

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,	Jacksonville, Florida
Plaintiff,	Case No. 3:16-cr-93-J-32JRK
vs.	May 10, 2017
CORRINE BROWN,	8:14 a.m.
Defendant.	Courtroom No. 10D

EXCERPT OF JURY TRIAL PROCEEDINGS REGARDING DISMISSED JUROR
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography;
transcript produced by computer.)

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P R O C E E D I N G S

May 10, 2017

8:14 a.m.

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COURT SECURITY OFFICER: All rise. The United States District Court in and for the Middle District of Florida is now in session. The Honorable Timothy J. Corrigan presiding. Please be seated.

THE COURT: The record will reflect that the parties and Ms. Brown are present. The court needs to address a matter with counsel and with Ms. Brown.

The first question I have -- the matter involves a question about a juror. And I have notified counsel overnight of the general issue, and said I would convene a hearing at 8:15 this morning to discuss it.

The first question I have for counsel is whether the matter should be discussed in open court or whether the matter ought to be handled in camera. And so I would solicit the government's view on that first and then Mr. Smith's.

(Counsel confer.)

MR. DUVA: Your Honor, I think counsel agree that the general issue should be discussed in open court. Once the court moves -- or if the court moves into specific inquiry with individual jurors, if that's the case, then that should be done in camera.

THE COURT: All right. Then we will proceed in that

1 way. Obviously I want the matter to be in public as much as it
2 can be, but I also have to balance that with the principle
3 under the law that the overriding interest is to make sure that
4 the jury is protected in their deliberations and that they're
5 not subjected to public scrutiny for those deliberations. And
6 so there may be a point at which I will determine I need to
7 close the proceedings.

8 So, Mr. Duva, then it's yours and Mr. Smith's view
9 that I should go ahead in -- in open session and go ahead and
10 lay out the problem that has brought us all together, and only
11 if there's actual individual questioning of jurors, that
12 that -- I would consider sealing that portion of the hearing at
13 that time?

14 Is that what I'm understanding?

15 MR. DUVA: Yes, Your Honor.

16 THE COURT: Mr. Smith?

17 MR. SMITH: Yes, Your Honor.

18 THE COURT: Okay. All right. So, Mr. Duva and
19 Mr. Smith -- and, of course, other counsel as well -- here's
20 what happened.

21 My courtroom deputy, as part of her normal
22 procedures, has given the jurors her cell phone number. She
23 does that in case a juror is delayed or sometimes gets stuck in
24 traffic or those types of things, in order for her to be able
25 to have the jurors let them know, for example, if they're going

1 to be late or something like that. So it's a routine matter.

2 However, last night my courtroom deputy received an
3 unsolicited call from a juror. And the content of that call --
4 of course, it was a -- this is just a recounting of it, and has
5 to be understood as such. But the essence of it was that this
6 juror said that she was calling on her own behalf, but thought
7 that other jurors were concerned as well.

8 Her -- she expressed a concern about another juror,
9 that from the beginning this juror was talking about, quote,
10 higher beings, close quote.

11 She said something to the effect that this other
12 juror was making comments about higher beings and also
13 mentioned Congresswoman Brown's name.

14 At that point my courtroom deputy stopped the juror
15 and said that she was -- could not discuss anything to do with
16 the case with her and that she would bring the matter to my
17 attention, which she did last night.

18 And based upon that, the court notified counsel by
19 e-mail overnight that this had occurred and said we would
20 convene a hearing at 8:15 this morning in order to discuss it.

21 That is the substance of what was said. And -- and
22 so that's -- so that's the only record we have. And so the
23 court has, overnight, undertaken a look at the case law.

24 I sent some cases to counsel by e-mail to review.
25 Counsel for the government has sent back some case law early

1 this morning that I have now had an opportunity to review as
2 well.

3 I do have some thoughts about the matter, but I want
4 to solicit counsels' views, and then make a decision as to how
5 I intend to proceed.

6 So that's it. And we just need to determine what we
7 need to do about it, if anything, and then do it, and then get
8 the case back to the jury, as it should be.

9 So who wants to speak for the government? Mr. Duva?

10 MR. DUVA: Your Honor, based on the court's
11 articulation, and having had the opportunity to review *United*
12 *States versus Abbell*, which is A-b-b-e-l-l, 271 F.3d 1286,
13 Eleventh Circuit, 2001, and also *United States versus Godwin*,
14 765 F.3d 1306, Eleventh Circuit, 2014, it's the view of the
15 government that to make the required record that those cases
16 require, the court should inquire with the juror that made the
17 call to Ms. Diaz to further develop the record and determine
18 from that what needs to be done next, whether or not the court
19 needs to then inquire with the jury foreperson and potentially,
20 as has happened in both of those cases -- I don't know that
21 this is required, but it's noteworthy that in both of those
22 cases all jurors were polled by the court.

23 It's hard to tell if that will be necessary in this
24 case. We don't know much, other than what the court has
25 explained here on the open record. There's potential for that

1 to happen.

2 It might not be necessary, but I think step number
3 one is to inquire in camera with the juror that made the phone
4 call to Ms. Diaz.

5 THE COURT: Thank you.

6 Mr. Smith?

7 MR. SMITH: I did also have an opportunity to look at
8 the cases that the court sent, and the cases that the
9 government sent as well. Frankly, those were the cases I was
10 going to bring to the attention of the court as well, because
11 it seems like we might be getting into the area concerning
12 religious beliefs.

13 I agree with the government that the appropriate step
14 to take place -- obviously I'll have some views and opinions
15 depending upon the information that we develop, but I would ask
16 that the initial questioning of the juror take place in camera,
17 as opposed to publicly, given the sensitive nature,
18 potentially, of what we're discussing here.

19 THE COURT: Thank you.

20 MR. SMITH: Thank you.

21 THE COURT: So I want to just put out there a view of
22 this and make sure that we're handling this correctly, because
23 I have some observations, and especially in reading the case
24 law.

25 My observations are that this jury has been diligent,

1 that the deliberations have been progressing smoothly. The
2 jury has had no questions or inquiries from the court, no
3 indication of problems in their deliberations, which
4 distinguishes it quite a bit from *Abbe11*, from *Augustin*, and
5 *Godwin*, which are the three cases that -- that I have reviewed
6 that have similar issues.

7 And just so the record is clear -- I know they were
8 cited, but -- *U.S. versus Abbe11* is 271 F.3d 1286. That's an
9 Eleventh Circuit, 2001 case. *U.S. versus Augustin* is 661 F.3d
10 1105. And that is a 2011 Eleventh Circuit case. And *U.S.*
11 *versus Godwin*, which actually came out of this court, is 765
12 F.3d 1306. It's a 2014 Eleventh Circuit case.

