

18 A. I can.

19 Q. You assumed from the conversation Erin did not  
20 want to have sex with Mr. Pampu?

21 MR. FIGLIOZZI: Objection.

22 THE COURT: Yeah, sustain the objection.

23 BY MR. GRANTLAND:

24 Q. I'm going to -- I don't know if you have any of  
25 your text that you had with Ms. -- with Erin the

1 evening or the morning of the incident. Do you have  
2 those handy?

3 A. Yeah, I can pull them up.

4 Q. And I'm just going to ask you about a few of  
5 them.

6 A. Okay.

7 Q. Erin shared with you Mr. Pampu's text where he  
8 was bragging about having sex with a chick by the  
9 garbage thing behind Chipotle.

10 MR. FIGLIOZZI: Objection.  
11 Mischaracterization.

12 THE WITNESS: Do you have a page number? Is it  
13 something from the deposition?

14 THE COURT: Is that ---

15 MR. GRANTLAND: This -- this is the text  
16 between her and Ms. Wingo.

17 MR. FIGLIOZZI: He's using the term "bragging"  
18 that Mr. Pampu did not send.

19 MR. GRANTLAND: I'll -- I'll just -- I'll  
20 rephrase the question. I'll take out the word  
21 bragging.

22 THE COURT: All right. Rephrase your question.

23 BY MR. GRANTLAND:

24 Q. Ms. Hafner, do you recall Erin sharing with you  
25 Mr. Pampu's text about having sex with a chick by

1 the garbage thing behind Chipotle?

2 A. Yes. I think it was GroupMe.

3 Q. Yes. And do you recall your response back to  
4 Erin was, "What? That is not quite a shed"?

5 A. Yes.

6 Q. And Erin's response back to you was, "I had no  
7 idea"; is that right?

8 A. Yes.

9 Q. And you were surprised by Mr. Pampu's text,  
10 weren't you?

11 A. Yes.

12 Q. It was crude and demeaning, wasn't -- wasn't  
13 it?

14 A. I would say, yes. I don't know if someone's  
15 speaking in the background. Sorry.

16 Q. Now, Erin told you she thought the sex was by a  
17 shed. Mr. Pampu's text says it was by a garbage  
18 thing. Either way, it was clear Erin did not know  
19 where she was; is that correct?

20 MR. FIGLIOZZI: Objection.

21 THE COURT: Sustained.

22 MR. GRANTLAND: I'll move on, Your Honor. I'm  
23 going to move on to another question.

24 BY MR. GRANTLAND:

25 Q. In another text, Ms. Hafner, correct me if I'm

1 wrong, Erin told you that -- let me find it real  
2 fast. In another text that same morning,  
3 Ms. Hafner, do you remember Erin telling you that  
4 she had to tell her mom about it?

5 A. I don't remember that at this moment, but if  
6 you remind me of something that would remind me, I'm  
7 sure I could tell you if that was accurate.

8 Q. Right. Well, her text was basically -- and I'm  
9 not going to read the -- her entire text to you, but  
10 she basically said, "Someone reported Drew raping  
11 me, and now I'm dealing with that. Come down  
12 because I had to tell her -- my mom wants to come  
13 down because I had to tell her today I was raped  
14 Saturday night." And you say, "Okay."

15 And then you said, "How do you feel about  
16 that?" And then you said, "I mean, if you don't  
17 even remember being there, I would say it needs to  
18 be reported." Do you remember that conver -- do you  
19 remember that text conversation with Erin?

20 A. Yes.

21 Q. And that's what you said?

22 A. Yes.

23 Q. And you were clear that if Erin didn't remember  
24 being there, you -- you thought it needed to be  
25 reported?

1 A. That's what I would do. Yes.

2 Q. Okay. And then I want to ask you about some  
3 other texts and then I'll be finished with the  
4 texts.

5 A. Okay.

6 Q. This is all in the same morning. I think Erin  
7 texted you that she did not ask for someone to  
8 report it or classify it as rape. And you respond  
9 in a text, "I know you didn't and I know sometimes  
10 it makes it tougher on you, but I'm glad someone  
11 did. It's a reality check for anyone that that is  
12 not okay. It is not okay for him to do that to you  
13 and definitely not okay to talk about it the way he  
14 did in his GroupMe. That pissed me off." Do you  
15 recall saying that to Erin?

16 A. I do.

17 Q. And Erin responded, "I felt helpless. I really  
18 did." And do you remember Erin saying that to you?

19 A. Yes.

20 Q. And you -- you responded back, "And you  
21 probably were." I guess you probably were helpless.  
22 Is that what you meant?

23 A. Yes.

24 Q. And then you also said, "That's just a reminder  
25 never to drink that much and be by yourself." Do

1 you recall those words to her?

2 A. I do.

3 Q. Bear with me one second, Ms. Hafner. And,  
4 Ms. Hafner, just to clarify, you and Ms. Wingo,  
5 y'all -- you're no longer friends with Ms. Wingo; is  
6 that correct?

7 A. Yeah.

8 Q. I mean, y'all haven't spoken to each other  
9 since 2015 or 2016?

10 A. Yeah, more like 2016.

11 MR. GRANTLAND: Thank you. No further  
12 questions. Thank you, Ms. Hafner.

13 THE WITNESS: Okay.

14 MR. MOORE: No questions.

15 THE COURT: Any redirect?

16 MR. FIGLIOZZI: Yes.

17 REDIRECT EXAMINATION

18 BY MR. FIGLIOZZI:

19 Q. Ms. Hafner, on October 25, 2015, did  
20 Mr. Gahagan visit Ms. Wingo in her room after you  
21 left?

22 MR. GRANTLAND: Objection, Your Honor. This  
23 is -- I didn't mention the word Mr. Gahagan in  
24 my ---

25 THE WITNESS: I remember talking about it. I

1 just don't remember ---

2 MR. GRANTLAND: Mr. Gahagan's name did not come  
3 up during my cross-examination. This is improper  
4 redirect.

5 MR. FIGLIOZZI: Well, he asked her questions  
6 about text messages that occurred on October 28th.  
7 I'm just trying to fill in the gaps as to why ---

8 THE COURT: All right. You can go over the  
9 text messages, but I'm going to sustain the  
10 objection.

11 BY MR. FIGLIOZZI:

12 Q. Do you remember the text messages that  
13 Mr. Grantland went over with you, the last set of  
14 text messages?

15 A. Yes.

16 Q. And those message were sent -- were those  
17 messages sent on October 28, 2015?

18 A. That is not something that I will know right  
19 now.

20 Q. Okay.

21 A. Sorry.

22 Q. Well, if I -- if I represented to you that they  
23 were sent on October 28, 2015, would you have any  
24 reason to dispute that?

25 A. No. I do not have the texts in front of me.

1 Q. And that was three days after you went to  
2 Ms. Wingo's room on October 15, 2015, right?

3 A. The 18th being three days after the 15th, yes.

4 Q. The 28th -- sorry. The 28th being three days  
5 -- excuse me. The 28th being three days after the  
6 25th of October 2015?

7 A. Yes.

8 Q. Bear with me for one minute. And referring to  
9 one of the messages that you went over with defense  
10 counsel where you said, "That pissed me off." Do  
11 you remember that message?

12 A. Yes.

13 Q. Okay. And when you sent this message, you  
14 weren't aware that Drew wasn't the person who sent  
15 the text about the sexual encounter to the GroupMe,  
16 were you?

17 A. I think the screen shot was shared with me,  
18 which means I would've known who sent it, but never  
19 directly.

20 Q. Was it -- was it your understanding that --  
21 well, what was your understanding of who sent the  
22 message to the GroupMe?

23 A. I'm pretty sure it was another person -- wait.  
24 I'm actually not sure because I -- I feel like I  
25 remember maybe one person saying something, and then

1 later maybe Drew saying something, but I'm not  
2 accurate. I'm not sure.

3 Q. Do you recall a statement -- do you recall  
4 giving a statement on December 9, 2015, related  
5 to ---

6 MR. GRANTLAND: Objection, Your Honor. Outside  
7 the scope of redirect.

8 MR. FIGLIOZZI: Well, it goes to a question  
9 that was asked and testimony that was elicited on  
10 the cross.

11 THE COURT: Okay. I'm going to let him.

12 BY MR. FIGLIOZZI:

13 Q. Ms. Hafner, do you recall giving a statement on  
14 December 9, 2015, related to the sexual encounter  
15 between Ms. Wingo and Mr. Pampu?

16 A. I do.

17 Q. And do you recall saying, "Erin then told Jami  
18 that she had sex with Drew behind a shed behind the  
19 Compound"?

20 MR. GRANTLAND: Objection, Your Honor. This is  
21 a -- this is a double hearsay statement. This is --  
22 he's using hearsay upon hearsay.

23 THE COURT: All right. Sustained.

24 MR. FIGLIOZZI: Your Honor, with respect, I  
25 believe Mr. Grantland also elicited similar

1 testimony from the witness on his cross-examination  
2 asking her what she was told.

3 MR. GRANTLAND: There was no objection.

4 THE COURT: Move on.

5 BY MR. FIGLIOZZI:

6 Q. Ms. Hafner, do you recall if Ms. Wingo ever  
7 told you that she had sex with Drew behind a shed  
8 behind the Compound?

9 A. Yes.

10 Q. And did she tell you that?

11 A. Yes.

12 MR. FIGLIOZZI: Thank you, Ms. Hefner.

13 THE COURT: All right. Tell her that's the end  
14 of your testimony.

15 MR. FIGLIOZZI: You may step down. You're  
16 done. Thank you very much.

17 (Witness excused.)

18 THE COURT: All right. And y'all -- is this  
19 the deposition portion?

20 MS. LAU: Yes, Your Honor. At this time we'd  
21 like to -- we've had some designations.

22 THE COURT: Right. And now let's -- let's kind  
23 of do all of this and get that set up.

24 So, ladies and gentlemen, while we do that, I'm  
25 going to ask you to step back in your jury room.

1 Don't discuss the case, and we'll bring you out in  
2 just a few minutes.

3 (At 11:08 a.m., jury exited the courtroom.)

4 THE COURT: We'll kind of move all of this  
5 stuff. I believe y'all have agreed to all the  
6 designations.

7 MS. LAU: Yes, we have.

8 THE COURT: All right. And Mr. Moore has asked  
9 if my law clerk can be the person who actually reads  
10 the portions. That's fine with me. If she's okay  
11 with it, I'm okay with it. Let's take a short  
12 break.

13 (From 11:09 to 11:19 a.m., brief recess.)

14 THE COURT: All right. Bring the jury in.

15 (At 11:19 a.m., jury entered the courtroom.)

16 THE COURT: Please be seated.

17 THE JURORS: (Complying.)

18 THE COURT: All right. Ladies and gentlemen,  
19 as -- as you've seen, there are many ways to present  
20 testimony. In addition to live testimony, we have  
21 testimony by Webex. Sometimes we have video  
22 depositions where people have actually taken a  
23 deposition before trial. And there's another way,  
24 and that's where they've taken depositions in this  
25 matter to present to you in court.

1           Now, at the time those depositions are taken,  
2           and those are statements that are taken down and  
3           transcribed by a court reporter. And those -- those  
4           are just the same as if a person was live and in the  
5           courtroom. You use the same weight given the weight  
6           and value that you feel is appropriate.

7           In this particular case, instead of standing up  
8           and just reading that deposition, a lot of times  
9           attorneys like to reenact, even though the person's  
10          not here. And they've asked that my law clerk serve  
11          as the witness. In other words, the lawyers will  
12          ask the questions that they did at the time of the  
13          deposition, and my law clerk acting as the witness  
14          will give the response that that witness gave at the  
15          time. I don't want you to think that she was  
16          involved in the case.

17          I do want to explain kind of what's going on,  
18          so they'll ask the questions that they or someone on  
19          their behalf asked at the deposition, and the -- my  
20          law clerk will answer what that witness would answer  
21          at the time. And, again, they're under oath. It's  
22          to be considered the same as all other evidence.

23          With that being said, Ms. Lau, I'd ask that you  
24          call your next witness or Mr. Figliozzi.

25          MR. FIGLIOZZI: Plaintiff calls Benjamin D.

1 Zboray.

2 DIRECT EXAMINATION

3 BY MR. FIGLIOZZI:

4 Q. Can you please turn to page 75 of your  
5 transcript. And I will read the question in the  
6 transcript, and then I would ask you to please  
7 provide the answer.

8 THE COURT: Before you do that, if you could  
9 preface with the part where the date was provided  
10 and the where the oath was administered.

11 MR. FIGLIOZZI: This is the transcript of a  
12 deposition that occurred on April 27, 2020, and the  
13 oath was administered in Myrtle Beach, South  
14 Carolina.

15 THE COURT: Okay.

16 BY MR. FIGLIOZZI:

17 Q. Page 75, starting at line 4. "Do you recall  
18 having a discussion with any of the other pledge  
19 brothers about CJ, Erin, or Drew?"

20 A. "I don't specifically recall. No."

21 Q. Please turn to page 103 of the transcript,  
22 starting on line 1. "Did you state that Ms. Wingo  
23 asked you about Mr. Pampu's whereabouts when she  
24 arrived at the party of the Compound on October 24,  
25 2015?"

1 A. "I did say that. Yes."

2 Q. "And was your statement true?"

3 A. "To my knowledge, yes."

4 Q. "Did you state that when Ms. Wingo first saw  
5 Mr. Pampu at the party, she went up to him and gave  
6 him a hug and a kiss on the lips?"

7 A. "I did say that. Yes."

8 Q. "And was that statement true?"

9 A. "To my knowledge, yes."

10 Q. Please turn to page 104, starting at line 1.

11 "But you stated that when you next saw Ms. Wingo,  
12 she was sitting on the front steps of the Compound  
13 crying and asking why Mr. Gahagan did not love her  
14 anymore, correct?"

15 A. "That is what I said. Yes."

16 Q. "Was that statement true?"

17 A. "To my knowledge. Yes."

18 Q. "Did you state that Ms. Wingo was crying about  
19 Mr. Gahagan during the car ride from the Compound to  
20 her dorm?"

21 A. "It does reference that there. Yes."

22 Q. "Was that statement true?"

23 A. "I can't recall the specifics of the car ride,  
24 but at the time the statements that I made were true  
25 to my knowledge."

1 Q. "Did you state that you did not see Ms. Wingo  
2 throw up during the car ride from the Compound to  
3 her dorm?"

4 A. "That is what it says there. Again, I don't  
5 independently recall that car ride."

6 MR. FIGLIOZZI: Your Honor, just in this  
7 answer, I would ask ---

8 THE COURT: Just tell her to read to a certain  
9 point.

10 MR. FIGLIOZZI: Right. Please only read to  
11 "but the statements I made."

12 THE COURT: I guess re-ask the question.

13 BY MR. FIGLIOZZI:

14 Q. Yes. And please stop at the word "made" there.  
15 "Did you state that you did not see Ms. Wingo throw  
16 up during the car ride from the Compound to her dorm  
17 room?"

18 A. "That is what it says there. Again, I don't  
19 independently recall that car ride, but the  
20 statements I made."

21 Q. And then please begin reading again with the  
22 word "were."

23 A. "Were true to my knowledge at that time."

24 Q. Thank you. And please turn to page 105,  
25 starting on line 2 -- oh, starting on line 1. I'll

1 just read it. "You stated Erin never mentioned Drew  
2 or hooking up to Ben on Saturday night. She was  
3 just crying about CJ not loving her and something  
4 about CJ's involvement with another girl.