13 In addition to those cases, I have reviewed --
14 counsel for the government provided early this morning cases
15 *U.S. versus Geffrard*, G-e-f-f-r-a-r-d, 87 F.3d 448, Eleventh
16 Circuit, 1996; *U.S. versus Burrous*, B-u-r-r-o-u-s, 147 F.3d
17 111. That's a Second Circuit case, 1998. And *U.S. versus*
18 *Decoud*, D-e-c-o-u-d, 456 F.3d 996. That's a Ninth Circuit
19 case, 2006. And I have reviewed other matters and cases as
20 well.

21 But one of the things that -- that I had noted in
22 those cases that's distinct from our case is that in those
23 cases -- all of those cases, really, there was much more
24 information that the court had.

25 There were either notes written by the foreperson or

1 by the jury about another juror, or there was -- in the
2 Eleventh Circuit case that -- which is the *Burrous* -- no, I'm
3 sorry, is the *Geffrard* case, the Eleventh Circuit case, 87 F.3d
4 448, there was actually a letter that had been written about
5 religious beliefs that -- from a juror. And so you had much
6 more tangible evidence of a real problem in the deliberations.

7 Here, we have one juror who brought something to the
8 attention of court staff. And it is difficult to tell how
9 serious it is. It -- you know, it could well just be part of
10 the natural frustration or dialogue or tensions that go on in
11 any jury deliberations.

12 And I notice in these cases that there is a strong
13 preference -- even though in those cases inquiry was made of
14 the jurors, there is a -- a strong statement in these cases
15 that -- and let me just get the language so I'm quoting it
16 accurately.

17 First of all, it says -- this is from the *Augustin*
18 case. As we recently explained, the district court's
19 discretion is at its zenith when the alleged misconduct relates
20 to statements made by jurors themselves and not from media,
21 publicity, or outside -- or other outside influences.

22 Given our warning that district courts should, quote,
23 be careful about invading the secrecy of the jury's
24 deliberations, and -- court should, quote, err on the side of
25 too little inquiry, as opposed to too much.

1 And so I -- I want to make sure that if I do make
2 inquiry, I'm doing it in an advised way. I do notice that in
3 some of these cases -- matter of fact, I think in the good
4 majority of them, when there was a -- the first sign of
5 trouble, the district judge actually just brought the jury and
6 reinstructed the jury on their duty to follow the law, and then
7 just sent them back. And it was only after a further inquiry
8 or note was passed to the judge that inquiry was made.

9 And so I am -- I'm not saying I'm not going to do
10 what's been requested, but I do want to make sure that we don't
11 necessarily put this inquiry in the same category as these
12 other cases, which had much more clear evidence of difficulty
13 in the deliberation process.

14 So with that, let me just ask again -- Mr. Duva, your
15 advice to me is that -- you say I should still go ahead and
16 interview the juror who made the phone call, to just find out
17 what she said and why she said it, and then just see where we
18 are after that?

19 Is that -- and do you think that -- is there
20 something less than doing that, such as just readvising the
21 jury on their duties and responsibilities and having them
22 resume their deliberations that would be sufficient? Or is it
23 your view that we do -- with the information we have, we do
24 need to go ahead and make inquiry?

25 MR. DUVA: Your Honor, we feel strongly that we need

1 to make inquiry. The court is -- I think -- I can't remember
2 if it was *Abbell* or *Godwin*, there were one note and in the
3 other case there were two notes.

4 This juror, at night, made the decision to pick up
5 the phone and call the courtroom deputy and lay this out. And
6 one thing that Your Honor said in recounting this -- I know
7 it's not verbatim -- is that you said this juror said something
8 to the effect of from the beginning this other juror was saying
9 these types of things, and that this juror, who was reporting
10 this to Ms. Diaz, had a feeling that other jurors felt the same
11 as she did.

12 Throughout the trial, the court did a great job of
13 telling the jury -- and I know it was more along the lines of
14 discussing the case with each other or doing independent
15 research.

16 But the court said -- I can't even count how many
17 times -- remember all of my instructions, follow my
18 instructions. There's an indication that that's not happening.

19 And because of that, I think the court has to make an
20 inquiry with the juror that made the call. If not, it could
21 potentially get a lot worse.

22 If there's a general instruction on, Folks, this was
23 my -- I don't even know what the court would say. Just follow
24 all of my instructions, which has been said 100-plus times.

25 I think it's time, based on the juror's independent

1 decision to pick up the phone and call Ms. Diaz to express
2 concern, that we inquire. Because at this point we don't know
3 what we don't know. And so we can't effectively deal with it
4 until we know that.

5 THE COURT: Thank you, sir.

6 Mr. Smith, do you wish to be heard further on this?

7 MR. SMITH: Just briefly, Your Honor. I do agree we
8 need to have some inquiry of the juror, because I think there
9 are a couple of possibilities here.

10 One that concerns me potentially is that there may
11 not be a problem necessarily with this juror who said something
12 about higher beings.

13 There could be an issue with the juror who made the
14 report, if she was discussing this perhaps on the way in or the
15 way out.

16 So I think I understand the court's concern. I do
17 agree the case law says we want to keep the inquiries as
18 limited as possible, but I do think we need to have some
19 question.

20 I don't think it would be sufficient, given the
21 circumstances, just to bring the jury in and to remind them of
22 their obligations.

23 THE COURT: All right. And the case law does talk
24 about -- that just because one juror is talking about another
25 juror, that doesn't necessarily mean that the second juror is a

1 problem.

2 It could be the first juror that's a problem. And
3 there's a real -- real dilemma in not invading true differences
4 of opinion, but at the same time making sure that the jury is
5 following the instructions. And so I hear what you're saying.

6 All right. Stay right there.

7 (Judge confers with law clerk.)

8 THE COURT: All right. Then I will -- I agree with
9 counsel that further inquiry needs to be made. I do so
10 reluctantly, because I just don't like to be making these
11 inquiries without cause to do so.

12 But I think that I'm persuaded that the phone call
13 is -- is the equivalent of writing a note or raising the issue.
14 And so I -- I think I am required to make initial inquiry.

15 I have asked that the jury remain in the jury
16 assembly room and that Juror No. 8 be escorted up here. I'm
17 intending -- once she's in the jury room, I'm intending to
18 bring her in. I'll probably have her sit in a chair over here.

19 It's a very -- it's an uncomfortable position for a
20 juror to be brought in like that. And so I try to do
21 everything I can when I make these inquiries to make them as --
22 as easy as possible for the affected juror.

23 I -- and then I will simply make inquiry of what --
24 what the issue was as described and see what she says. And
25 based on that, I'll ask appropriate follow-up questions.

1 I will then ask counsel whether they have any
2 additional inquiry they wish me to make. Then I'll ask the
3 jury -- juror to retire. And then we'll discuss the matter
4 further.

5 And I need now to get counsel's view as to -- I think
6 you've already given it to me. But what is the -- what are the
7 parties' positions with respect to whether that inquiry should
8 be made in open court or in an in camera proceeding?

9 Mr. Duva?

10 MR. DUVA: Your Honor, the parties agree that the
11 inquiry should be made in camera.

12 THE COURT: Mr. Smith?

13 MR. SMITH: That is correct, Your Honor.

14 THE COURT: All right. So -- and, of course, this
15 was something else I looked at overnight, because, obviously,
16 there's a First Amendment issue here. There is a First
17 Amendment interest in having proceedings be held in public in a
18 criminal case.

19 And so -- but there are circumstances in which the --
20 where that First Amendment interest can be affected by the
21 necessity of the case.

22 And the cases that I looked at last night were
23 primarily Supreme Court cases, *Richmond Newspapers, Inc.*,
24 *versus Virginia*, 448 U.S. 555, 1980; the *Press-Enterprise*
25 *Company versus Superior Court of California*, 464 U.S. 501,

1 which is a 1984 case; and *Waller versus Georgia*, 467 U.S. 39,
2 which is a 1984 case.

3 All those cases recognize the important First
4 Amendment interest and the important Sixth Amendment interest
5 in having an open and public proceeding, which, of course, we
6 have had throughout this trial.

7 However, they do recognize there can be some
8 circumstances in which closure of the court is permitted in
9 order to effectuate the defendant's right to a fair trial, and
10 also to advance other interests.

11 And the test, essentially, is that the court has to
12 identify -- after the parties request closure, the court has to
13 identify the overriding interest that is likely to be
14 prejudiced if the court doesn't close the proceeding.

15 The closure must be no broader than necessary to
16 protect that interest. And I must consider reasonable
17 alternatives to closing the proceedings. And I must make
18 findings adequate to support that closure.

19 In my view here, the overriding interest is, as the
20 Eleventh Circuit said in the *Augustin* case, which we've already
21 discussed, and other cases, that there is an interest in
22 shielding from public scrutiny the jurors' deliberations, and
23 that -- and so I do think that that public -- that that
24 interest, as identified here, would apply to the interview of
25 the -- of the juror, at least.

1 We've already discussed the issue in open court. And
2 so the public knows what the issue is. But the actual
3 specifics of the juror's situation, and if I have to make
4 further inquiry of jurors, especially if we get into potential
5 areas of religion, I think is the type of overriding interest
6 that would allow the court to close the proceedings temporarily
7 until those inquiries can be completed.

8 That closure would be temporary, limited to that --
9 to this one matter. I don't find any other reasonable or
10 timely alternative that I could utilize other than closure.

11 And I make the finding that the disclosure of the
12 discussion between the court and the juror about the matter,
13 and any other jurors that I might have to interview, would
14 potentially invade the jury's deliberative province and expose
15 the jury's deliberations to public scrutiny, which is not
16 thought to be appropriate.

17 The court will consider whether, after -- after I
18 have conducted these proceedings, and potentially at a later
19 point, the court will consider any request to unseal the
20 transcript of that inquiry. And I will deal with that request,
21 if it's made by the press or anybody else -- I'll consider that
22 request on its merits at the appropriate time.

23 But it is my judgment that under this case law that
24 the court needs to make closure of the proceedings in order to
25 make a proper inquiry of the juror, and any other juror

1 inquiries that I make, and, therefore, the court will
2 temporarily close the proceedings and conduct an in camera
3 while the court conducts the inquiry of -- with the juror and
4 any other jurors that I need to inquire of.

5 As soon as that inquiry has been made, the court will
6 reopen the proceedings to the public. And as I said, a
7 transcript, of course, will be made of those proceedings and
8 any request to have access to that transcript I will deal with
9 at the appropriate time.

10 Mr. Duva, is the government satisfied that the court
11 has made appropriate findings that would justify the sealing of
12 the courtroom for the inquiry?

13 MR. DUVA: Absolutely, Your Honor.

14 THE COURT: And, Mr. Smith, is Ms. Brown satisfied?
15 And is this Ms. Brown's -- first, is Ms. Brown satisfied with
16 my findings on closure?

17 MR. SMITH: Yes, sir.

18 THE COURT: And is Ms. Brown supportive of me closing
19 the proceedings temporarily to conduct the jury inquiry?

20 MR. SMITH: Yes, sir.

21 THE COURT: All right.

22 (Judge confers with court security officer.)

23 THE COURT: Ladies and gentlemen in the audience, I
24 am now going to ask you to leave the proceedings. The court
25 security officer will -- after you've left, will close the

1 doors. The proceedings will be in temporary closure.

2 I will open the proceedings just as soon as I possibly
3 can. The only persons that should remain would be counsel,
4 Ms. Brown, and court personnel.

5 (Whereupon the courtroom was closed to the public and
6 proceedings occurred under seal:)

7 THE COURT: Would you ask Juror No. 8 to come out.
8 And, Tommy, if you'll put her right in the witness box right
9 there. Thank you, sir.

10 COURT SECURITY OFFICER: Yes, sir.

11 MR. DUVA: Your Honor, do you think we should just
12 keep her in the jury -- I think --

13 THE COURT: That's fine. That's fine.

14 MR. DUVA: I think putting her in the witness box --
15 (Juror No. 8 enters the courtroom.)

16 THE COURT: I tell you what, Tommy -- that's fine.
17 Just put her right -- up in the jury box. That's better.
18 Thank you.

19 JUROR: Okay.

20 THE COURT: Good morning, ma'am.

21 JUROR: Good morning.

22 THE COURT: Just have a seat there for me, if you
23 will.

24 JUROR: Okay.

25 THE COURT: And you're Juror -- we're calling you

1 Juror No. 8. Okay?

2 JUROR: Okay.

3 THE COURT: I won't use your name, but we -- I'm
4 going to call you Juror No. 8. And, first, before I ask you
5 any questions or talk to you, I want to make sure that you know
6 that I am not asking you to, nor should you, state or reveal in
7 anything you say your own opinions or positions about any of
8 the deliberations that you've been having or any of the issues
9 in this case, nor should you disclose or discuss the opinions
10 of any of the other jurors about any of the deliberations that
11 have gone on. So I want to be clear about that.