5 Now, in that statement, were you referring to  
6 Ms. Wingo's statement from the time you saw her on  
7 the front steps of the Compound until you dropped  
8 her off at her dorm?"

9 A. "I believe so, yes. I don't independently  
10 recall that, but based on the line of questioning,  
11 that is what I would think. Yes."

12 Q. "Is that statement true?"

13 A. "To my knowledge, yes, it was true."

14 Q. "Do you recall Ms. Wingo ever mentioning  
15 Mr. Pampu at any time after you saw her on the front  
16 steps of the Compound?" Okay. See that copy of  
17 that?

18 MR. FIGLIOZZI: Can we conference with defense  
19 counsel?

20 THE COURT: Yes.

21 (Sidebar discussion.)

22 MR. FIGLIOZZI: I apologize for that delay. On  
23 your copy, there was some lines crossed out, but  
24 we're going to go through the questions and answers  
25 down to line 22. Okay?

1 THE WITNESS: Okay.

2 MR. FIGLIOZZI: So I'll re -- re-ask my  
3 question starting at line 15.

4 MR. GRANTLAND: What page?

5 MR. FIGLIOZZI: Oh, page 105.

6 MR. GRANTLAND: Thank you.

7 BY MR. FIGLIOZZI:

8 Q. "Do you recall Ms. Wingo ever mentioning  
9 Mr. Pampu at any time after you saw her on the front  
10 steps of the Compound?"

11 A. "I don't specifically recall. No."

12 Q. "Do you recall Ms. Wingo ever mentioning that  
13 she had hooked up with Mr. Pampu at any time after  
14 you saw her on the front steps of the Compound?"

15 A. "I don't recall her saying that. No."

16 MR. FIGLIOZZI: Thank you.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. GRANTLAND:

20 Q. Good morning, Ms. Zboray. If you could turn to  
21 page 31 of the deposition transcript. I highlighted  
22 mine and dog-eared for you. Turn to page 31. I'm  
23 going to read from ---

24 THE COURT: This is just a different -- this is  
25 a transcript. It's the same?

1 MR. GRANTLAND: It's the original transcript,  
2 yes, sir.

3 THE COURT: All right.

4 BY MR. GRANTLAND:

5 Q. I'm going to read from line 21 through 25 of  
6 page 31. Question: "I'm going to ask you now  
7 specifically about the weekend of October 24th and  
8 25th, 2015. Do you remember that weekend?"

9 A. "Vaguely."

10 Q. Question: "What do you remember?" Turn to  
11 page 32.

12 A. "I remember there was a party. I certainly  
13 remember attending the party. I remember meeting  
14 Rachel there and I remember leaving with Rachel.  
15 Outside of that, most of the details are pretty  
16 sporadic in my mind."

17 Q. And now we'll go to make 36 published from line  
18 18 down to 45. Just tell me when you're there,  
19 Ms. Zboray.

20 A. Yes.

21 Q. Question: "And you said this -- this was a  
22 sober night for you. What does that mean?"

23 A. "Well, I don't know why I refer to it as a  
24 sober night at the time. It certainly was not a  
25 sober night. I obviously did have a few drinks.

1 All I can assume is that I meant that I was not  
2 arriving with any intention of getting highly  
3 intoxicated."

4 Q. And we can go to page 48 and I'll publish lines  
5 15 through 19.

6 MS. LAU: Objection. Speculation. This was  
7 the one we previously objected to.

8 (Counsel discussion held off the record.)

9 BY MR. GRANTLAND:

10 Q. Question: "Was Erin in the same condition  
11 based on your recollection?"

12 A. Based on my recollection, she was intoxicated.  
13 I don't recall exactly to compare in contrast the  
14 two."

15 Q. Okay. Let's go to page 55. I'll publish lines  
16 3 through 20. Tell me when you're there.

17 A. I'm there.

18 Q. Question: "Do you recall Drew handing Erin off  
19 to you?"

20 A. "No."

21 Q. "Do you recall Drew telling you at the time  
22 that he had sex with Erin?"

23 A. "No."

24 Q. "Do you recall telling Drew, 'Go on back into  
25 the party. I'll take care of Erin?'"

1 A. "No."

2 Q. "What do you recall about the encounter at the  
3 front of the house?"

4 A. "I remember seeing Rachel being concerned that  
5 she looked like she was throwing up. I didn't see  
6 her visually throw up at that time, but in my  
7 recollection, I do remember that she was kind of  
8 like doubled over. I think her friends were trying  
9 to help her out a little bit. I remember being  
10 concerned for her, and I do remember vaguely Erin  
11 being upset."

12 Q. Let's go to page 56. I'll publish lines 4  
13 through 9. Question: "When you see Erin is upset  
14 on the steps, what do you mean by -- what makes you  
15 believe that she's upset?"

16 A. "It's a vague memory, but I remember that she  
17 was crying or something along the likes. I don't  
18 remember exactly though."

19 Q. Now, let's go to page 92, and I'll publish  
20 lines 13 through 22. Question: "So you don't know  
21 what happened between the two of them when they left  
22 the Compound?"

23 A. "No."

24 Q. And you really don't have a recollection of  
25 Erin's condition on the front steps, in the car, and

1 when she got out of the car that evening?"

2 A. "I don't have any independent recollection,  
3 separate of what's in the exhibit."

4 Q. "And you never spoke with Erin after this  
5 party?"

6 A. "Not that I can recall."

7 Q. Let's go to page 100. I'll publish lines 21  
8 through 25. "Do you have an independent  
9 recollection of observing Mr. Pampu and Ms. Wingo  
10 together at any point during the party?"

11 A. "I have a vague recollection of seeing them  
12 together, but, again, I'd say vague at best."

13 MR. GRANTLAND: Thank you. No further  
14 questions.

15 THE COURT: Any redirect?

16 MR. FIGLIOZZI: No, Your Honor.

17 THE COURT: All right. Step down.

18 (Witness excused.)

19 THE COURT: All right. Call your next witness.

20 MR. FIGLIOZZI: Plaintiff calls Leslie Snider.

21 DIRECT EXAMINATION

22 BY MR. FIGLIOZZI:

23 Q. All right. And this is a deposition that  
24 occurred on November 20, 2019, and the oath was  
25 administered in Columbia, South Carolina.

1           Please turn to page 9 of the transcript.

2           A.    (Complying.)

3           Q.    Starting on line 3.  "And what institution did  
4           you attend for your undergraduate degree?"

5           A.    "Clemson University."

6           Q.    "When did you graduate from Clemson?"

7           A.    "May 2016."

8           Q.    And going down to line 15.  "While you were a  
9           student at Clemson, did you have an on-campus job?"

10          A.    "Yes, I did."

11          Q.    "And what was that job?"

12          A.    "I worked as a resident assistant."

13          Q.    "And were you a resident assistant during the  
14          2015-2016 academic year?"

15          A.    "Yes, I was."

16          Q.    "And in which dorm did you serve as a resident  
17          assistant during the 2015-2016 academic year?"

18          A.    "In Manning Hall."

19          Q.    "Was Erin Wingo a resident of this dorm?"

20          A.    "Yes, she was."

21          Q.    "Were you responsible for the floor in your --  
22          as a resident assistant, were you responsible for  
23          the floor Ms. Wingo lived on?"

24          A.    "Yes, I was."

25          Q.    "What were your duties as a resident

1 assistant?"

2 A. "My duties entailed creating a positive  
3 environment for the residents. Creating a good  
4 atmosphere for academic growth, for personal growth.  
5 Manning was a freshman dorm, so as an RA, one of my  
6 specific duties was making sure they were able to  
7 transition well into the college environment.

8 I also had to do administrative duties, such  
9 as, you know, checking out keys, such as making sure  
10 there weren't any damage done to any of the property  
11 on the floor or in the building, running the front  
12 desk, things like that."

13 Q. Please go page 12 of the transcript, and  
14 starting on line 4. "Okay. Did you receive any  
15 training from Clemson regarding the difference  
16 between being drunk or intoxicated and being  
17 incapacitated by the consumption of alcohol?"

18 A. "I received alcohol awareness training via my  
19 resident assistant training."

20 Q. "And what did that entail?"

21 A. "That entailed during the resident assistant  
22 training looking at examples of whenever a person  
23 might be under the influence. So being able to  
24 notice slurred speech, being able to notice if eyes  
25 are dilated, being able to notice if they can walk

1 properly, being able to notice if they are acting  
2 like themselves or if they are not. Just the basics  
3 signs to look out for."

4 Q. "Okay. As a resident assistant, did you  
5 receive training on how to deal with student who  
6 were intoxicated as a result of alcohol consumption  
7 outside of what you had just told me?"

8 A. "Yes, we have."

9 Q. "And what did that training entail?"

10 A. "Typically, whenever someone is intoxicated,  
11 the number one concern for a resident assistant is  
12 to make sure first and foremost that they are safe.  
13 So making sure, you know, if they need water, get  
14 them water. You know, if they need -- whatever it  
15 is that they need, making sure that they are safe.  
16 And then, typically, whenever a person was  
17 intoxicated, we would've had to have written up a  
18 report on the incident because Manning specifically  
19 from my position, Manning Hall was a freshman dorm."

20 Q. "Okay."

21 A. "Which means it was alcohol free. And so that  
22 was the training. Make sure they're safe, and then  
23 do a personal write-up of the report."

24 Q. Can I have a moment, Your Honor? I apologize.  
25 Okay. Could you please go to page 18?

1 A. (Complying.)

2 Q. Starting at line 1. "Do you recall the evening  
3 of October 24, 2015, into the early morning hours of  
4 October 25, 2015?"

5 A. "Yes, I do."

6 Q. "Were you the -- were you on duty as a resident  
7 assistant in Manning Hall during the evening of  
8 October 24, 2015, and the early morning hours of  
9 October 25, 2015?"

10 A. "Yes, I was."

11 Q. "Did you speak with Erin Wingo at any point  
12 during the evening of October 24, 2015, and the  
13 early morning hours of October 25, 2015?"

14 A. "Yes, I did."

15 Q. "Where did you speak with Ms. Wingo?"

16 A. "I was leaving out of my room and Erin's room  
17 was directly adjacent to mine. She was sitting  
18 outside of her room on the wall facing the door."

19 Q. "And what time was this?"

20 A. "To my recollection, I think that was around  
21 midnight."

22 Q. "Okay. Was anyone with Ms. Wingo when you  
23 spoke to her?"

24 A. "I remember she had one friend who was with her  
25 who I believe was visiting her that weekend."

1 Q. And going down to line 4. "What was  
2 Ms. Wingo's emotional state when you encountered  
3 her?"

4 A. "When I encountered her, she was sitting on the  
5 floor. Her back was to the wall and she was crying.  
6 Her face was red, but she was crying."

7 Q. "Did she tell you why she was crying?"

8 A. "I -- that -- I asked her, you know, what was  
9 wrong, and that's whenever -- I believe she told me  
10 that she had been stood up for a party that she went  
11 to and she lost her room key and she just wanted to  
12 get inside of her room, but she couldn't. So that's  
13 why she was upset."

14 Q. "Did the friend that was with Ms. Wingo inform  
15 you why Ms. Wingo was crying?"

16 A. "I believe she may have said the same."

17 Q. Please turn to page 20, starting at line 1.

18 "Okay. Did Ms. Wingo appear intoxicated as a result  
19 of her alcohol consumption when you spoke with her?"

20 A. "She did not appear intoxicated to me."

21 Q. "Did Ms. Wingo appear incapacitated as a result  
22 of alcohol consumption when you spoke to her?"

23 A. "No, she did not."

24 Q. Going down to line 10. "Did Ms. Wingo state  
25 that she was sexually assaulted when you were

1 speaking with her?"

2 A. "No, she did not."

3 Q. "Did Ms. Wingo state that she was raped when  
4 you were speaking with her?"

5 A. "No, she did not."

6 Q. "Did Ms. Wingo's friend state that Ms. Wingo  
7 was sexually assaulted when you were speaking with  
8 her?"

9 A. "No, she did not."

10 Q. "Did Ms. Wingo's friend state that Ms. Wingo  
11 was raped when you were speaking with her?"

12 A. "No, she did not."

13 Q. "Did Ms. Wingo mention the name 'Andrew Pampu'  
14 when you were speaking with her?"

15 A. "No, she did not."

16 Q. Please turn to page 21. "Did Ms. Wingo's  
17 friend mention the name 'Andrew Pampu' when you were  
18 speaking with her?"

19 A. "No, she did not."

20 Q. "After your encounter with Erin Wingo and her  
21 friend, did you file any reports indicating that  
22 Ms. Wingo was intoxicated as a result of alcohol  
23 consumption?"

24 A. "No, I did not."

25 Q. "After your encounter with Ms. Wingo and her

1 friend, did you file any reports indicating that  
2 Ms. Wingo was incapacitated as a result of alcohol  
3 consumption?"

4 A. "No, I did not."

5 MR. FIGLIOZZI: Thank you.

6 CROSS-EXAMINATION

7 BY MS. PORTER:

8 Q. We're going to start on page 24, line 11 and go  
9 through 25. "Ms. Snider, other than being Erin  
10 Wingo's resident assistant, did you socialize with  
11 her?"

12 A. "No, I did not."

13 Q. "Are you familiar with a fraternity that has a  
14 location named 'the Compound'?"

15 A. "No, I do not."

16 Q. "Have you ever heard of the Compound?"

17 A. "I have not."

18 Q. "Have you ever attended a party at the  
19 Compound?"

20 A. "No, I have not."

21 Q. "Did you attend a party with Erin Wingo on  
22 Saturday, October 24th, at the Compound?"

23 A. "No, I did not."

24 Q. On page 25, lines 1 through 8. "Did you  
25 pre-party with Erin Wingo at a different dorm, not

1 Manning dorm, but in a different dorm with her  
2 friends on October 24, 2015?"

3 A. "No, I did not."

4 Q. "All right. So you have no idea whatsoever  
5 that Erin Wingo did -- what Erin Wingo did prior to  
6 seeing her in the hall that evening?"

7 A. "I have no clue."

8 Q. Go to line 12 through 25. "Do you have any  
9 idea what Drew did on October 24, 2015?"

10 A. "I do not know."

11 Q. "Okay. Have you ever had a sub -- after this  
12 incident with Erin in the hall, did you ever have a  
13 follow-up question with Erin regarding what occurred  
14 on October 24, 2015?"

15 A. "I did not."

16 Q. "All right. Did ever -- Erin ever ask you for  
17 help after this evening?"

18 A. "No, she did not."

19 Q. "All right. Did she ever contact you about  
20 trying to move out of the dorm?"

21 A. "She did contact me. She -- I remember sent me  
22 an e-mail at the end of the semester asking for an  
23 update about her moving out of the dorm, but I --  
24 that was the first I had heard that she was even  
25 moving out of the dorm. I was not part of that

1 process."

2 Q. All right. We're going to continue reading  
3 through line 21. "And you weren't aware of why she  
4 was moving out of the dorm?"

5 A. "Correct."

6 Q. "All right. Did you ever have a conversation  
7 with Arial Santa regarding Erin Wingo?"

8 A. "I do not -- I don't recall."

9 Q. "Okay. Let me back up and just ask you a  
10 couple of questions about your observation of  
11 Ms. Erin Wingo in the hall that evening. She was  
12 sitting on the floor?"