12 But as -- I am told that you did call my courtroom
13 deputy last night and express some concerns. And I would like
14 for you to just, in your own words -- without talking about the
15 deliberations or anybody else's views or your views, just tell
16 me what concerns that you expressed or that you have at this
17 time.

18 JUROR: Okay. Thank you. It was just the one
19 concern -- oh, sorry. Thank you.

20 It was just one concern with a juror -- am I allowed
21 to repeat what was said?

22 THE COURT: Well, first of all, what juror number is
23 it? Is it 13? Is that what you said?

24 JUROR: Correct. Correct.

25 THE COURT: Okay. That's what you told Ms. Diaz,

1 right?

2 JUROR: Correct.

3 THE COURT: All right. And I guess I'm not -- until
4 I know what it is, it's hard for me to know. Is the thing that
5 you want to talk about something other than the actual
6 deliberations or discussions of the charges and the issues?

7 JUROR: Would you like me to give you the letter I
8 wrote for you in case --

9 THE COURT: Yes, ma'am. That will -- I didn't know
10 you had written a letter.

11 JUROR: Well, I -- just in case I didn't get a phone
12 call last night.

13 THE COURT: I tell you what, why don't you hand me
14 the letter, and then maybe we can -- maybe that's the way to do
15 it.

16 JUROR: Thank you. Thank you very much.

17 THE COURT: And I appreciate you coming in this
18 morning.

19 JUROR: Oh, absolutely.

20 THE COURT: And certainly we're not trying to put you
21 on the spot. We just have to...

22 JUROR: I understand. And I apologize for any
23 trouble.

24 THE COURT: You're not causing any trouble.

25 Okay. So what I'm going to do -- just sit right

1 there. What I'm -- and we don't have -- I'm not going to take
2 the time to make a copy right now.

3 But what I'm going to do is I'm going to ask Ms. Diaz
4 to share the letter -- first with Mr. Smith and then with
5 Mr. -- and then Mr. Smith will show it to Mr. Duva. And then
6 we'll proceed from there.

7 How hard would it be to get copies quickly?

8 COURTROOM DEPUTY: Not hard.

9 THE COURT: Okay. Can we get the machine warmed up,
10 or whatever we need to do. Thank you.

11 Mr. Duva, if you could hand that to Ms. Weisman,
12 please. Yeah.

13 All right. Counsel, we're having copies made, but --
14 but let me -- so, ma'am, let me just ask you this before --
15 before we -- before I -- what you wrote in the letter, is that
16 the sum and substance of what the issue is that you wanted to
17 bring to our attention?

18 JUROR: Yes. It was -- I was just concerned about
19 those comments.

20 THE COURT: Are you -- and when in point of time were
21 those comments made? When were those comments made?

22 JUROR: The first one was when we first went into
23 deliberation.

24 THE COURT: Okay.

25 JUROR: And the second one, shortly after, maybe

1 within a few hours after.

2 THE COURT: Has this juror expressed that view again?

3 JUROR: No, sir.

4 THE COURT: To your observation, has that juror been
5 deliberating?

6 JUROR: Yes.

7 THE COURT: Is there anything about the situation as
8 it stands right now that's interfering with your ability to
9 deliberate in the way that the court has directed in the
10 instructions?

11 JUROR: No, sir. Not at all. I was more concerned
12 that it was going to interfere in his ability to do that.

13 THE COURT: Okay. Counsel, what I'm inclined to do
14 is ask Juror No. 8 to go into the jury room so that we can
15 discuss this further.

16 Is that -- is there any other matter at this moment
17 that you would -- if there is, I'll -- is there any other
18 matter, Mr. Duva, before I ask Juror No. 8 to retire?

19 MR. DUVA: The only other inquiry that the government
20 would request is: Was the second comment on the first day --
21 she said a couple of hours after the first -- was that still
22 the first day of deliberation, or was it yesterday?

23 Otherwise, no, Your Honor.

24 THE COURT: Okay. Ma'am, you said that this comment
25 was made twice. Was the comment similar both times?

1 JUROR: Yes. And it was -- yes.

2 THE COURT: Okay. All right. And when was the --
3 the first comment you said was shortly after deliberations
4 began; is that correct?

5 JUROR: The first comment is basically right when
6 deliberation began.

7 THE COURT: And then when in point of time was the
8 second comment?

9 JUROR: That same day, just maybe a couple of hours
10 after.

11 THE COURT: And has that comment -- and I think I've
12 asked you this. But has this juror repeated that comment or
13 anything similar to that since then?

14 JUROR: No, sir, but other jurors have.

15 THE COURT: I don't know what you mean by that.

16 JUROR: Some of the jurors are concerned that that's
17 affecting his -- his decision.

18 THE COURT: Okay.

19 Okay. Anything else, Mr. Duva, before I ask Juror
20 No. 8 to retire?

21 MR. DUVA: No, Your Honor.

22 THE COURT: Mr. Smith, any further inquiry that
23 you're requesting at this moment?

24 MR. SMITH: Yes, sir.

25 THE COURT: Okay.

1 MR. SMITH: Should I present the question to the
2 court?

3 THE COURT: Yes. Present it to me, please.

4 MR. SMITH: Yes, sir. The two areas of inquiry we'd
5 ask the court to direct to the juror would be, first: Was this
6 brought to the attention of the court by the juror as a result
7 of something she wanted to do on her own, or was she asked to
8 do so?

9 And then, secondly, it appears that potentially these
10 are discussions that groups -- or a group of jurors are having
11 outside of his presence.

12 When are these discussions taking place? Are they
13 taking place during deliberations or during breaks?

14 THE COURT: All right. So, ma'am -- repeat for me
15 the first one, Mr. Smith, so I make sure I'm understanding what
16 you're saying.

17 MR. SMITH: Yes, sir. The first question, Your
18 Honor, would be: Were you prompted to bring this to the
19 attention of the court by other members? Or did you do this of
20 your own volition?

21 THE COURT: All right. Ma'am, did you decide to call
22 Ms. Diaz on your own? Or did anybody suggest you do so?

23 JUROR: No, sir. I made that decision. I don't
24 think any of them are even aware that I did that.

25 THE COURT: Okay. And the second question is -- you

1 referenced in your last answer that other jurors have expressed
2 concerns.

3 Is that during the course of deliberations, or is
4 that outside of deliberations?

5 JUROR: It was all in -- during deliberations.

6 THE COURT: Thank you, ma'am.

7 JUROR: With him present.

8 THE COURT: Thank you.

9 MR. SMITH: That's all I have, sir.

10 THE COURT: All right. Thank you very much.

11 JUROR: Thank you.

12 THE COURT: I'm just going to ask you to go in the
13 jury room just for a second. And then we're going to figure
14 out what we're going to do. Okay?

15 JUROR: Thank you very much.

16 THE COURT: Thank you. And, ma'am, I will ask you to
17 keep this discussion to yourself and not bring it into the
18 deliberations. All right?

19 JUROR: Absolutely.

20 THE COURT: Thank you.

21 (Juror No. 8 exits the courtroom.)

22 THE COURT: All right. I do have copies now,
23 Counsel, of the communication from Juror No. 8. And so I'll
24 give that to counsel so you'll be able to be able to look at it
25 at the same time I am. I will make the original -- do we have

1 a court exhibit yet?

2 COURTRROOM DEPUTY: No.

3 THE COURT: -- Court Exhibit 1. But it will be under
4 seal at this time, until further order of the court.

5 (Court's Exhibit No. 1 was received into evidence.)

6 THE COURT: All right. What say you, Mr. Duva?

7 MR. DUVA: Your Honor, the language in the letter is
8 pretty startling. And it -- I know the court said that it's
9 under seal. I know -- I know we can all -- we can all read it,
10 so I guess I won't...

11 THE COURT: Well, we're in --

12 MR. DUVA: We're in camera. So the recitation that
13 at the outset of the jury deliberation that a juror said a
14 higher being told me Corrine Brown was not guilty on all
15 charges, and that he, quote/unquote, trusted the Holy Ghost --
16 these questions are asked to the entire venire at the outset
17 during jury selection: Can you put aside any religious or
18 philosophical beliefs?

19 This juror did not raise his hand and say that he
20 could not do that. It appears that expressing this right away
21 is a problem.

22 I think the court asked Juror No. 8: Is this
23 affecting your deliberation? She said, No. I think the
24 question is, is it affecting the deliberations, period, not
25 this person's ability.

1 I think she's expressed a view that she can parse the
2 evidence and help make up her mind one way or the other. But I
3 think the question becomes: Is this affecting the
4 deliberations overall?

5 The court has instructed the jury in the jury
6 instructions to make their decision based on the law as applied
7 to the facts.

8 A representation by a juror, if we accept this to be
9 true, is that he's not willing to do that, saying right out of
10 the gate, A higher being told me that Corrine Brown was not
11 guilty on all charges and that he trusted the Holy Ghost.

12 That does not resonate whatsoever with the court's
13 instructions to apply the law to the facts and make a decision.
14 So I think the next step is to probably inquire with the
15 foreperson in camera to ask if this view is shared by the
16 foreperson or any of the other jurors and to determine if there
17 needs to be a next step.

18 Because if it's affecting the deliberation overall,
19 we all know what that result could be. And I don't think
20 anybody wants that. And so I think that has to be the inquiry:
21 Is this viewpoint affecting the jury's ability to reach a
22 verdict, whatever that verdict might be?

23 Because I think the worst scenario here is to stop at
24 this point and sort of hope for the best. I think -- I think
25 with an issue like this that came up so early in the jury

1 deliberations, we might all be headed for trying this case a
2 second time. And I don't think anybody wants that.

3 I think everybody wants the jury to have the
4 conditions as favorable as possible for them, if they can, to
5 make a decision based on the court's instructions to apply the
6 law to the facts and the evidence that was admitted during the
7 trial, not one person's view about what some higher being told
8 him or her about the case.

9 I think we have to take all steps possible to remove
10 that element from affecting the jury's deliberation overall and
11 their ability to do so.

12 THE COURT: Thank you.

13 Mr. Smith?

14 MR. SMITH: Yes, sir. I think based on the limited
15 information that we have right now, I don't see that there is
16 any indication that this juror is not fulfilling his
17 responsibilities for deliberating.

18 I can understand why there might be a threshold
19 concern with this as initially reported to the court, but I
20 think, given the answers that we've received now from the
21 juror, that it's not affecting her deliberations.

22 Absent any information to show that this juror is
23 refusing to follow the court's instructions, I don't believe
24 that anything additional needs to be done, frankly, at this
25 point.

1 Had the juror come in and said, He's refusing to
2 discuss the evidence with us, he is saying that no matter what
3 the evidence is he's going to reach a particular result, I
4 think then we might have a concern here.

5 But my reading of the cases is, unless there is some
6 evidence that the juror is going to disregard the instructions
7 of the court and is going to abide by some other rules or
8 consider things outside of the evidence introduced in the
9 court, I don't see that there's a basis, really, for us to move
10 beyond what we have at this point.

11 THE COURT: Why would not the thing to do -- if we do
12 anything more -- and I hear you, Mr. Smith -- I am not quite
13 sold on the idea that I don't need to make further inquiry.

14 If there's a juror who, from the beginning, expressed
15 religious beliefs as to the guilt or -- whether somebody's
16 guilty or not guilty, you know, it's a -- it's a fine line. I
17 grant you that.

18 But, you know, it really is a fine line, because,
19 obviously, people pray for guidance and so forth, and I -- you
20 know, that's certainly to be respected.

21 On the other hand, if this juror is, in effect,
22 raising some religious view that would prevent him from ever
23 determining that a defendant was guilty on charges or that
24 Ms. Brown was guilty on charges, that is problematic.

25 And I'm wondering why I wouldn't make inquiry of this

1 juror himself, as opposed to -- and try to do so in a careful
2 way, but -- you know, I saw the *Geffrard* case, where -- you
3 know, it was different in the sense that it really was raising
4 a religious objection to participating.

5 This is not quite as strong as that, but I -- I
6 just -- you know, Mr. Smith, I'm wondering if the juror had
7 said, A higher being told me that Corrine Brown is guilty on
8 all the charges, whether you would feel the same about not
9 doing anything. I think probably not.

10 And I -- and so -- or that -- that I trusted in the
11 Holy Ghost to find Ms. Brown guilty of all charges. I suspect
12 that you would think that some inquiry needed to be made about
13 a statement like that if that's what had been said.

14 And so I'm -- so I'm considering that. I'll be happy
15 to hear anything else you have to say. I'll be happy to
16 hear -- and then I want to hear from Mr. Duva why he thinks
17 inquiry of the foreperson, as opposed to of the juror himself,
18 is the next appropriate step.

19 So, Mr. Smith, what would you like to say right now?

20 MR. SMITH: And, Your Honor, I would agree that if
21 the court is going to conduct further inquiry that it should be
22 of the juror.