13 A. "Right."

14 Q. "And in your previous -- well, let me ask you  
15 this: Is it fair to say that your memory back in  
16 2015 was sharper, clearer of the events in October  
17 of 2015 than they are today?"

18 A. "Yes."

19 Q. All right. We'll go to page 27. I'm going to  
20 read the question and line 3, and we're going to go  
21 through 25. "Okay. So if you said previously that  
22 she had a red face, would that be accurate?"

23 A. "Yes, it would."

24 Q. "A little bit red and puffy. I believe that's  
25 in response to a question previously. And you --

1 and what was her state? And you would read your  
2 answer."

3 A. "I said whenever I ran into Erin, she was  
4 outside of her room door because I know she was  
5 locked out of her room and she was just, like,  
6 sitting on the floor. And her eyes were a little  
7 bit red and puffy and that's really it, but she was  
8 still talking."

9 Q. "Okay. She wasn't passed out?"

10 A. "Correct."

11 Q. "All right. So does someone have to be passed  
12 out to be drunk?"

13 A. "No, they do not."

14 Q. "Okay. And could you judge if she was unsteady  
15 on her feet when she's sitting against a wall?"

16 A. "I cannot judge that. She was sitting the  
17 entirety of the encounter I had with her."

18 Q. All right. And this is continuing onto page  
19 28. We're going to read through line 25. "Okay.  
20 Did you give her a new dorm key so that she could  
21 get into her room that evening?"

22 A. "Yes. I remember I walked her friend down to  
23 the front to get the new room key."

24 Q. "Is that in compliance with the resident  
25 assistance policy?"

1 A. "No, it is not."

2 Q. "What is the policy?"

3 A. "The policy is to physically walk the resident  
4 down to the front desk to issue them a new -- to  
5 issue them the new key."

6 Q. "Okay. And why didn't Erin accompany you down  
7 to get the key?"

8 A. "I recall that I asked several times for her to  
9 come with me, but she would not get up off of the  
10 floor. And so I remember it was getting late and I  
11 knew that she just wanted to go in the room, so I  
12 took matters into my own hands and just walked the  
13 friend down to get the room key. I gave her my  
14 resident assistant speech about having to return the  
15 key, where to leave it."

16 Q. "Okay. So she's sitting down, red face,  
17 refusing to get up and go with you?"

18 A. "Uh-huh."

19 Q. All right. On page 29, we're going to start at  
20 line 17 and read through 25. "Alright, Ms. Snider.  
21 Sitting against the wall, refusing common commands,  
22 red faced, could all of those be indicators of being  
23 intoxicated?"

24 A. "They could've been indicators. They could  
25 have."

1 MR. FIGLIOZZI: Objection.

2 BY MS. PORTER:

3 Q. "And how long did this encounter take with  
4 Ms. Wingo?"

5 A. "Probably about five minutes. It was very  
6 brief."

7 MS. PORTER: Thank you.

8 THE COURT: Any additional? Is that all from  
9 this witness?

10 MR. FIGLIOZZI: Yes.

11 MS. LAU: Yes, that is, Your Honor.

12 THE COURT: Any additional depositions?

13 MS. LAU: We're not reading in anymore  
14 depositions. Thank you.

15 THE COURT: You may step down.

16 (Witness excused.)

17 THE COURT: All right. Next witness.

18 MS. LAU: Your Honor, at this time plaintiff  
19 rests its case.

20 THE COURT: Okay. Ladies and gentlemen, the  
21 plaintiff has rested their case in chief, and then  
22 that means there's quite a few things that we'll  
23 need to go over, and then defense -- defendants will  
24 have the opportunity to present any matters that  
25 they want to present as evidence. And then

1 plaintiff after the defendants rest have the right  
2 to present any additional, kind of, reply if needed.  
3 So just to kind of let you know the scheduling.

4 So at this time, there's -- like I said,  
5 there's a few things we need to go over and there's  
6 a couple matters outside of this case that I need to  
7 go over with some other folks, as well. So at this  
8 time, I'm going to ask that you go ahead and break  
9 for lunch and if you'll be back in your jury room at  
10 1:30. Okay. And that gives you a little bit over  
11 an hour and a half. So do not discuss the case  
12 among yourselves or anyone. Do not do any type of  
13 research, Google anything about the parties, the  
14 lawyers, the law, anything like that. Do not pay  
15 any attention to any media coverage if there is any.  
16 And, finally, if you're contacted by anybody outside  
17 of somebody from the clerk's office, please let the  
18 bailiffs know. Otherwise, we'll see you back at  
19 1:30. Thank you.

20 (At 11:51 a.m., jury was excused for lunch.)

21 THE COURT: All right. Let's take a few  
22 minutes. I understand that y'all were going to  
23 present -- proffer some testimony.

24 MS. PORTER: Ms. Smith is here. She just  
25 arrived.

1 THE COURT: All right. Let's take just a few  
2 minutes and then we'll get set up for that.

3 MS. PORTER: All right.

4 (From 11:52 to 12:00 p.m., brief recess.)

5 THE COURT: All right. You will come around to  
6 be sworn.

7 MR. GRAHAM: For right now, we'd like to state  
8 our objections -- just renew the objections.

9 MS. PORTER: All right. Well, y'all won. I'm  
10 just proffering.

11 MR. GRAHAM: I know. I know.

12 THE COURT: And, also, it goes without -- we  
13 finished all this stuff. Also, just for the record  
14 too, this -- by presenting a witness at this  
15 particular time is for the convenience of the  
16 witness and also the fact that the jury's not here  
17 so that no one is prejudiced by any motions or  
18 anything because of the defense proffering this.  
19 All -- all rights are preserved as far as any  
20 motions or anything that we have now that the  
21 plaintiff has rested. So just wanted to get that on  
22 the record.

23 MS. PORTER: Do you want to do those motions?

24 THE COURT: No, I just was -- yeah, no. I was  
25 just making sure.

1 MS. PORTER: All right.

2 THE CLERK: If you would, raise your right  
3 hand.

4 THE WITNESS: (Complying.)

5 THE CLERK: Do you solemnly swear that the  
6 testimony you're about to give in this case to be  
7 the truth, the whole truth, and nothing but the  
8 truth so help you God?

9 THE WITNESS: Yes.

10 THE CLERK: State your full name for the  
11 record.

12 THE WITNESS: Alesia Smith.

13 ALESIA SMITH,  
14 having been produced and first duly sworn as a  
15 witness on behalf of the Defendant, then testified  
16 as follows:

17 PROFFER EXAMINATION

18 BY MS. PORTER:

19 Q. Good morning, Ms. Smith.

20 A. Good morning.

21 Q. You have a bachelors degree an a masters in  
22 public science with an emphasis in public  
23 administration from the Illinois State University;  
24 is that correct?

25 A. I have a bachelors of science and

1           communications and a master of science and political  
2           science, public administration.

3           Q.     I said that wrong, didn't I? I apologize.

4           A.     That's okay.

5           Q.     But they are from Illinois State University; is  
6           that correct?

7           A.     Yes, they are.

8           Q.     Okay. Great. And you have worked your entire  
9           career in higher education; is that correct?

10          A.     That's correct.

11          Q.     And the last 26 years -- actually, it's been  
12          longer than 26 years now. How long have you been  
13          working at Clemson?

14          A.     Twenty-six -- it's 25 years. It'll be 26  
15          July 22nd.

16          Q.     I'm all -- I'm wrong all over the place. I  
17          need to stop leading. All right. At Clemson  
18          University, you've held the positions of Director of  
19          Student Judicial Services, which has since been  
20          renamed the Office of Community and Ethical  
21          Standards; is that correct?

22          A.     That's correct.

23          Q.     Also been the Assistant Dean of Students, as  
24          well?

25          A.     That's correct.

1 Q. And Deputy Title IX Coordinator?

2 A. Yes.

3 Q. And currently you are the Executive Director of  
4 the Equity Compliance and the Title IX Coordinator;  
5 is that correct?

6 A. Yes.

7 Q. All right. You're the member -- you're a  
8 member of professional organizations, in which you  
9 attend for -- in this area of Title IX; is that  
10 correct?

11 A. Yes.

12 Q. And you do continuing education annually; is  
13 that correct?

14 A. Yes.

15 Q. And as matter of fact, you speak often times on  
16 the subject of student conduct Title IX sexual  
17 harassment, sexual assault, and diversity issues,  
18 and bias incident-type issues?

19 A. Yes.

20 Q. Right. In the fall of 2015, you were the  
21 Associate Dean of Students and Assistant -- or  
22 Deputy Title IX Coordinator, correct?

23 A. Yes.

24 Q. All right. And as a part of that position, you  
25 oversaw administrative responsibilities for the

1 student code of conduct?

2 A. Yes.

3 Q. All right. I'm going to hand you what has been  
4 marked for identification purposes only as Defense  
5 Exhibit 10. Is that a copy of the student code of  
6 conduct for Clemson University?

7 A. Yes.

8 Q. All right. I'll also hand you what has been  
9 marked as Defendants' 11 for identification purposes  
10 only. Do you recognize that as the antiharassment  
11 policy that's incorporated within the student code  
12 of conduct?

13 A. It's the antiharassment nondiscrimination  
14 policy. It's not incorporated in the student code  
15 of conduct. It's separate.

16 Q. It's separate, but the student code of conduct  
17 refers to the antiharassment policy; is that  
18 correct?

19 A. That's correct.

20 Q. Specifically in the code of conduct when  
21 defining sexual misconduct, correct?

22 A. That's correct.

23 Q. Okay. Now, the student code of conduct was  
24 created with input to a variety of communities  
25 within the university; is that correct?

1 A. That's correct.

2 Q. And it was adopted in 2004 and then has been  
3 updated annually?

4 A. That's correct.

5 Q. Okay. And the Office of Community and Ethical  
6 Standards or OCES is tasked with enforcing that  
7 code; is that correct?

8 A. That's correct.

9 Q. Okay. Now, when an individual is new to  
10 Clemson, whether they're a transfer student or a  
11 freshman, are they trained in a class called  
12 CU-1000?

13 A. Yes. They -- they have courses and departments  
14 that they have to fulfill in student CU-1000.

15 Q. And as a part of that course, do they -- are  
16 they educated and trained on the student code of  
17 conduct and the antiharassment policy?

18 A. They receive information on both -- both the  
19 student code of conduct and the harassment policy.

20 Q. All right. Now, if a Title IX violation --  
21 well, a Title IX -- an allegation of a violation of  
22 Title IX can be reported by any person, correct?

23 A. Yes.

24 Q. And it can be done verbally or in written -- in  
25 written form?

1 A. Yes.

2 Q. Okay.

3 A. Can I ---

4 Q. Go ahead.

5 A. Just a point of clarification.

6 Q. Yes.

7 A. I want to make sure when you're asking, is it  
8 currently because things have changed just a little  
9 bit or at this time?

10 Q. At this time.

11 A. That's correct.

12 Q. So I want all of your testimony as it was -- as  
13 what the standards were in 2015.

14 A. That's correct.

15 Q. Okay. And let's back up for a second. There  
16 was a change in the federal regulations regarding  
17 Title IX, correct?

18 A. Yes.

19 Q. What year did that take place?

20 A. There have been several.

21 Q. After 2015, was there a change in the federal  
22 regulations?

23 A. The change was in 2020.

24 Q. Thank you. All right. So we're under the old  
25 regulations at this time?

1 A. 2015, yes.

2 Q. Okay. If you will briefly walk through when  
3 your office receives a complaint of sexual  
4 harassment or rape, what -- what happens?

5 A. When -- when a report is -- when there's a  
6 report made, it can be in the form of a report from  
7 a faculty member, staff, student, or someone else.  
8 We do that to determine if we know who the  
9 complainant or victim is. Then we'll reach out to  
10 the victim or the complainant and -- and offer  
11 resources, make sure that they are okay, number one.  
12 And then make them aware of available options if  
13 they would like to take some type of action to file  
14 a formal complaint. Once ---

15 Q. Let me stop -- I'm going to stop you and -- and  
16 ask you a quick question. When you say "make a  
17 formal complaint," do you mean within Clemson  
18 University?

19 A. That's correct.

20 Q. You don't have any decision or authority  
21 regarding criminal complaints made to outside law  
22 enforcement agencies?

23 A. No. We do refer them if they want to, but they  
24 would speak directly with that agency.

25 Q. Okay. I'm sorry. So once -- once you

1 identified the victim and -- and/or complainant,  
2 then you offer them your support services and if  
3 they so choose to go forward with the formal  
4 complaint, correct?

5 A. That's correct.

6 Q. All right. What happens if they choose to go  
7 forward with a formal complaint?

8 A. If they chose to go with the formal complaint,  
9 then they would notify us that they want to move  
10 forward, and we would schedule a meeting with the  
11 respondent at that time to make them aware of the  
12 complaint and we would assign investigators.

13 Q. All right. Let me stop you right there. I'll  
14 show you what has been marked as Defense Exhibit 12  
15 for identification purposes. Do you recognize this?

16 A. Yes. This is the notice of investigation.

17 Q. So that's the notice of investigation in this  
18 particular case to Andrew Pampu?

19 A. The notice of the complaint received and that  
20 we're going to start an investigation.

21 Q. All right.

22 A. That's correct.

23 Q. So you -- a formal investigation ---

24 THE COURT: Speak up just a little bit more.

25 It's hard to hear.

1 THE WITNESS: Okay.

2 BY MS. PORTER:

3 Q. So a formal investigation was begun and  
4 Mr. Pampu was properly notified, correct?

5 A. Yes.

6 Q. All right. And you assigned two investigators  
7 to look into this complaint?

8 A. Yes. The investigators are assigned. That was  
9 our -- that was our normal process and one is a  
10 primary investigator, and then you have your  
11 secondary investigator. And so once the  
12 investigator starts that process, we turn that  
13 information over and then my role at that time is  
14 very limited.

15 So the investigators would meet with both the  
16 complainant and the respondent. They would also  
17 start gathering information from those two  
18 individuals and in the form of witnesses, so they  
19 would actually contact them to determine what  
20 witnesses they would want them to speak with, any  
21 evidence that they had that they would want to  
22 provide, if we didn't already have it. So they  
23 would gather that information.

24 Once they've done that, then they'll start  
25 meeting with the witnesses and then prepare a

1 report -- investigative report in terms of what  
2 information they were able to gather. They would  
3 share that information. Initially, the statement  
4 that the complainant made, they would share her --  
5 his or her statement with them, give them a chance  
6 to review it, and provide a response. They would  
7 also share that statement with the respondent, give  
8 him or her a chance to respond before they provide  
9 any final comments to -- back to me to review that  
10 report. So -- so that's generally the process.

11 And then once they've gone through that process  
12 and the report is final, they make recommendations  
13 in terms of whether we would move forward if we had  
14 sufficient evidence to move forward. And that means  
15 if we met the burden of proof which a preponderance  
16 of the evidence, more likely than not.

17 So if we met that -- that burden, they make  
18 their recommendations and move forward for the  
19 administrative hearing.

20 Q. Let me stop you because you've given us a lot  
21 of information. Let me ask just a few follow-up  
22 questions and then we'll start at the administrative  
23 hearing -- if there's an administrative hearing.