23 I think if the juror can come out and satisfy the
24 court that he's willing to follow your instructions on the
25 law -- I don't see how this comment, regardless of which way it

1 was going, would trump any assurance he could provide the court
2 that he's going to follow the instructions. I think it's --

3 THE COURT: Well, I am certainly open to that
4 possibility. I mean, I -- but I think I need to ask him. I
5 just --

6 MR. SMITH: I understand. My concern would be going
7 to the foreperson, because of the potential group dynamics of a
8 jury, and then calling him in.

9 There could be sort of a feeling of perhaps he's been
10 out of line or he's done something wrong. I think obviously
11 the court knows the last thing we want to do is have anyone
12 believe they can't make an independent decision.

13 So I think the appropriate step, first, is to talk to
14 the juror and see if we have a conflict of facts and if the
15 juror can follow the court's instructions before we go to the
16 foreperson.

17 THE COURT: Thank you.

18 Mr. Duva, my question to you, sir, is the -- the
19 request that I interview the foreperson, as opposed to the
20 juror himself, why is that -- why do you think that's the next
21 move?

22 MR. DUVA: Your Honor, I think it's an option. And I
23 look at it as the foreperson is really the leader of the group,
24 and that's -- the leader of the group probably needs to know
25 that this issue has been brought to the court's attention,

1 rather than hear it from Juror No. 8 and then Juror No. 13.
2 That could create a -- potentially an awkward dynamic in the
3 room there.

4 So I think it -- it could be that you're informing
5 the foreperson that this is what happened and the process of
6 how this was brought to my attention.

7 And the court can determine at that point, if Your
8 Honor wants to inquire with the foreperson, similar to
9 inquiring with Juror No. 8.

10 However, the *Godwin* case, if the court starts with
11 Juror No. 13, makes clear that if Juror No. 13 denies saying
12 these things, that's not going to be the end of the inquiry.
13 And that may well happen.

14 I think that is what happened in the *Godwin* case,
15 that the juror in question denied the statement or the
16 behavior, and at that point that is when the court began to
17 poll the individual jurors about this issue. And it may be
18 where we're headed.

19 So our preference would be to alert the foreperson of
20 the issue, determine if the court wants to ask the foreperson
21 about this dynamic.

22 Because, really, the issue is whether a single --
23 it's not whether Juror 8 can follow the instructions or
24 Juror No. 11, or whatever, it's whether every single juror can
25 follow the court's instructions.

1 This is not a situation, according to the letter,
2 where someone went in and just said, You know what, ladies and
3 gentlemen, I just feel she's not guilty based on the evidence.
4 It was right out of the gate. If the court is to credit the
5 letter, we're talking about religious beliefs and higher beings
6 and things of that nature.

7 So even if Juror No. 13 denies it, there's going to
8 be more inquiry that's needed.

9 THE COURT: Tommy.

10 (Judge confers with court security officer.)

11 THE COURT: I've decided I'm going to interview Juror
12 No. 13. But in order to keep the jury from having to go
13 through the hallway where the press is, I'm going to bring
14 Juror No. 8 through -- we're going to take her down the judges'
15 elevator, get her back into the jury room, bring 13 up through
16 the judges' elevator, and bring him in the courtroom, so that
17 they're not having to go out in the hallway and be identified
18 and so forth.

19 That will take a couple of minutes and --

20 (Juror No. 8 enters the courtroom.)

21 THE COURT: Ma'am, we're going to take you out a
22 different way, down the -- and if you'll just follow the court
23 security officer and wait in the jury assembly room. And I'll
24 ask you not to discuss this with the rest of the jurors. We're
25 going to figure this out. All right.

1 JUROR: Thank you very much.

2 THE COURT: Thank you.

3 (Juror No. 8 exits the courtroom.)

4 THE COURT: All right. I'm just going to take a
5 brief recess. We are still going to be in the in camera
6 session. I'll be right back out as soon as Juror No. 13 is up.

7 COURT SECURITY OFFICER: All rise.

8 (Recess, 9:09 a.m. to 9:11 a.m.)

9 COURT SECURITY OFFICER: All rise. This Honorable
10 Court is back in session. Please be seated.

11 THE COURT: Everybody have a seat. We're still in
12 the in camera session.

13 If you'll just -- Abby, if you'll just make sure that
14 the juror doesn't come in until we're ready for him. So if
15 you'll stand out in the hallway there and make sure that we
16 just wait for a second. Thank you.

17 So I'm looking for any guidance as to how I should
18 proceed. Should I directly ask the juror whether he made such
19 statements? Should I start with a more general: Have you --
20 have you expressed any religious views about the case?

21 Give me your best judgment, Mr. Duva, first, as to
22 what inquiry the court ought to make of Juror No. 13.

23 MR. DUVA: Your Honor, I think the government
24 believes that the best process is to go from more general to
25 specific.

1 I think the first question could be something like:
2 Have you expressed or do you feel a religious -- have you
3 expressed a belief -- I'm just waiting for the door to close.

4 Have you expressed a religious viewpoint that is
5 guiding your ability to deliberate and follow the court's
6 instructions, and then -- and then go from there.

7 Do you have one? Something like that. And go from
8 general to more specific, as opposed to: Did you say, quote, a
9 higher being told me Corrine Brown was not guilty on all
10 charges or, quote, that you, quote/unquote, trusted the Holy
11 Ghost? The likely answer to that is probably going to be no.
12 So the process won't be all that helpful. I think that the
13 thing to do is go general to specific.

14 THE COURT: Mr. Smith, do you have any guidance for
15 me?

16 MR. SMITH: I would agree that it should proceed in
17 that fashion, sir.

18 THE COURT: Okay.

19 (Judge confers with law clerk.)

20 THE COURT: I think what I might do is repeat the
21 question that Judge Klindt asked during voir dire, that --
22 Mr. Juror, you were asked during voir dire whether you had any
23 political, religious, or moral beliefs that would preclude you
24 from serving as a fair juror in the case. Do you remember that
25 question? And then -- and then take it from there.

1 Have you expressed any religious or moral beliefs
2 that are precluding you or hindering you in arriving at a fair
3 decision based on the evidence and the law, and then, depending
4 on those answers, maybe getting more specific: Have you
5 expressed to any other jurors any religious beliefs that might
6 interfere? And see where it goes from there. I think that's
7 how I'm going to handle it.

8 Anybody want to be heard on that?

9 MR. DUVA: No, Your Honor.

10 MR. SMITH: No, Your Honor.

11 THE COURT: All right. Let's have No. 13. Thank
12 you.

13 (Juror No. 13 enters the courtroom.)