24 In this particular case, did you assign Suzanne  
25 Price and Loretta Jackson as the investigators?

1 A. That's correct.

2 Q. And I just want to be clear, they do not work  
3 under OCES, correct?

4 A. They do not.

5 Q. And so you were not their supervisor; is that  
6 correct?

7 A. That's correct.

8 Q. All right. And did they interview 12  
9 individuals excluding the respondent and the  
10 complainant?

11 A. I don't recall the number of people they  
12 interviewed?

13 Q. If I showed you a copy of their investigative  
14 report, would that refresh your recollection?

15 A. It could. Based off the report, yes.

16 Q. They also spoke with the respondent and the  
17 complainant; is that correct?

18 A. That's correct.

19 Q. And the respondent being Mr. Pampu and the  
20 complainant being Erin Wingo?

21 A. Yes.

22 Q. All right. After finalizing their report, did  
23 they make a -- did the investigators make a  
24 recommendation?

25 A. Yes.

1 Q. All right. And what was that recommendation?

2 A. The recommendation was to move the case forward  
3 for administrative hearing to the adjudication  
4 process.

5 Q. All right. I'm going to hand you what has been  
6 marked as Defendant's Exhibit 13 for identification  
7 purposes. Do you recognize this?

8 A. Yes.

9 Q. And what is that?

10 A. It's called an administrative contract giving  
11 notice that an administrative hearing -- notice of  
12 an administrative hearing. So what we do is provide  
13 that to the respondent to let them know that the  
14 case can move forward to an administrative hearing,  
15 so I would give the respondent an option of whether  
16 or not to accept the recommended sanctions at that  
17 time. And then if they choose not to accept those  
18 sanctions, then we move forward to an administrative  
19 hearing.

20 Q. All right. And in this particular  
21 circumstances, did the respondent accept  
22 consequences or did he move forward to  
23 administrative hearing?

24 A. Moved forward to administrative hearing.

25 Q. Okay. And was that administrative hearing held

1 on -- in February of 2016?

2 A. It was.

3 Q. And did -- was he able to have assistance  
4 during that hearing?

5 A. Yes.

6 Q. And was that a licensed attorney?

7 A. Yes. They are called advisors.

8 Q. Advisors?

9 A. Yes.

10 Q. But he was -- it was David Aller who's a  
11 licensed South Carolina attorney; is that correct?

12 A. Yes.

13 Q. All right. And did the complainant also have  
14 assistance during this hearing?

15 A. Yes.

16 Q. Okay. And did she -- and was her assistance  
17 also an attorney?

18 A. Yes.

19 Q. Okay. And was that -- tell -- if you will  
20 briefly describe how your administrative board for  
21 that particular hearing was selected or members?

22 Excuse me.

23 A. The board members are made up of -- there were  
24 five board members that had a chair that was  
25 selected. And then you have a faculty member, staff

1 member, and two students. Those members have to be  
2 trained Title IX members of the board, so they had  
3 to go through specific training in order to serve on  
4 those -- those hearings and so that's how we select  
5 them.

6 The staff members in terms are appointed. We  
7 would identify the staff members that we felt would  
8 be good board members and we would work with the  
9 dean of students to appoint those members to the  
10 board. We also worked with -- our faculty reps are  
11 appointed by our faculty senate. And then our  
12 students are members of the student government,  
13 attorney general, and the student judicial board.

14 Q. And when you say they receive training, like  
15 how much training did they receive?

16 A. Well, we do annual training with our boards,  
17 but this particular -- members who serve on boards  
18 related to Title IX have to go to additional  
19 training. So those trainings were about two hours  
20 each training, so six hours of additional training.

21 Q. Okay. And I'm sorry. I failed to ask this.  
22 Let me back up. During the investigation phase, are  
23 the respondent and the complainant able to provide  
24 the investigators with text messages, e-mails,  
25 photographs, any type of physical evidence that they

1 choose?

2 A. Yes.

3 Q. All right. And are they also encouraged and  
4 allowed to provide potential witnesses that they'd  
5 like the investigators to then reach out to?

6 A. Yes.

7 Q. All right. And are you aware of the  
8 complainant and the respondent in this matter did,  
9 in fact, do that?

10 A. Yes.

11 Q. Okay. And then at the administrative hearing,  
12 are witnesses called and presented before the board?

13 A. Yes.

14 Q. All right. And does Clemson decide what  
15 witnesses they wish to present?

16 A. Yes. The witnesses were determined based upon  
17 the investigators who decide which witnesses were  
18 pertinent to the case.

19 Q. All right. And did the complainant and the  
20 respondent also get to call their own witnesses if  
21 they so chose?

22 A. Yes, they did.

23 Q. And did they choose witnesses to present?

24 A. Yes.

25 Q. Okay. Was a decision reached on February 26,

1 2016, regarding the allegations that the respondent  
2 was accused of?

3 A. I believe so.

4 Q. Okay.

5 A. I believe it was made that same day.

6 Q. All right. I'm going to hand you what has been  
7 marked as Defendant's 14 for identification  
8 purposes. And before you identify that, the hearing  
9 board, do they receive a copy of the investigative  
10 report?

11 A. They do.

12 Q. Okay. And so that includes any of the  
13 materials that the complainant and the respondent  
14 provided during the investigation?

15 A. Yes.

16 Q. All right. And are they -- are the respondent  
17 and the complainant able to review that  
18 investigative report and address any issues they  
19 have with it prior to the hearing?

20 A. Yes.

21 Q. Okay. What was -- I've been -- I've handed you  
22 what has been marked as Defense Exhibit 14 for  
23 identification purposes. Do you have -- do you  
24 recognize that?

25 A. I do.

1 Q. And what is that?

2 A. That's the administrative hearing board outcome  
3 letter.

4 Q. All right. And did the hearing board find the  
5 respondent responsible for sexual misconduct?

6 A. Yes. In "violation" is the term we would use.

7 Q. Okay. And if you will very -- this is  
8 something that we've discussed quite a bit, and I  
9 just want an explanation because I'm confused so I'm  
10 hoping you can help us.

11 A. Okay.

12 Q. All right. Here on what was found him to be on  
13 Number 4, the sexual misconduct, it states that no  
14 student shall commit or attempt to commit sexual  
15 misconduct. Then it says "see antiharassment  
16 nondiscrimination policy." All right. So in the  
17 student code of conduct, is that the definition of  
18 sexual misconduct? And feel free to refresh your  
19 memory.

20 A. The definition is what's in this -- this  
21 letter. The definition is taken straight from the  
22 student code of conduct.

23 Q. All right. So -- so the letter is telling him  
24 this is what you've been found responsible for?

25 A. That is correct.

1 Q. All right. So when it ---

2 A. Out of the student code of conduct.

3 Q. All right. So when it says "see the  
4 antiharassment policy," why does it -- what -- what  
5 does that mean?

6 A. It tells you to see the harassment policy  
7 because sexual misconduct is encompassing of all the  
8 information.

9 MS. LAU: Objection. I don't know if we should  
10 be objecting at this point or not, but I don't think  
11 the proper foundation has been laid as to her  
12 testimony on this topic, as well as she didn't write  
13 this decision, as well as the fact that it misstates  
14 and mischaracterizes the actual policy.

15 THE COURT: Well, you know, I guess ---

16 MS. PORTER: She's over the policy.

17 THE COURT: Right. I have ruled -- I have  
18 ruled that this is not admissible testimony and this  
19 is a proffer.

20 MS. LAU: If we can just do a blanket  
21 objection ---

22 THE COURT: Okay. That's fine.

23 MS. LAU: --- and then do the -- the line of  
24 questioning and the answers just based on our motion  
25 in limine brief.

1 THE COURT: Okay.

2 MS. LAU: Thank you.

3 THE COURT: Yes.

4 BY MS. PORTER:

5 Q. Very brief. All right. The letter is quoted  
6 what he's ---

7 THE COURT: Hold on.

8 (Brief interruption.)

9 THE COURT: Okay. Go ahead.

10 BY MS. PORTER:

11 Q. So the February 29, 2016, letter, finds him  
12 responsible for sexual misconduct and the definition  
13 from the code is here and it sends you to the  
14 antiharassment policy; is that correct?

15 A. That's correct.

16 Q. All right. And this is -- the antiharassment  
17 policy is 100 -- excuse me -- not 100 -- 11 pages;  
18 is that correct?

19 A. That's correct.

20 Q. Okay. I'm -- excuse -- excuse me --  
21 thirteen pages. I apologize. And it contains --  
22 well, let me ask this: The second full paragraph of  
23 this letter is the finding of the board, correct?

24 A. Yes.

25 Q. All right. And will you read starting with

1 "based"?

2 A. It says, "Based on information presented, the  
3 hearing board found that the complainant was  
4 incapacitated and unable to give consent, which you  
5 should have reasonably known. Therefore, you're  
6 found in violation of all four charges. And as a  
7 result, the following sanctions were imposed."

8 Q. All right. And if we go to the definition  
9 section of the antiharassment policy, on page 2,  
10 under the definition of sexual harassment, one,  
11 first bullet point it defines rape; is that correct?

12 A. Yes.

13 Q. Okay. And that definition includes instances  
14 where the victim is incapable of giving consent  
15 because of physical incapacitation; is that correct?

16 A. Yes.

17 Q. All right. Now, before the sanctions are  
18 imposed, are the parties -- is the respondent given  
19 the ability to appeal?

20 A. Yes.

21 Q. And can the complainant appeal, as well?

22 A. Yes.

23 Q. And in this particular case, did both the  
24 respondent and the complainant appeal ---

25 A. Yes.

1 Q. --- the decision? Okay. I'm going to hand you  
2 what has been marked as Defense Exhibit 15 and 16  
3 for identification purposes. Where does this first  
4 appeal go?

5 A. It goes to the vice president of student  
6 affairs.

7 Q. All right. And are -- do you recognize those?

8 A. Yes, I do.

9 Q. All right. And are those the respondent and  
10 the complainant's appeal in this matter?

11 A. Yes, they are.

12 Q. All right. Now, when a matter is brought up on  
13 appeal, what, if anything, does your office provide  
14 the vice president of student affairs office?

15 A. We have to provide -- provide them with the  
16 file, so that means all information that we've  
17 gathered and provided to the hearing board. So they  
18 get a copy of that entire document, as well as any  
19 transcripts that we have.

20 Q. And so you produced a transcript from the  
21 hearing?

22 A. Yes.

23 Q. And that was also provided to the vice  
24 president's office?

25 A. Yes. They get a copy of the recording.

1 Q. All right. And I'm sorry. The vice president  
2 of students affairs office.

3 A. Of student affairs.

4 Q. And they get a recording?

5 A. They get the recording.

6 Q. Okay. I'm going to hand you what has been  
7 marked as Defense Exhibit 17 for identification  
8 purposes. Do you recognize this?

9 A. Yes.

10 Q. Okay. And what is that?

11 A. That's the outcome letter from the vice  
12 president of student affairs.

13 Q. Thank you. Now, are -- is that the end of it  
14 or do you have another appellate option?

15 A. You have another appeal, appeal to the  
16 president of the university or his designee.

17 Q. All right. And in this particular matter, was  
18 that -- did the respondent exercise that appeal  
19 right?

20 A. Yes.

21 Q. And did the complainant exercise her appeal  
22 right?

23 A. Yes.

24 Q. All right. I'm going to hand you what has been  
25 marked for identification purposes as Defense 18 and

1 19. May I approach?

2 THE COURT: You may.

3 BY MS. PORTER:

4 Q. Do you recognize those?

5 A. Yes. Those are the appeals.

6 Q. The appeal the respondent and the complainant?

7 A. That's correct.

8 Q. All right. And then in addition to that, did  
9 the complainant file a reply to the respondent's  
10 appeal?

11 A. Yes.

12 Q. I'm going to hand you what I have marked as  
13 Defendant's Exhibit 20 for identification purposes.  
14 Do you recognize this?

15 A. Yes.

16 Q. And what is this?

17 A. That's the reply to the appeal submitted by the  
18 respondent.

19 Q. Okay. Did the president's office make a  
20 decision on the second appeal?

21 A. Yes.

22 Q. All right. And I'm going to hand you what has  
23 been marked for identification purposes as  
24 Exhibit 21. Do you recognize that?

25 A. I do.

1 Q. All right. And what is that?

2 A. That's the outcome letter from the president's  
3 representative.

4 Q. All right. Now, is it over at that point?

5 A. It's final at that point.

6 Q. All right. Does the complainant and/or  
7 respondent at that point have the ability to appeal  
8 this to the administrative law -- law judge division  
9 through the APA in South Carolina?

10 A. No. Not based off of our policy.

11 Q. Not based off your policy. Are you aware if  
12 the South Carolina code allows that?

13 A. I'm not aware.

14 MS. PORTER: Not aware. Okay. Thank you. Beg  
15 the Court's indulgence.

16 THE COURT: Okay.

17 BY MS. PORTER:

18 Q. All right. The administrative board decision  
19 was not based solely on Erin Wingo's statement,  
20 correct?

21 A. That's correct.

22 Q. And the administrative board hearing's decision  
23 was not based solely on Dave Wingo's -- any -- any  
24 statements by Dave Wingo, correct? Were there any  
25 statements by David Wingo presented to the hearing

1 board members?

2 A. No.

3 Q. Okay. Did the ---

4 A. You're talking about Mr. Wingo, her dad?

5 Q. Yes.

6 A. No.

7 Q. Okay. And CJ Gahagan, did the board base their  
8 decision solely on CJ Gahagan's statements?

9 A. I can't certify -- I can't really speak to what  
10 the boards based their decision on. I'm not part of  
11 that discussion.

12 Q. Okay.

13 A. So ---

14 Q. Let me ask you this. Let me ask it this way.

15 A. --- I can't speak to that.

16 Q. Let me ask it this way.

17 A. Okay.

18 Q. There were numerous witnesses that testified  
19 before the board, correct?

20 A. That's correct.

21 Q. And they had a copy of the investigative  
22 report, correct?

23 A. That's correct.

24 Q. All right. And then they made a decision,  
25 correct?

1 A. That's correct.

2 Q. All right. And all of that information and the  
3 transcript from the hearing and the respondent and  
4 complainant statements in the appeals were provided  
5 to the vice president's office; is that correct?

6 A. That is correct.

7 Q. And then a decision was rendered after  
8 receiving all of that information?

9 A. That is correct.

10 Q. And then, again, all of that information was  
11 provided to the president's office who received all  
12 of it?

13 A. That is correct.

14 Q. And after receiving all of that information,  
15 made a decision?

16 A. That is correct.

17 MS. PORTER: All right. Nothing further, Your  
18 Honor.

19 THE COURT: All right. Are you going to  
20 proffer?

21 MR. MOORE: Just a few.

22 THE COURT: Okay.

23 PROFFER EXAMINATION

24 BY MR. MOORE:

25 Q. Ms. Smith, my name is David Moore. I'm here on

1           behalf of CJ Gahagan. Let me ask just a few  
2           follow-up questions. You are presently and I  
3           believe at the time of this hearing the director of  
4           OCES; is that correct?

5           A.     That's correct.

6           Q.     What is OCU -- OCES?

7           A.     The Office of Community and Ethical Standards.

8           Q.     Okay. And that is a division of student  
9           affairs at Clemson?

10          A.     A department under the division.

11          Q.     Okay. And then that is all under the umbrella  
12          of Clemson University as I understand it?

13          A.     That's correct.

14          Q.     Now, my understanding is that Clemson  
15          University, like the other schools in this state are  
16          charged to have these type of hearings with regard  
17          to Title IX complaints; am I correct?

18          A.     That's correct.

19          Q.     And there's a particular statute on that, the  
20          South Carolina Campus Sexual Assault Information Act  
21          I believe. Are you familiar with that?

22          A.     The South Carolina?

23          Q.     Campus Sexual Assault Information Act?

24          A.     I'm not familiar with that.

25          Q.     Are you aware that South Carolina law

1 establishes that hearings are to be set up by the  
2 universities and colleges in this state?

3 A. Yes.

4 Q. Okay. And you -- in this particular case, you  
5 participated in your capacity as head of OCES; am I  
6 right?

7 A. Yes.

8 Q. Okay. And so the complaint in this particular  
9 matter was not made by Erin Wingo; am I correct, the  
10 complaint regarding the event with Mr. Pampu or do  
11 you know?

12 A. That's when -- we initially got the first  
13 report, it was not made by -- it was not made by --  
14 by Erin Wingo.

15 Q. Okay.

16 A. However, in order to move forward, Erin Wingo  
17 had to file a formal complaint which is what  
18 happened.

19 Q. And so initially started by someone else ---

20 MR. GRANTLAND: May I sidebar with you?

21 (Sidebar discussion.)

22 BY MR. MOORE:

23 Q. All right. Let's go back.

24 A. Okay.

25 Q. Now, you're head of OCES and you were involved

1 in the hearing with regard to Mr. Pampu as I  
2 understand it?

3 A. Yes.

4 Q. Okay. And that is initialed by a complainant,  
5 but that complaint is that not started by Erin Wingo  
6 if I understand you correctly?

7 A. The complaint has to be issued.

8 Q. But it's not the original complaint?

9 A. The original report ---

10 Q. Yes.

11 A. --- did not come from Erin.

12 Q. All right. And also is not -- the original  
13 report is not given by CJ Gahagan in this case,  
14 correct?

15 A. That's correct.

16 Q. Okay. All right. Once that report is issued,  
17 then -- then the victim is contacted as I understand  
18 it?

19 A. That's correct.

20 Q. Okay. And that would be Erin Pampu at that  
21 juncture?

22 A. Wingo.

23 Q. I'm sorry?

24 A. Erin Wingo.

25 Q. Wingo. Sorry. I do that all the time. I'm

1           sorry. She has the -- she -- she can tell you not  
2           to go forward or go forward as I understand it?

3           A. She can -- is -- right. If it doesn't meet  
4           certain conditions, she can determine if she wants  
5           to move forward without a formal complaint. That's  
6           correct.

7           Q. And she made a decision to go forward?

8           A. That's correct.

9           Q. All right. CJ Gahagan doesn't any input on  
10          that one way or the other, does he?

11          A. He does not.

12          Q. Okay. Then you move forward with the  
13          investigation?

14          A. Yes.

15          Q. Okay. You appoint investigators on the matter?

16          A. Yes.

17          Q. And they gather information or interview  
18          witnesses, correct?

19          A. Yes.

20          Q. Okay. Then you go forward from that. I guess  
21          a decision is made to go forward to a hearing; am I  
22          correct?

23          A. Yes.

24          Q. Okay. And a hearing was held in this  
25          particular matter?

1 A. Yes.

2 Q. Okay. And if I understand correctly, that  
3 hearing involved a number of witnesses?

4 A. Yes.

5 Q. Okay. And based upon the -- the investigative  
6 report, which was submitted during the course of  
7 that hearing, and these witnesses and whatever  
8 statements might be made by the parties, a decision  
9 is made?

10 A. Yes.

11 Q. Okay. Now, in that particular matter, the  
12 respondent in that case is Mr. Pampu; am I correct?

13 A. Yes.

14 Q. Andrew Pampu. And the decision is issued  
15 against him in this particular matter; am I right?

16 A. When you say "against"?

17 Q. Yes, ma'am. The finding was that Andrew ---

18 A. In violation, yes.

19 Q. --- had violated policy in certain respects?

20 A. Yes.

21 Q. Okay. And in that regard, a letter was issued  
22 by the university saying that he had violated  
23 regarding particular -- regarding what we're  
24 interested in and that he had sex with Erin Pampu  
25 and she did not consent to that; am I correct?

1 A. Erin Wingo. Yes, that's correct.

2 MR. MOORE: Erin Wingo. Sorry. Thank you.

3 THE COURT: All right. Thank you, Ms. Smith.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: All right. Anything else in regard  
7 to this witness?

8 MS. PORTER: No, sir.

9 THE COURT: Let's take a break before we hear  
10 any motions and stuff. Let's just be back in here  
11 at 1:30. I mean, I'm just going to have to tell the  
12 jury we may be a little bit delayed in getting back  
13 to them. Be back in here at 1:30. We'll hear  
14 motions and then defense will be ready. Assuming  
15 the case goes forward, ready for your ---

16 MR. GRANTLAND: We have a witness who'll be  
17 ready on Webex, so maybe tell her 1:45?

18 THE COURT: Yeah, that should be good.

19 (From 12:37 to 1:30 p.m., lunch recess.)

20 THE COURT: My plan is, get through this and  
21 then we'll work on the charge and do whatever, and  
22 then argue.

23 MR. MOORE: You want to do motions and then  
24 charge?

25 THE COURT: Yeah, we can do all the motions and

1 then that way, my thought was, we probably will  
2 charge in the morning.

3 MR. MOORE: No, what I was asking, do motions,  
4 and then defense side of the trial and then do the  
5 charges.

6 THE COURT: Or maybe first thing in the  
7 morning. We'll see. All right. So the plaintiff  
8 has rested. Any motions from the defense?

9 MR. MOORE: Yes.

10 MS. LAU: Your Honor, at this time we ---

11 MR. MOORE: Do you want them to go first?

12 THE COURT: I mean, y'all can. Go ahead.  
13 We'll hear from the plaintiff.

14 MS. LAU: So many stops and starts. Okay. At  
15 this time the plaintiff believes he has met all of  
16 the elements of his causes of action and that no  
17 reasonable juror could find for the defendants based  
18 on the evidence provided thus far in the plaintiff's  
19 case and we move for a directed verdict.

20 THE COURT: All right. Well, but that means  
21 that they -- that kind of presupposes that I put  
22 forth any testimony, so I guess denied.

23 MR. MOORE: Judge, I'm going to start it off in  
24 which there are two causes of action. I assume what  
25 you want us to do is go through each cause of

1 action, argue one cause of action.

2 THE COURT: That works. Yes.

3 MR. MOORE: The one I'm going to start off with  
4 has to do with civil conspiracy. And as you're  
5 aware and I will repeat for the record that there  
6 are basically four elements of that cause of action.  
7 One is, has to be a combination of an agreement  
8 between two or more persons or parties. Secondly,  
9 they have to have agreed to commit an unlawful act  
10 or an act which is lawful, but won't perform by  
11 unlawful means. Thirdly, they have to have done  
12 this with the commission of an overt act in  
13 furtherance of the agreement. Fourth, there has to  
14 be evidence of damages.

15 With regard to CJ Gahagan, they have asserted  
16 that he with Dave Wingo have worked in concert with  
17 one another and tried to harm Andrew Pampu with  
18 regard to him remaining in his fraternity or say it  
19 in another way, get kicked out. Our position on  
20 it -- my position on that is basically there is no  
21 evidence -- no evidence whatsoever with regard to CJ  
22 Gahagan working in concert with David Wingo to try  
23 to cause that harm. Obviously, the first element  
24 has to do with a combination. Absence of that --  
25 that particular evidence means that they have not

1 proven their case with regard to that particular  
2 cause of action.

3 Secondly, Judge, there has to be evidence of  
4 damages. And what they're relying upon with regard  
5 to damages was with Steven Shedlin. And as you may  
6 recall yesterday, they were trying to use Steven  
7 Shedlin as an accomplice which you ruled they  
8 couldn't do. So there is no evidence of any  
9 monetary laws that they may have sustained as a  
10 result of any civil conspiracy.

11 Now, the same doesn't apply with regard to  
12 the -- the cause of action for defamation, so I'm  
13 not going into that, but with regard to conspiracy,  
14 there must be evidence of damages. And in this  
15 situation, there is no evidence of damages in a  
16 monetary amount because Shedlin was not able to  
17 testify to that, and there has been no other  
18 evidence regarding that one way or the other.

19 So we have two elements that are missing with  
20 regard to that cause of action. One is, no  
21 combination and then, secondly, an absence of proof  
22 or damages.

23 THE COURT: All right. And I'll hear from them  
24 and then I'll hear from y'all.

25 MR. GRANTLAND: And, Your Honor, we would

1 join -- on behalf of Erin and Dave Wingo, we would  
2 join with Mr. Moore's motion on the civil conspiracy  
3 with the directed verdict. I mean, the testimony  
4 from Mr. Wingo, he alone presented Clemson's  
5 findings as the attorney. The findings -- he alone  
6 authored the letter. Erin was not involved in the  
7 letter. CJ was not involved in the letter.

8 The findings from Clemson were true. They may  
9 disagree with the findings obviously, but the  
10 findings are true, and the attorney made the  
11 decision. And, certainly, was no conspiracy on --  
12 there's certainly no evidence of a conspiracy.

13 THE COURT: Let me ask you to stop for a  
14 minute. Is the civil conspiracy claim just relating  
15 to fraternity?

16 MS. LAU: Your Honor, the civil conspiracy  
17 claim is with respect to Mr. and Ms. Wingo, so  
18 Mr. Wingo and Ms. Wingo.

19 THE COURT: Okay. But is it related -- is it  
20 relating only to his ouster from the fraternity?

21 MS. LAU: On that aspect, yes. And there's  
22 another civil conspiracy as to Ms. Wingo and  
23 Mr. Gahagan with respect to the school.

24 THE COURT: All right.

25 MR. MOORE: Yeah, I'm sorry. There are two

1 parts.

2 MS. LAU: Right.

3 MR. MOORE: One is, what I'm arguing now has to  
4 do with the fraternity. We're coming back to the  
5 school part in a second.

6 THE COURT: Okay. All right. I'm sorry. I  
7 didn't mean to cut you off.

8 MR. GRANTLAND: No, no, no.

9 THE COURT: I wasn't clear on that.

10 MR. GRANTLAND: No, that's -- I mean, I'm just  
11 echoing Mr. Moore's comments.

12 THE COURT: All right. So we're just talking  
13 about the fraternity right now. All right. Glad to  
14 hear from you.

15 MS. LAU: Your Honor, the elements have just  
16 been misstated by -- by defense counsel. It's a  
17 combination of two or more persons joining for the  
18 purpose of injuring the plaintiff. There's no  
19 requirement for some kind of commitment or agreed  
20 upon commitment to an unlawful act. The fact is  
21 that they could be joining in some -- some  
22 potentially lawful act is not what we're saying that  
23 what was joined into in this case, but they could  
24 still be joining in a lawful act, but with the  
25 purpose of injuring the plaintiff. And that's key

1 to that element. And that that plan, that  
2 combination, that plan of common plan is what caused  
3 special damages to the plaintiff, and that's what we  
4 pleaded here and that's what we believe we've proven  
5 here. I don't know if you need me to move on to the  
6 present value.

7 THE COURT: Whatever you feel. I'll be glad to  
8 hear that part.

9 MS. LAU: Okay. Also, I guess before I do move  
10 on, you know, as we've shown through the evidence  
11 that Mr. Wingo did say he consulted with Ms. Wingo.  
12 So, I mean, there's certainly -- we believe we met  
13 those elements here.

14 Now, as far as the damages, I mean, that's  
15 really within the province of the jury and we did  
16 limit and Mr. Shedlin was limited on what damages --  
17 the extent of the damages that he could provide  
18 testimony for. And so now the jury is entitled to  
19 decide for itself what damages are appropriate here.  
20 And, in fact, many juries have decided in cases of  
21 defamation and civil conspiracy what kind of damage  
22 would be appropriate for the reputational harm and  
23 otherwise.

24 THE COURT: Well, I mean, there's reputational  
25 harm. Does that -- I mean, does that satisfy the

1 element for civil conspiracy? I mean, I'm not  
2 talking -- we're just talking about the civil  
3 conspiracy here.

4 MS. LAU: Well, Your Honor, we would argue that  
5 we've -- we've established both that as well as, you  
6 know, specific damages or special damages with  
7 respect to Mr. Pampu's career as Mr. Shedlin  
8 properly stated. I mean, while he could not provide  
9 numbers, certainly he provided testimony that the  
10 damages would be significant given what he would've  
11 made as an orthodontist and what he's making now.  
12 There is a basis here for the jury to decide. It's  
13 in the province of the jury to decide. He's also  
14 got loss of connections in the fraternity as well,  
15 which Mr. Pampu did provide testimony on. So we've  
16 provided testimony on several aspects of his  
17 damages.

18 THE COURT: All right. Mr. Moore.

19 MR. MOORE: Your Honor, what I'm not hearing  
20 and maybe I'm missing something is any reference by  
21 plaintiff's counsel with regard to evidence against  
22 CJ Gahagan and him being in basically cahoots or a  
23 combination whatever with Dave Wingo to cause his  
24 damage with regard to him staying in the fraternity.  
25 There's just absolutely no evidence of that

1           whatsoever.

2                       She said I misstated the factors involved in  
3           civil conspiracy, but, quite frankly, I'm reading  
4           from the factors set forth in the Paradise case.  
5           And I'm not real sure we have a real disagreement  
6           there. However, clearly there has to be a  
7           combination or agreement between parties as she said  
8           and don't disagree with this to cause harm, but they  
9           don't have any evidence that CJ Gahagan was engaged  
10          in any kind of conspiracy or agreement or whatever  
11          with regard to him getting kicked out of the  
12          fraternity. That was solely done by Dave Wingo, and  
13          I think the evidence shows that all he did was act  
14          alone in sending a letter and communicating with the  
15          president of the fraternity, but, certainly, CJ  
16          Gahagan was not mentioned with regard to testimony  
17          or evidence.

18                     Now, going further, she says, well, we have  
19          special damages proven. They don't because  
20          Mr. Shedlin could not testify to that. It was  
21          beyond his expertise. All he said was basically in  
22          general, well, I think there may have been some  
23          damage here, but he didn't follow through with  
24          regard to any numbers as to what those damages might  
25          have been. His testimony was basically, well, he

1 can't get in -- he can't become an orthodontist. He  
2 can't get into dental school and then become an  
3 orthodontist later based upon him getting into  
4 dental school.

5 But in order to provide damages under those  
6 circumstances, they got to have some kind of number  
7 there to compare, you know, what he makes as dentist  
8 as -- or an orthodontist compared to what he might  
9 be making now or in the future. And there was no  
10 evidence regarding that whatsoever either, so there  
11 are no special damages here. I'm not aware of any  
12 case law in South Carolina which indicates their  
13 connections or lack of connections gives a basis for  
14 damages.

15 Essentially what they're arguing is, when you  
16 have these connections, that can help you with  
17 regard to businesses and he might make more  
18 business -- make more money because of those  
19 connections, but, again, there's no evidence as to  
20 what that might be. So I think there's a failure on  
21 the part of the damages as well.

22 THE COURT: Anything further?

23 MR. GRANTLAND: Your Honor, to echo Mr. Moore's  
24 comments, the case law is very clear that special  
25 damages cannot overlap their own damages and that's

1           what is going on here. They're calling -- they're  
2           calling their damages special damages, but they're  
3           really -- they're really all general damages. And,  
4           you know, I direct the Court to Benedict College  
5           which is 735 S.C.2.d 518, a Court of Appeals case  
6           2012, which specifically says that the two damages  
7           has to be separate and distinct. They don't -- they  
8           can't overlap and that's what's going on. They're  
9           calling these nebulous claims special damages.  
10          There certainly no number attached to it and it's  
11          all ultimately general damages. That by itself  
12          should cause a civil conspiracy claim to fail.