14 THE COURT: Good morning. How are you?

15 If we can just -- come on over. We'll just ask you
16 to sit in the jury box. We just have a couple of questions for
17 you this morning.

18 JUROR: Okay.

19 THE COURT: How are you this morning, sir?

20 JUROR: Good, sir. How are you?

21 THE COURT: Good. And you're Juror No. -- we've been
22 calling you Juror No. 13, even though there's only 12 of you
23 now. But that's how we had you in the box. So we're just
24 going to keep calling you that. So we just have a question or
25 two for you this morning.

1 Do you remember back when you were selected for the
2 jury that one of the questions that Judge Klindt asked you was
3 whether you had any political, religious, or moral beliefs that
4 would preclude you from serving as a fair and impartial juror
5 in this case?

6 Do you remember that question?

7 JUROR: I do.

8 THE COURT: Okay. And I assume at that time you
9 answered that question no, is that right, that you did not --

10 JUROR: That is correct.

11 THE COURT: Okay. And is that -- is that still the
12 case? Are you having any difficulties with any religious or
13 moral beliefs that are, at this point, bearing on or
14 interfering with your ability to decide the case on the facts
15 presented and on the law as I gave it to you in the
16 instructions?

17 JUROR: No, sir.

18 THE COURT: Okay. Do you consider yourself to have
19 been deliberating with your other jurors according to the law
20 and the instructions that the court gave to you before you went
21 in to deliberate?

22 JUROR: We have been going over all the individual
23 numbers, as far as --

24 THE COURT: Yeah, I don't want to hear anything about
25 the deliberations.

1 JUROR: Yes, sir.

2 THE COURT: But I'm just asking you: Are you -- do
3 you consider yourself to be following the court's instructions,
4 in terms of the law and how you go about what you're doing,
5 free from any influence of religion or political or moral
6 beliefs?

7 Are you able to do that? Have you been doing that?

8 JUROR: I've been following -- I've been following
9 and listening to what has been presented and making a
10 determination from that, as to what I think and believe.

11 THE COURT: Okay. That's fine. So let me get a
12 little more specific with you. Have you expressed to any of
13 your fellow jurors any religious sentiment, to the effect that
14 a higher being is telling you how -- is guiding you on these --
15 on these decisions, or that you are trusting in your religion
16 to -- to base your decisions on?

17 Have you made any -- can you think of any kind of
18 statements that you may have made to any of your fellow jurors
19 along those lines?

20 JUROR: I did, yes.

21 THE COURT: Okay. Can you tell me, as best you can,
22 what you said?

23 JUROR: Absolutely. I told them that in all of this,
24 in listening to all the information, taking it all down, I
25 listen for the truth, and I know the truth when the truth is

1 spoken. So I expressed that to them, and how I came to that
2 conclusion.

3 THE COURT: Okay. And in doing so, have you invoked
4 a higher power or a higher being? I mean, have you used those
5 terms to them in expressing yourself?

6 JUROR: Absolutely. I told -- I told them that --
7 that I prayed about this, I have looked at the information, and
8 that I received information as to what I was told to do in
9 relation to what I heard here today -- or this past two weeks.

10 THE COURT: Sure. When you say you received
11 information, from what source? I mean, are you saying you
12 received information from --

13 JUROR: My Father in Heaven.

14 THE COURT: Okay. Is it a fair statement -- I don't
15 want to put words in your mouth. But are you saying that you
16 have prayed about this and that you have received guidance from
17 the Father in Heaven about how you should proceed?

18 JUROR: Since we've been here, sir.

19 THE COURT: Do you view that in any way -- as you
20 know, when I instructed you, I, as I do for -- for all
21 juries -- you had told Judge Klindt that you had no religious
22 or any -- you did not have any religious or moral beliefs that
23 would preclude you from serving as a fair and impartial juror,
24 nor did you have any religious or moral beliefs that would
25 preclude you from sitting in judgment of another person. So

1 you told Judge Klindt that.

2 And then you also -- of course, you heard my
3 instruction, where you have to base your decision only on the
4 evidence presented during the trial and follow the law as I
5 explained it.

6 Do you feel that you have been doing that?

7 JUROR: Yes, sir, I do.

8 THE COURT: Do you feel that there is any
9 inconsistency in the prayer that you've had or the guidance
10 you're receiving and your duty to base your decision on the
11 evidence and the law?

12 JUROR: You said a few -- you said a few things.
13 Repeat, please.

14 THE COURT: Do you feel that there's any religious
15 tension, or is your religion and your obvious sincere religious
16 beliefs -- do you believe it at all to be interfering with or
17 impeding your ability to base your decision solely on the
18 evidence in the case and following the law that I've explained
19 to you?

20 JUROR: No, sir. I followed all the things that you
21 presented. My religious beliefs are going by the testimonies
22 of people given here, which I believe that's what we're
23 supposed to do, and then render a decision on those
24 testimonies, and the evidence presented in the room.

25 THE COURT: Sure. Stay right there for a second.

1 Mr. Duva, do you have additional areas of inquiry
2 that you wish me to pursue?

3 MR. DUVA: Not right at this moment, Your Honor.

4 THE COURT: Mr. Smith?

5 MR. SMITH: No, Your Honor.

6 THE COURT: Sir, would you do me a big favor and just
7 go into the jury room for a moment while we kind of figure out
8 where we are. And we'll go from there.

9 Thank you.

10 JUROR: Yes, sir.

11 (Juror No. 13 exits the courtroom.)

12 MR. DUVA: Your Honor, there's three very damaging
13 things that Juror No. 13 said. I know at the end the court
14 asked the question, in essence: Do you believe this is
15 interfering with your ability to deliberate? Of course he's
16 going to say no to that. That was clear.

17 This individual, Juror No. 13, said the truth has
18 spoken and he referenced a higher power. I prayed about this.
19 And I received information from my Father in Heaven. And he
20 also said that that has occurred since we've been here, sir.

21 This is a juror who is guided by what he believes a
22 deity told him to do, and is apparently implementing that, and
23 not by the court's instructions on the law.

24 There is nowhere in the court's instructions on the
25 law where it says that it's permissible to receive information

1 from a god or higher power and implement that and impose that
2 on the deliberative process.

3 I think the -- the significant statement that likely
4 may -- that would require seating an alternate down the road,
5 once the record is developed, that more is that he received
6 information from his Father in Heaven. At no point is that
7 part of this court process or deliberative process whatsoever.