13                 THE COURT: All right.

14                 MS. LAU: Your Honor, on those two points,  
15                 first with Mr. Moore's point. You know, as we  
16                 stated, the civil conspiracy claim is really kind of  
17                 broken down into sub-claims because there's two  
18                 different conspiracies going on here which we've  
19                 explained to the jury. There's a civil conspiracy  
20                 as between Mr. Wingo and Ms. Wingo regarding the  
21                 frat. Then there's a civil conspiracy claim between  
22                 Mr. Gahagan and Ms. Wingo regarding the school, and  
23                 we do believe that we've met those elements with  
24                 respect to the evidence and testimony provided in  
25                 this case. So -- but that said that, you know, as

1 far as whether Mr. Gahagan is implicated in any  
2 conspiracy, he is implicated in one of them.

3 Now, with respect to the second piece which is  
4 the special damages argument, we believe we've --  
5 we've met that through Mr. Shedlin's testimony with  
6 respect to his testimony specifically saying that he  
7 would've -- Mr. Pampu would've earned significantly  
8 more as an orthodontist than he is here and there is  
9 a baseline, it's what he's making now. He has -- he  
10 has established that and it's within the jury's  
11 province to decide.

12 THE COURT: Isn't that asking the jury to  
13 totally speculate on the amount of that. How can  
14 they come up with a figure that I wouldn't even let  
15 this -- your expert come up with? How can they come  
16 up with that?

17 MS. LAU: Because they can decide even \$1 more  
18 than \$77,000 that he's making because they still  
19 have a baseline to start with. We're not asking  
20 them to start with anything. We've have them have a  
21 baseline to start with. There's been testimony on  
22 that. It's not been disputed and it's within the  
23 province of the jury to decide how much they would  
24 like to -- like to have. There's no requirement  
25 that there has to be a dollar amount submitted to

1 the jury for it to be special damages.

2 THE COURT: All right. Now, let's talk about  
3 the school. You said there are -- you -- you seem  
4 to have divided your argument.

5 MR. MOORE: I did. I did. The second aspect  
6 of the civil conspiracy theory that they have has to  
7 do as indicated where CJ combined with Erin to cause  
8 Andrew Pampu to be expelled from school. Again,  
9 there is no testimony because we've been precluded  
10 from getting into that particular aspect of the case  
11 as to the Title IX hearing and what happened at the  
12 Clemson hearing as to why he might have been  
13 expelled from school. There's really no testimony  
14 to that effect that they combined together to cause  
15 him to be expelled from school. In other words,  
16 when you look at those elements, there has to be a  
17 combination. And the argument is, okay, you have CJ  
18 and Erin working together to try to get Andrew Pampu  
19 expelled from school, but they are not the ones  
20 making the decision and there's no testimony as to  
21 why he was actually expelled from school.

22 The second aspect and we've already gonn  
23 through this probably ad nauseam is, again, with  
24 civil conspiracy, you got to prove your damages.  
25 And they have not proved the damages because, again,

1 they're relying on Shedlin in that situation and he  
2 could not testify because he did not have the  
3 expertise to give evidence regarding what amount of  
4 damages they might have. It's not a matter of  
5 baseline. They've got to show that there's some  
6 difference between what he was earning at his  
7 present job as they've argued and what he might be  
8 earning either as an orthodontist or as a dentist  
9 and there's no evidence of that.

10 For example, if he actually earned more while  
11 he's working at his present job and as a dentist.  
12 There's no damages and there's nothing there to show  
13 that could not occur. So our position, again, is on  
14 two elements -- one is obviously with regard to the  
15 damages, but, secondly, there has to be a showing in  
16 this combination that actually caused -- that they  
17 combined to cause this injury that they actually  
18 caused this injury they're talking about and they  
19 can't prove that.

20 MR. GRANTLAND: And, Your Honor, on behalf of  
21 Erin Wingo and those comments, Clemson suspended  
22 Mr. Pampu. Erin Wingo didn't. And Erin Wingo  
23 working with CJ Gahagan, there's no evidence of  
24 that. She made an allegation. Clemson investigated  
25 it and suspended him, not -- not Erin Wingo. And,

1           again, there are no special damages. And no  
2           matter -- you're absolutely right, Your Honor.  
3           They're asking the jury to speculate on a number  
4           higher than his current salary based on what an  
5           orthodontist might make. There's no number to pull  
6           up an orthodontist, so this is all -- they've lured  
7           general damages into special damages.

8           MS. LAU: Your Honor, there's no question the  
9           defendants' statements to the school and the  
10          defendants' statements to the frat caused -- he was  
11          removed as a result. He was removed. And there's  
12          no question that he suffered damages. He suffered  
13          damages in that he cannot get a job in his intended  
14          field. That's been testified to. He will not be  
15          able to be an orthodontist because of this.

16          As far as whether we are required a dollar  
17          amount needs to be provided, again, as we've argued  
18          before, the special damages has been testified to  
19          the extent that we -- we were allowed through  
20          Mr. Shedlin's testimony, there is no requirement  
21          that an actual dollar amount has to go to the jury.  
22          They can decide special damages with respect to what  
23          the testimony was given to them. They know that an  
24          orthodontist now makes significantly more than a  
25          salesperson.

1           THE COURT: Any final word on that? And I'm  
2 going to consider this. All right. Now, your next  
3 motion.

4           MS. LAU: I guess the final note was that their  
5 text messages show a common plan and this is as to  
6 Ms. Wingo and Mr. Gahagan so if there was any  
7 question about that, I want to make that clear.

8           THE COURT: All right.

9           MR. MOORE: The second aspect has to do with  
10 the second cause of action which is for defamation.  
11 And there are, again, four -- four factors that are  
12 considered. One, a false and defamatory statement  
13 concerning another person. That other person is  
14 obviously Andrew Pampu. And an unprivileged  
15 publication to a third party. Fault on the part of  
16 the publisher, which in this case from my standpoint  
17 is CJ Gahagan. And then either damages, which are  
18 pro se or pro quad.

19           What I'm concentrating on is with regard to  
20 fault. And we have a case on that or at least  
21 touches upon that, and it's Holtzsheilr. I'm trying  
22 to pronounce that correctly, but it's  
23 *H-o-l-t-z-s-h-e-i-l-r v. Thompson.*

24           And that particular case which has also been  
25 adopted by the Court of Appeals indicates that, you

1 know, when one publishes false and defamatory  
2 communication concerning another person, a private  
3 person, they're subject to liability if and only if,  
4 one, that person knows the statement is false and it  
5 defames another; two, or that these are  
6 alternatives. They're not in combination. Or acts  
7 in reckless disregard of these matters or acts  
8 negligent in failing to ascertain them.

9 Now, with regard to CJ Gahagan, can't be argued  
10 that he knows these things are false because he  
11 wasn't there. He doesn't -- has no information as  
12 to yes or no because he didn't observe the act of  
13 sex involved. With regard to whether it's reckless  
14 or not, he didn't just make a statement and pull it  
15 out of the air. He had reasons for that statement.

16 So we go to the third aspect of it with regard  
17 to negligence. And if you look at the statement  
18 which the Supreme Court and Judge Toal situation.  
19 They made reference to the restatement. What the  
20 restatement requires is that there has to be some  
21 kind of evidence as to the conduct of the defendant  
22 as to whether he acted reasonably in checking on the  
23 truth or the falsity of the defamatory character of  
24 the communication before he published it.

25 So in this situation, CJ Gahagan is not present

1 when the sexual act took place. All he knows is,  
2 number one, he receives a call from Andrew Pampu the  
3 night of the incident. He also receives texts on  
4 the night of the event from Erin Wingo. He  
5 subsequently the next day sees this text where  
6 Andrew Pampu is bragging about him having sex with a  
7 chick. He puts that information together to  
8 determine that it was actually Erin Wingo who is the  
9 one, the victim of that sexual act. He then goes to  
10 Erin Wingo determine and confronts her about what  
11 occurred. She tells him at that point in time that  
12 she cannot remember much of anything that has  
13 occurred. She has a very spotty memory as to what  
14 occurred and basically she has blackout -- alcoholic  
15 blackout as a result.

16 He then tries to go to talk to Andrew Pampu and  
17 Andrew Pampu kind of puts him off at that particular  
18 point in time. He also, the evidence shows, went to  
19 talk to the sorority sisters of Erin Pampu as to how  
20 much she had to drink. And according to testimony  
21 of Andrew Pampu on cross-examination, I asked him  
22 specifically was there anything else that CJ Gahagan  
23 could have done to go ahead and try to investigate  
24 this matter and the response is he doesn't know of  
25 anything.

1           So with regard to trying to prove negligence,  
2           you've got to -- you've got to prove some kind of  
3           breach of standard as to what he should have been  
4           doing. And there is no proof of anything more that  
5           he could've done. He made -- he made the effort to  
6           try to talk to the people involved in this  
7           particular activity. He made an effort to talk to  
8           the sorority sisters. He gathered information as to  
9           the extent of her intoxication, which indicated she  
10          had a blackout. She also indicated that there's  
11          also indication that she was drunk when she got to  
12          the party. She became progressively drunk as the  
13          night went on.

14          There's also information that she could hardly  
15          text when she got to the frat house when they  
16          returned from having sex, that she was there  
17          crying -- drunk crying I think was the testimony.  
18          And that when she left, she threw up a couple of  
19          times before she got back to her sorority -- to her  
20          residence. And then when she got back into her  
21          residence, she couldn't even stand up to open the  
22          door. They had to help her into her bed to put her  
23          into bed.

24          So there's a lot of information there with  
25          regard to, you know, whether she's under the

1 influence, the extent of how much she's under the  
2 influence, and whether she could have had a  
3 situation where she could not consent to having sex.

4 Now, Andrew Pampu has indicated that in order  
5 to have rape, you have a situation where you have a  
6 sexual act which is a given here. Everybody admits  
7 that occurred and that it was without consent. The  
8 information that CJ Gahagan gathered as to whether  
9 it was consensual or not, and that was all he could  
10 do to gather the information to determine if it was  
11 consensual or not would indicate that it was not.  
12 And then any statement he made directly after that  
13 was based upon that limited information that he had.  
14 He couldn't have done anything else. So there is an  
15 absence of fault with regard to CJ Gahagan with  
16 regard to this particular cause of action. And  
17 without that particular type -- without that factor,  
18 they can't prove defamation against CJ Gahagan.

19 MR. GRANTLAND: Thank you, Your Honor. May it  
20 please the Court? Regarding Erin Wingo, there's --  
21 in the light favorable to Mr. Pampu, there's no  
22 question words were said before the Clemson process  
23 began. Words like "hooked up with Drew; had sex  
24 with Drew; had sex apparently." None of this --  
25 none of these words are defamation. The word -- the

1           defamatory words they're alleging that were wrongful  
2           and defame Mr. Pampu are the words "rape" and  
3           "sexual assault." Those words did not occur --  
4           those words did not come out of Erin Wingo's mouth  
5           until after the Clemson process began and until  
6           after the Clemson investigation began.

7           And once the Clemson process began, I think on  
8           October 27th, whatever she said regarding the -- to  
9           Clemson, would be privileged, would be a qual -- she  
10          would have a qualified privilege to any of her  
11          statements made to Clemson. So they -- I know  
12          that -- I know there's testimony that the words  
13          "rape" were used, the words "sexual assault" were  
14          used. Those were used after Clemson began the  
15          process and those words would be privileged.  
16          Particularly under -- I direct the Court to Corbin  
17          v. Washing Fire Marine. It's a Fourth Circuit  
18          decision. 398 F.2d 543. It's been adopted by South  
19          Carolina courts that any statements in a  
20          quasi-judicial proceeding are privileged. And  
21          whatever Erin said to Clemson would be privileged.  
22          Again, before -- before the comments -- before she  
23          spoke to Clemson, her words were that and there's no  
24          question the words were "hooked up with; had sex  
25          with; had sex apparently," but beyond that there

1 were no words.

2 THE COURT: Well, I believe the testimony is  
3 that she -- she made the comment against -- it's  
4 from testimony that I recall, she made the comment  
5 that it was rape after she talked to Clemson, but it  
6 was not in connection with a claim filed to Clemson.

7 MR. GRANTLAND: When Clemson started  
8 investigating, Your Honor ---

9 THE COURT: It wasn't -- I mean, she was  
10 telling other people. This was not a claim -- this  
11 was -- some of these comments were not comments made  
12 to Clemson though. It was after she had some  
13 discussions, but I'm not sure that that ---

14 MR. GRANTLAND: It all -- all relates to the  
15 Clemson investigation, Your Honor.

16 THE COURT: Well, I mean, related in actual  
17 publication to the body are two different things,  
18 aren't they?

19 MR. GRANTLAND: They're all -- once Clemson  
20 started asking her questions and began investigating  
21 her statements became privileged.

22 MS. LAU: Your Honor, there's simply no  
23 privilege that applies here, not a qualified one and  
24 nothing that I can see that would apply or relate to  
25 the circumstances in this case. And as -- as has

1        been previously ruled, you know, this -- even if we  
2        were to assume that the Clemson decision would  
3        provide some cover as -- it's just not -- it's not  
4        decided. I mean, these were statements that were  
5        made. As you just mentioned, they were made outside  
6        process to other people before a decision can ever  
7        come down, but, again, you know -- again, the  
8        rulings in this case prior to -- to trial were that  
9        that is not an administrative decision hearing --  
10       you know, hearing decision anyway so there was  
11       certainly no privilege for anything stated after  
12       that fact and certainly something no privilege  
13       before that fact.

14                Now, as far as the level of fault, we are  
15       talking about negligence here. We're not talking  
16       about anything else. And negligence or  
17       recklessness, however, you know, counsel wants to  
18       frame it, but certainly some of the case sites I've  
19       been giving you are with respect to public figures  
20       where something of a malice nature is required.  
21       That's not required here.

22                And relying on statements by someone you claim  
23       has no memory is negligent. That's -- that's  
24       negligent and reckless, especially when you know  
25       there is somebody who does have memory. It's mainly

1 the other person to that encounter, and he's saying  
2 something else. So, you know, the fact that there  
3 is a reliance on one half of that -- that encounter;  
4 namely, the half that says they didn't remember.  
5 That's just not reasonable and certainly would rise  
6 to the degree of negligence.

7 THE COURT: All right. Let me ask you a  
8 question too. We're just discussing actual damages,  
9 correct?

10 MR. MOORE: Yes, sir.

11 MS. LAU: You know, it's your motion, so...

12 THE COURT: Not general, but, I mean, just for  
13 purposes. I mean, general -- not talking about  
14 general versus special. I mean, I'm talking about  
15 actual versus punitive. That's what -- looking at  
16 the complaint, there was no allegation for punitive  
17 to be the causes of action.

18 MS. LAU: No, there was.

19 MR. MOORE: Well, I guess where you're leading  
20 it is the ---

21 THE COURT: Well, let's finish this though.

22 MR. MOORE: Oh, okay. Judge, obviously, I  
23 disagree with her as far the nexus part because if  
24 you look at the South Carolina law in that  
25 particular case, the Court of Appeals set forth the

1 standard, but they're relying upon one of Jean  
2 Toals' opinions to the effect Jean Toal has  
3 indicated that that -- that it has to be proven of  
4 at least negligence with regard to a private  
5 individual. This is not one of these constitutional  
6 laws things, so that if it is -- if that is the  
7 standard and you have to prove negligence with  
8 regard to the private individual, then you've got to  
9 show somehow with regard to negligence that there  
10 has been a breach of some kind of standard.

11 In this situation, the standard is the  
12 reasonable man standard. We all know what that is.  
13 So what's a reasonable man do? What you look at is  
14 what a person would do to try to find out what  
15 occurred if he's not involved in the actual sexual  
16 act. CJ Gahagan was not. So what he does is  
17 investigate based upon the information that he can  
18 gather. The information he can gather is, number  
19 one, he's already figured out who was involved in  
20 the sexual act and, ultimately, Mr. Pampu has  
21 admitted that he was involved in the sexual act.

22 Then the question becomes: Okay. Is it  
23 consensual? What's the evidence regarding that?  
24 Well, we know that we got a lot of testimony of her  
25 immediately after the sexual act as -- well, let me

1 back up a little bit. There's a lot of testimony  
2 regarding the amount of alcohol she had to consume.  
3 There's testimony as to the way she was acting  
4 immediately after the sexual act, that she was  
5 crying a lot, that she was -- she was talking about  
6 ex-boyfriends, talking about CJ Gahagan, that she  
7 was stumbling, that she gets back to the fraternity,  
8 that she's trying to text CJ, but she can't do so  
9 properly, that she gets in the car to go back to her  
10 dorm. She's throwing up at least two times. She  
11 gets back to her dorm. She's throwing up more. She  
12 can't get up from the ground. She's seated on the  
13 ground because she can't get up and follow the RA to  
14 get the key. She -- they come back. They had to  
15 actually walk her to the bed and put her in the bed  
16 to make her go to sleep.

17 The next morning, CJ goes to see her. She  
18 tells him, "I can't remember most of what occurred  
19 during the course of the night. That's evidence of  
20 quasi judicial backout -- alcoholic blackout. He  
21 then goes and talks to Pampu about it. Pampu won't  
22 talk to him immediately. Just say, okay, he's only  
23 looking at one side of the story. At that point in  
24 time, he can only get the information that I put  
25 before you because Pampu will not talk to him.

1           The acts of defamation they're talking about  
2           are two texts which occurred before he was actually  
3           able to sit down with Pampu and talk to him about  
4           it. So we got to look at the time he's making the  
5           statement. And if his statements are in these text,  
6           so that what's the information he has and whether he  
7           complied with the reasonably standard under the  
8           circumstances to make a conclusion. And I submit to  
9           Your Honor there's nothing else he could've done.  
10          And I think Mr. Pampu has admitted that on his  
11          cross-examination.

12           MR. GRANTLAND: Your Honor, for Dave Wingo, I  
13          didn't address him.

14           THE COURT: I assumed you were.

15           MR. GRANTLAND: The statement he made to the  
16          fraternity was based solely on what he received from  
17          Clemson. He -- he -- he received Clemson's decision  
18          and sent that to the -- to the fraternity. He sent  
19          a true decision to the fraternity.

20           THE COURT: Well, and again, like I said  
21          earlier, with a lot more added to it.

22           MR. GRANTLAND: Your Honor, but it was all  
23          based on the investigative report. Everything he  
24          sent was based on the investigation that Clemson had  
25          produced that he received that he forwarded to the

1 fraternity. He relied on their decision and their  
2 process.

3 THE COURT: Okay. Well, I mean, here as to the  
4 defamation claim, I feel like that's a jury question  
5 and I'm going to let that go to the jury. I'm going  
6 to hold -- I'm going to take under advisement your  
7 motion for civil conspiracy. I'm going to look at  
8 some of the case law. I don't think that should  
9 prejudice y'all and anything that y'all agreed to  
10 presenting.

11 And I guess my question on the punitive versus  
12 actual, I was looking at the complaint. I see  
13 punitive there are punitive on the defamation, but  
14 there's not -- I'm not sure it's applicable to civil  
15 conspiracy or not, but I didn't see that pled as to  
16 civil -- to punitive damages. And in looking at the  
17 case law, I'm not sure I can find any one way or the  
18 other, but, I mean, so actual and punitives are ---

19 MR. MOORE: With the defamation, I thought this  
20 is where you're going. It's got to be clear and  
21 convincing evidence regarding punitive damages.

22 THE COURT: Right. But, I mean, as far as  
23 punitive damages, I think they've been pled as to  
24 civil conspiracy.

25 MS. LAU: Not to our knowledge.

1 THE COURT: Okay. That's just clarification.  
2 All right. Anything else from the defendant?

3 MR. MOORE: No, sir.

4 THE COURT: All right.

5 MS. PORTER: We have Olivia Pescatore on Zoom  
6 is our first witness.

7 THE COURT: All right. Tell the jury we had  
8 some issues, but we should have them out here  
9 shortly.

10 (From 2:04 to 2:09 p.m., brief recess.)

11 THE COURT: Is the defense ready?

12 MS. PORTER: Yes.

13 THE COURT: Is the plaintiff ready?

14 MS. LAU: Yes.

15 THE COURT: All right. Bring them in.

16 (At 2:09 p.m., jury entered the courtroom.)

17 THE COURT: Ladies and gentlemen, thank you for  
18 your patience. Hopefully, everyone had a good  
19 lunch. There were a few matters we had to go over.  
20 I'm not making any promises, but we -- this case is  
21 working hard and I think we're moving along rather  
22 quickly, so we're in good shape, but I'm not making  
23 any promises because things can change.

24 So at this time as you can see, we're back --  
25 this witness will be by Webex. And as I told you

1 before, you treat this witness the same as if she  
2 were here live and give it the weight and value that  
3 you feel appropriate. So call you first witness  
4 from the defense.

5 MR. GRANTLAND: Thank you, Your Honor. May it  
6 please the Court? The defendant calls Olivia  
7 Pescatore.

8 THE COURT: All right. Ms. Broom, if you'll go  
9 around and swear her in.

10 THE CLERK: (Complying.) Hey, Ms. Pescatore.  
11 If you'd raise your right hand for me.

12 THE WITNESS: (Complying.)

13 THE CLERK: Do you solemnly swear the testimony  
14 you're about to give in this case to be the whole  
15 truth, nothing but the truth so help you God?

16 THE WITNESS: I do.

17 THE CLERK: State your full name for the  
18 record.

19 THE WITNESS: Olivia Pescatore.

20 OLIVIA PESCATORE,  
21 having been produced and first duly sworn as a  
22 witness on behalf of the Defendant, then testified  
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. GRANTLAND:

1 Q. Good afternoon, Olivia. May I call you Olivia?  
2 I have difficulty with your last name. Can you  
3 spell your last ---

4 A. Yes, you may.

5 Q. Can you spell your last name for the record?

6 A. Pescatore, P-e-s-c-a-t-o-r-e.

7 Q. Thank you. And if it's okay with you, I'm  
8 going to call you Olivia if that's all right. Okay.  
9 As you know, Olivia, I'm John Grantland. I  
10 represent Erin and Dave Wingo. First, if you could  
11 introduce yourself to the jury, tell the jury a  
12 little bit about yourself.

13 A. Yes. Like I said, my name is Olivia. I  
14 currently live in Washington, DC, at an agency here  
15 working with nonprofit organizations after I  
16 graduated from Clemson University.

17 Q. And where are you from originally?

18 A. I'm from New Jersey.

19 Q. New Jersey. Excellent. Okay. And so you live  
20 in DC now, is that what I heard?

21 A. Yes.

22 Q. What kind of work do you do?

23 A. I work with nonprofit organizations and  
24 fundraising, mostly with humanitarian clients.

25 Q. Great. And you graduated from Clemson?

1 A. Yes.

2 Q. Go Tigers. What year did you graduate?

3 A. Graduated in 2019.

4 Q. Great. Okay. Olivia, I'd like to take you  
5 back to 2015 and talk to you about Erin Wingo and  
6 what you may remember what about what happened to  
7 her on the night of October 24th and 25th, 2015.  
8 You and Erin were in the same sorority back in  
9 October 2015?

10 A. Yes.

11 Q. And you were friends then, but you have not  
12 kept up with her since graduation?

13 A. Yes.

14 Q. Do you recall the night y'all went to the  
15 compound and -- and the incident that happened to  
16 Erin?

17 A. Yes.

18 Q. Okay. Before you went to the fraternity party  
19 at the compound, what did you and Erin and your  
20 friends do?

21 A. We had a pregame at one of our friends dorm and  
22 were drinking.

23 Q. What does a pregame mean? I don't think anyone  
24 has said that in this whole trial. They've said  
25 pregame, but no one has defined what a pregame is.

1           What -- what do you mean pregame?

2           A.     Essentially, just hanging out together before  
3           we went to the party.  Yeah, usually just regroup,  
4           make sure we all show up together.

5           Q.     And at -- while y'all were pre-gaming at --  
6           whose -- whose dorm room were you in?  Do you  
7           recall?

8           A.     Yes.  Rachel Corbin.

9           Q.     And while you were at Rachel Corbin's dorm room  
10          with Erin, did Erin drink alcohol with you and the  
11          other girls?

12          A.     Yes.

13          Q.     What did she drink?

14          A.     She drank Fireball, and I think that there was  
15          vodka there, as well.

16          Q.     Do you know how much -- how much Fireball did  
17          Erin drink?

18          A.     I -- I don't recall exactly.

19          Q.     Okay.  After drinking, do you know if she drank  
20          Fireball and Vodka?

21          A.     Yeah.

22          Q.     Okay.  And after drinking at the dorm, what did  
23          y'all do?

24          A.     We then left and walked to the compound for the  
25          party.

1 Q. Okay. Do you know what time of the evening you  
2 would've left the dorm to go to the party?

3 A. Between like 10:15, 10:30.

4 Q. Okay. How was Erin's speech when you were  
5 walking to the party?

6 A. She was slurring her words a little bit,  
7 talking a lot more than usual. She was really  
8 excited.

9 Q. How did she walk from the dorm to the compound?

10 A. I think we were all kind of walking a little  
11 zigzagged, not really a straight line.

12 Q. Were y'all all a little intoxicated?

13 A. Yeah.

14 Q. Okay. I'm not trying to embarrass you, but was  
15 Erin intoxicated?

16 A. Yes.

17 Q. All -- all -- while -- when y'all were going to  
18 the party, she was already intoxicated?

19 A. Yes.

20 Q. Okay. And the fraternity party was at a place  
21 called the compound; is that right?

22 A. Yes.

23 Q. And after you got to the compound, when did you  
24 see Erin again?

25 A. I'm not entirely sure the exact timeline, but I

1 did see her later on in the night. We were -- I was  
2 walking inside one of the houses to use the  
3 restroom. She was walking down the stairs, and we  
4 sort of ran into each other. I told her I had to  
5 used the restroom. She said she would show me where  
6 it was. We turned around and went back up the  
7 stairs.

8 Q. Well, tell -- tell the jury what happened when  
9 y'all went back up the stairs to go to the bathroom?

10 A. Yeah, when Erin had turned around and I  
11 followed her up the stairs, she tripped up them.

12 Q. Was she having trouble walking?

13 A. Yes.

14 Q. Was Erin intoxicated when you saw her? Did she  
15 actually fall on the stairs -- fall going up the  
16 stairs?

17 A. Yes, she did.

18 Q. Was she intoxicated when you saw her fall going  
19 up the stairs?

20 MR. FIGLIOZZI: Objection. Speculative.

21 MR. GRANTLAND: She can testify as to what she  
22 observed, Your Honor.

23 MR. FIGLIOZZI: She doesn't know if Erin was  
24 intoxicated.

25 THE COURT: I'm sorry?

1 MR. FIGLIOZZI: She wouldn't know if she were  
2 intoxicated.

3 THE COURT: If she can -- she can give her  
4 opinion on that. Overruled.

5 MR. GRANTLAND: Everyone else does. Let me  
6 repeat the question. Was Erin intoxicated?

7 THE COURT: Refrain from the comments.

8 MR. GRANTLAND: Yes, sir.

9 BY MR. GRANTLAND:

10 Q. Was Erin intoxicated when you saw her fall  
11 walking up the stairs?

12 A. Yes.

13 Q. Okay. When was the next time you observed  
14 Erin?

15 A. Her and I walked outside together, and we  
16 stopped and saw CJ and I left her with CJ at that  
17 point and went in the house with other friends.

18 Q. Okay.

19 A. And then later on in the night, she was on the  
20 front steps of the main Phi Delt house.

21 Q. Let me stop you there. When you -- when you  
22 saw Erin on the front steps of the -- of the house,  
23 how was she acting?

24 A. She was hysterically sobbing into somebody's  
25 lap. I'm not sure who that person was.

1 Q. And so you said she was hysterically crying or  
2 you said sobbing?

3 A. Yes.

4 Q. Okay. Could you understand her words?

5 A. Yes. She kept just saying that CJ was going to  
6 be really mad at her, that CJ hated her, and then  
7 some of it in between there was a little incoherent.

8 Q. Did she appear more intoxicated than she was  
9 the last time you saw her?

10 A. Yes.

11 Q. Did you think she was not just intoxicated, but  
12 do you think she was incapacitated?

13 A. Yes.

14 Q. And why did you think she was incapacitated?

15 A. She was so hysterical and I just couldn't  
16 understand anything -- hardly anything that she was  
17 saying between talking about CJ, crying really,  
18 really hysterically.

19 Q. So -- so what did y'all do from there? Once  
20 you found Erin on the steps crying hysterically,  
21 what did you do from there?

22 A. We were there with Rachel and Ben as well, and  
23 I think that Ben had called a pledge driver because  
24 I think at that point we had decided it was time to  
25 go home. Rachel had been sick already. And we all

1 piled into a car and went back to Erin's dorm.

2 Q. Now, what happened when you got back to Erin's  
3 dorm.

4 A. When we got back to Erin's dorm, we could get  
5 into the actual physical dorm building itself. We  
6 had her Clemson ID, but she didn't a key for her  
7 room, so we were sitting outside of her room for a  
8 little bit. And I think her RA came out of her room  
9 and Haley went to find a key so she could get  
10 physically into her room so we could put her to bed.  
11 And between the key situation getting sorted, Erin  
12 needed to throw up so we into the bathroom across  
13 the hallway, and I held her hair up so she could  
14 throw up.

15 Q. And I'm going to -- let me just back up a  
16 little bit. Was Erin able -- was Erin able to stand  
17 when you were -- when y'all were in the dorm?

18 A. No.

19 Q. Were you actually helping carrying her?

20 A. Yes. Haley and I were on either side of her  
21 carrying her inside.

22 Q. And once you got her into the dorm, did you  
23 stay with Erin while someone else went to look for a  
24 dorm key?

25 A. Yes. Excuse me -- Erin had her head like in my

1 lap. She couldn't hardly sit up.

2 Q. Okay. And so she -- she was obviously sick to  
3 you?

4 A. Yes.

5 Q. And then she got nauseated and you took her to  
6 the bathroom?

7 A. Yes.

8 Q. And you -- you held her or helped her while she  
9 was throwing up?

10 A. Yes.

11 Q. Do you know how many times she threw up?

12 A. I don't recall.

13 Q. Okay. And how coherent was she at that point?

14 A. Still not very -- still very much crying  
15 through the whole thing, not really saying too much  
16 at that point.

17 Q. So y'all got a key to get her into her room,  
18 and what did y'all do once you got her in her room?

19 A. When we got her into her room, she -- she had a  
20 lofted bed. We helped her up into her lofted bed.  
21 And Haley left her a note on a sticky note telling  
22 her to return the key in the morning to her RA and  
23 to call us tomorrow.

24 Q. So y'all got her tucked into bed and safe and  
25 then you left?

1 A. Yes.

2 Q. So y'all were good friends to her. Let me ask  
3 you about Sunday, the next -- or the next day. Did  
4 you hear from Erin on that -- the next day or that  
5 afternoon? I guess that would've been a Sunday  
6 afternoon.

7 A. I heard from Erin Sunday night.

8 Q. Okay. Sunday night. Okay. Did she send you a  
9 text?

10 A. Yes. She texted me and Haley in a group chat.

11 Q. And what did she say to you in the -- in a --  
12 what did she say to you and Haley? I think it's in  
13 our -- in our exhibit in the court. It's  
14 Defendant's Exhibit 8. What do you recall her  
15 saying to you in a text message to you and Haley?

16 A. She thanked us for the night before, said that  
17 she, you know, owed us pretty big. She said she was  
18 feeling a little bit better. Still had a headache  
19 and had thrown up most of the day. She had seen CJ  
20 at a certain point on Sunday, as well. She  
21 mentioned that CJ knew what happened with Drew the  
22 night before.

23 Q. Well, let me -- let me stop you there. When --  
24 when did Erin mention Mr. Pampu?

25 A. I think it was like in the second text message

1 she sent to us.

2 Q. And what did she tell you about Mr. Pampu in  
3 her text message?

4 A. She said that she had hooked up with him, that  
5 they had had sex and she did not remember it.

6 Q. Correct me if I'm wrong, was the text message  
7 you asked what happened with and -- and -- or  
8 someone asked what happened, and she said, "I hooked  
9 up with him, had sex apparently and don't -- and I  
10 don't remember it"?

11 A. Yes.

12 Q. That was -- was that her text message to you  
13 and Haley?

14 A. Yes.

15 Q. Did Erin say anything else about Mr. Pampu and  
16 the way he was acting?

17 A. Not specifically. She had said that she just  
18 wished that it hadn't happened and that he knew  
19 better than she did.

20 Q. Did Erin say anything about Mr. Pampu acting  
21 like was his proudest moment?

22 A. Yes.

23 Q. Okay. And what did Erin say about how she felt  
24 with Mr. Pampu saying these things?

25 A. She said it made her feel horrible.

1 Q. And did Mr. -- did Erin also tell you that Drew  
2 was mad because she didn't remember it?

3 A. Yes.

4 Q. Do you recall anything else Erin told you about  
5 how she felt after the sexual encounter with  
6 Mr. Pampu?

7 A. I had met up with her a couple of days later  
8 and she said she was afraid to tell anybody about  
9 it.

10 Q. Did she -- did she say something to you in a  
11 text to the effect, "I feel like I shouldn't get to  
12 be mad because I let it happen, but I'm mad because  
13 I wish he hadn't done it because he knew better than  
14 I did"?

15 A. Yes.

16 Q. And did you receive that text from Erin?

17 A. Yes, I did.

18 Q. Okay. And from talking to Erin, did you think  
19 Mr. Pampu had sexually assaulted her?

20 A. Yes.

21 Q. And why did you feel that way?

22 A. The way that I had seen Erin that night, I knew  
23 that she was not in the state of mind by any means  
24 to be able to get this done.

25 Q. You thought she was too drunk to give consent

1 to Mr. Pampu?

2 A. Yes.

3 Q. And you said you spoke to Erin later in the  
4 week. What did she say about whether she remembered  
5 having sex with Mr. Pampu?

6 A. She said she didn't remember it.

7 Q. What did Erin tell you about telling other  
8 people about the incident?

9 A. She said she was afraid to tell people. She  
10 was afraid to tell her mom specifically. We had  
11 talked she was afraid of people finding out about  
12 it.

13 Q. Did Erin want to report the incident to  
14 Clemson?

15 A. No. Not at that point.

16 Q. And she was afraid to tell her mom? She was  
17 afraid to tell others; is that correct?

18 A. Yes.

19 Q. And I think you and Erin were friends at this  
20 time; is that right?

21 A. Yes.

22 Q. And how did this incident with Mr. Pampu affect  
23 her from your perspective?

24 MR. FIGLIOZZI: Objection.

25 THE WITNESS: From my perspective

1 afterwards ---

2 MR. GRANTLAND: Please stop.

3 MR. FIGLIOZZI: Speculation as to how Ms. Wingo  
4 felt.

5 THE COURT: Right. And -- and sustained a  
6 little, I mean, in that she can testify about what  
7 her observation what she knew ---

8 MR. GRANTLAND: Yes.

9 THE COURT: --- but it has to be limited to  
10 that.

11 MR. GRANTLAND: Sure.

12 BY MR. GRANTLAND:

13 Q. So, Olivia, there was an objection, so let me  
14 just make sure I'm clear on my question. What did  
15 you observe about Erin after the incident?

16 A. Yeah. I observed Erin was more anxious after  
17 that. She became more reclusive, stopped hanging  
18 out with friends as much as she had in the past.  
19 She started seeing a therapist. Generally, you  
20 know, very anxious personality afterwards.

21 MR. GRANTLAND: Thank you. Please answer any  
22 questions Mr. Pampu's attorneys may have. Thank  
23 you, Olivia.

24 THE COURT: Mr. Moore, you have some?

25 MR. MOORE: No questions.

## CROSS-EXAMINATION

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BY MS. LAU:

Q. Hi, Ms. Pescatore. How are you?

A. I'm well. How are you?

Q. Good. Thank you. So you said a moment ago when you were being questioned by Mr. Grantland that there was some vodka and Fireball available in Ms. Corbin's room on the evening of October 24th, right?

A. Correct.

Q. You also were asked whether you had observed Ms. Wingo drinking Fireball. I believe you testified you did?

A. Yes.

Q. But you did not testify as to how much, correct?

A. Correct.

Q. Because you don't recall; is that right?

A. Yes.

Q. I believe you also were asked whether you observed Ms. Wingo drinking vodka in the room. Do you remember that testimony?

A. Yes.

Q. And I believe you testified that you did?

A. Yes.

1 Q. Are you sure that you saw Ms. Wingo drinking  
2 vodka or just Fireball?

3 A. Both.

4 Q. Are you -- do you recall a deposition that you  
5 attended on May 1, 2020, in this case?

6 A. Yes.

7 Q. Okay. And in that deposition, you were sworn  
8 to provide testimony under oath similar to the oath  
9 that you swore to tell the truth here at this trial?

10 A. Yes.

11 Q. Okay. And I know that you don't have a copy of  
12 your transcript in front of you, but defense counsel  
13 does so they can follow along with me. I'm going to  
14 read from page 32 of your deposition transcript  
15 where you were asked on line 20, "Were all five of  
16 y'all drinking this vodka?" And your answer, "I  
17 don't remember if all of us drank it."

18 And can then you -- you were asked, "Well, who  
19 do you remember drinking it?" And you answered,  
20 "Just myself and Haley." Do you remember that  
21 testimony?

22 A. I'm sorry. What was your question?

23 Q. Do you remember that testimony?

24 A. Yes.

25 Q. Okay. And that testimony was true and accurate

1 at the time?

2 A. Yes.

3 Q. Okay. You were asked when you left  
4 Ms. Corbin's room in McCabe to go to the party at  
5 the compound. Do you remember that testimony?

6 A. Yes.

7 Q. I think you said you approximated around 10:15  
8 or 10:30. And if I'm misstating that, please let me  
9 know.

10 A. It was in that time frame, yeah.

11 Q. Okay. Do you recall taking a photograph with  
12 Haley and Rachel and Erin? I'm showing the witness  
13 Plaintiff's 21. Do you remember taking a  
14 photograph -- this photograph? Sorry it's a little  
15 grainy.

16 A. No, it's okay. I -- I don't specifically  
17 remember it.

18 Q. Well, do you dispute that you were ---

19 A. I mean, but it's myself in the photo, yeah.

20 Q. Okay. Okay. And do -- do you see that there  
21 is a time stamp and a date stamp on the top of that  
22 photograph?

23 A. I see 11:32 p.m. Yes.

24 Q. Okay. Do you dispute the time stamp that's  
25 depicted on this photograph?

1 A. No, I don't.

2 Q. Okay. And do you dispute that a photo was  
3 taken of the four of you on your walk to the  
4 compound that night?

5 A. I don't recall.

6 Q. Okay. On the walk to the compound, Ms. Wingo  
7 was coherent, right?

8 A. Yes.

9 Q. You understood what she was saying?

10 A. Yes.

11 Q. She didn't stumble around?

12 A. I wouldn't use the word "stumble," no.

13 Q. Okay. And were you aware at some point prior  
14 to arriving at the compound, that Ms. Wingo told you  
15 it was Mr. Pampu's birthday?

16 A. Yes.

17 Q. And that she wanted to give Mr. Pampu a kiss  
18 for his birthday?

19 A. Yes.

20 Q. Now, you testified to a point in the evening  
21 when you were already at the compound where you saw  
22 Ms. Wingo at the bathroom. Do you recall that  
23 testimony?

24 A. Yes.

25 Q. Ms. Wingo was acting pretty normal during this

1 time, right?

2 A. Can you define normal?

3 Q. Well, I'm just using your words, Ms. Pescatore,  
4 from your deposition on May 1, 2020. Would you like  
5 me to read your testimony?

6 A. No. I mean, I'm sure I used the term "normal,"  
7 you know, in contrast to later in the evening when I  
8 saw her and she was hysterically crying. At that  
9 point, she was not hysterically crying.

10 Q. Understood. You did not notice anything  
11 outwardly off about Ms. Wingo during that time when  
12 you ran into her at the bathroom, right?

13 A. Other than the fact that she was intoxicated,  
14 no.

15 Q. Well, her physical appearance was the same as  
16 you had seen her before, right?

17 A. Yes.

18 Q. And by "before," you're referring to -- or  
19 we're referring to the walk from McCabe over to the  
20 compound, right?

21 A. Yes.

22 Q. Now, you gave testimony just a moment ago about  
23 you observing Ms. Wingo tripping up the stairs or  
24 something to that effect. Do you recall that?

25 A. Yes.

1 Q. But you can't state with 100 percent certainty  
2 she tripped up the stairs because of the consumption  
3 of alcohol, right?

4 A. I -- I guess not, no.

5 Q. I mean, could somebody fall up the stairs for  
6 reasons other than effects of drinking?

7 MR. GRANTLAND: Objection. Calls for  
8 speculation.

9 THE COURT: I think that's allowable.

10 BY MS. LAU:

11 Q. You may answer it.

12 A. Okay. I'm sorry. I couldn't hear in the  
13 background, but, yeah.

14 Q. Okay. During the car ride to -- well, let me  
15 back up. When you saw Ms. Wingo at the front steps  
16 of the compound -- this is now toward the end of the  
17 night when you had all kind of reconvened to get a  
18 ride to -- to home -- to your homes. Do you recall  
19 that testimony?

20 A. Yes.

21 Q. Okay. And you said Ms. Wingo was hysterical  
22 crying?

23 A. Yes.

24 Q. Okay. Is -- I mean, does your -- are you --  
25 are you testifying that with a 100 percent certainty

1 that she was hysterically crying because she was  
2 incapacitated?

3 MR. GRANTLAND: Objection, Your Honor. She's  
4 doing 100 percent certainty. I mean, it, again,  
5 calls for speculation.

6 THE COURT: Ask to what she knows.

7 BY MS. LAU:

8 Q. Base on what you know. Based on what you  
9 observed.

10 A. I'm sorry. Can you repeat the question?

11 Q. Can you state with 100 percent certainty based  
12 on what you observed that she was hysterically  
13 crying because she was incapacitated as opposed to  
14 another reason?

15 A. No.

16 Q. Okay. I mean, you testified that she was  
17 crying and saying that CJ was going to hate her,  
18 right?

19 A. Yes.

20 Q. During the car ride to Manning, you also  
21 previously testified Ms. Wingo was crying and saying  
22 CJ was going to hate her, right?

23 A. Yes.

24 Q. And then when you were at Manning, Ms. Wingo's  
25 dorm, Ms. Wingo told you that Mr. Gahagan was going

1 hate her again, right?

2 A. Yes.

3 Q. She -- that Mr. Gahagan wasn't going to forgive  
4 her; is that right?

5 A. Yes.

6 Q. And she stated that Mr. Gahagan did not love  
7 her, correct?

8 A. Yes.

9 Q. And you provided some testimony about some  
10 messages that you exchanged with -- I believe it was  
11 between yourself, Haley, and Ms. Wingo on  
12 October 25th. Do you recall that testimony?

13 A. Yes.

14 Q. Oh, I'm sorry. Are you -- are you referring to  
15 something on your screen? I should've asked you.  
16 Do you have anything else with the zoom screen on --  
17 on your screen?

18 A. I have just the court documents that were  
19 provided to me.

20 Q. What court documents? I'm sorry. What  
21 documents are you looking at?

22 A. The actual text messages that you're referring  
23 to.

24 Q. Okay. Do you have any documents that you're  
25 looking at?

1 A. No.

2 Q. Okay. And you're not communicating with anyone  
3 by an electronic device or otherwise?

4 A. No. I'm -- I'm not able to do that on my  
5 laptop for work.

6 Q. Okay. Just wanted to confirm for the record.  
7 Okay. So you mentioned you were -- you were texting  
8 with Haley and Ms. Wingo. And you texted about the  
9 sexual encounter between Ms. Wingo and Drew, right?

10 A. Correct.

11 Q. Okay. She did not state in those messages that  
12 she believes she had been raped, right?

13 A. She did not use those words, no.

14 Q. Okay. And then you testified a little while  
15 ago that she met with you or you met with her a  
16 couple of days later; is that correct?

17 A. Correct.

18 Q. Okay. And you continued to discuss the sexual  
19 encounter, including your beliefs that the sexual  
20 encounter were not consensual, right?

21 A. Correct.

22 Q. And this was based on only your discussions  
23 with Ms. Wingo at that point, correct?

24 A. Correct.

25 Q. You weren't actually present while the sexual

1 encounter occurred; is that right?

2 A. No, I was not.

3 Q. And you didn't see what she consumed as far as  
4 alcohol before or during the sexual encounter,  
5 correct?

6 A. Not since Rachel's dorm room before the party,  
7 no.

8 Q. Or -- or at any point during the party, right?

9 A. Not during the party, no.

10 Q. Okay. So you didn't see whether she may've  
11 been acting and appearing normal to Drew during the  
12 sexual encounter, right?

13 A. That's correct.

14 Q. Ms. Wingo told you at some point that she  
15 wanted Mr. Pampu kicked out of Clemson, right?

16 A. She said that she wanted her classes changed  
17 specifically. I know that they were living also on  
18 the same side of campus so she moved dorms, and I  
19 think later she said she did not want to run into  
20 Drew on campus.

21 Q. Okay. Page 97 of your deposition testimony,  
22 lines 19 through 25. I'm just going to read to you  
23 my question and your answer. My question was,  
24 "That's okay. Do you remember any specific words  
25 that Ms. Wingo used when she told you that she