8 THE COURT: Thank you.

9 Mr. Smith?

10 MR. DUVA: And the government would have that view if
11 he said, I believe from my Father in Heaven that she's guilty
12 of all charges and, therefore, I'm going to vote guilty. It
13 goes both ways. There -- in no way should this be part of the
14 process.

15 THE COURT: Yes, sir.

16 MR. SMITH: I think what -- the most important thing
17 the juror said was that he was following the court's
18 instructions.

19 I can understand the concern that the court would
20 have here with the statement about receiving guidance. I did
21 not hear this juror say, however, that he was going to
22 disregard the court's instructions, that he was receiving
23 evidence, or a directive what to do.

24 I think a fair reading here -- what may have happened
25 is that, as a person of deep faith, and perhaps like many

1 people with deep faith, has prayed for clarity, the ability to
2 be fair, the ability to be calm, but I did not hear this juror
3 say, I came in with a view given to me by God, and I'm going to
4 go with that, I'm going to follow God no matter what.

5 My concern would be that -- and I'm not in any way,
6 shape, form, or fashion suggesting that the court would do
7 this. I want to be clear when I say this.

8 But I think someone who has a deeply held religious
9 belief of faith sometimes expresses a request for guidance from
10 God to do the right thing under the rules, whatever they may
11 be.

12 That's why we have witnesses who are sworn to tell
13 the truth. That's why jurors take an oath to fulfill their
14 duty. And so I think it would be an easy case if you had
15 someone come in here and say, Yes, the evidence is overwhelming
16 for one particular verdict, but, because God gave me a duty and
17 a task beforehand, I'm going to do that regardless of what the
18 evidence shows.

19 I don't think a fair reading of what this juror said
20 shows that, and that you have someone whose faith guides him
21 when he has to make certain decisions.

22 He has said the most important, I think, relevant
23 thing, which is that his decision is based upon what he has
24 heard, the testimony, and the deliberations.

25 And I think when you combine that with the fact that

1 the juror, who initially brought it to the attention of the
2 court, has said that deliberations are progressing, it's not
3 affecting her -- I think what you have is perhaps a juror who
4 just, in an abundance of caution, brought this to the attention
5 of the court. And it could be -- and I know I'm speculating
6 now and getting out here on a limb.

7 Sometimes people who are not of faith have some
8 concern and skepticism about statements that are made by people
9 who are deeply faith-driven.

10 So I would just be concerned about any potential
11 action that might remove this juror simply because he is a man
12 of faith.

13 I think it is possible to be a fair and impartial
14 juror and also be someone who believes that God expects you to
15 be just and fair and follow the laws as instructed by the
16 judge.

17 That's all I have, Your Honor.

18 (Judge confers with law clerk.)

19 THE COURT: I think that what I would like to do is
20 ask Juror No. 13 the direct question: Did you ever make the
21 statement that a higher being told me that Corrine Brown was
22 not guilty on all charges?

23 I think -- I mean, I think that -- I think that would
24 bring some clarity to what this gentleman is saying and -- and,
25 I mean, if he says he said it, then he said it. And if he said

1 he didn't, then I guess we can still evaluate it.

2 But I would -- because otherwise it's a closer
3 question in my mind as to what a sincerely held religious --
4 there's nothing wrong with praying for guidance.

5 On the other hand, if that has gone to the place
6 where you're being told by a higher authority what to do, then
7 that probably is an improper religious intrusion into the
8 deliberative process, as Mr. Duva said.

9 So I think I would like to ask him that direct
10 question, see what he says. I think I would also want to ask
11 this juror whether he's been following the court's instructions
12 about fully considering the evidence with the other jurors and
13 discussing the case, to try to reach an agreement to see if he
14 is -- what he says about that. As Mr. Duva said, it's easy for
15 him to say yes. But I still would like to inquire about it.

16 So I think those are two areas of inquiry I'd like to
17 make of this juror, and then I'll -- then we'll decide where to
18 go from here.

19 What does the government say about the court's
20 proposal?

21 MR. DUVA: Your Honor, I think we all know what the
22 answer is going to be to question two. I don't think that's a
23 useful question.

24 I think it is a useful question to ask Juror No. 13:
25 Did you say this? And it is absolutely okay as to probably

1 everybody in this trial to pray for guidance about what to do.
2 But what's not okay is to then tell other people in the jury
3 deliberation process that I, Juror No. 13, received this
4 information, and then to impose that on everybody else. That's
5 something totally different.

6 THE COURT: Okay. Thank you.

7 Mr. Smith, what is your view of the court's proposed
8 inquiries?

9 MR. SMITH: And forgive me, Your Honor, I think
10 perhaps the court did that sufficiently with the general
11 questions.

12 I do believe the court asked if he's following
13 instructions and going along with the deliberations. I don't
14 know if the court asked him with perhaps that level of
15 specificity.

16 So I don't have any objection to those questions.
17 But I would take issue with one thing the government has just
18 said here.

19 There's been no, I believe, testimony or evidence at
20 this point, or information received by the court, of this being
21 imposed on the other jurors.

22 I think even taking it in its most severe light, the
23 juror who brought this to the attention of the court has not
24 said this is being imposed on others.

25 And I guess what I would say, finally, if this juror

1 said something along the lines of following, You know what,
2 before this trial the Holy Spirit told me she wasn't guilty,
3 it's just something I got a revelation, what have you, now that
4 I've sat through the trial and I've received the evidence, you
5 know what, that's confirmed what I've heard and I trust the
6 Holy Spirit, I don't believe that that is a violation of a
7 juror's duty, because that could just simply be a juror saying,
8 Look at how God has worked. He told me something. Now the
9 evidence has come in that I have to consider has confirmed
10 that. That's just how you should trust the Holy Spirit.

11 I don't see that being comparable to someone saying,
12 I saw overwhelming evidence of guilty, but I'm going to go with
13 God. I don't see the conflict situation being set up here. I
14 see a juror expressing an affirmation of his faith by saying
15 what God told him beforehand was reaffirmed by what he saw in
16 court.

17 MR. DUVA: Your Honor, one huge thing that Mr. Smith
18 is missing, is that it's not been refuted this happened at the
19 very beginning of the deliberations. They hadn't even
20 deliberated yet.

21 So if they followed your instructions and did not
22 talk about the case all along, which they heard numerous
23 times -- to say this at the outset of a deliberation is a huge
24 issue.

25 MR. SMITH: And that's all I have, sir.

1 THE COURT: Yeah. I understand. All right. Well, I
2 think I'm going to ask him directly whether he said this or
3 not. I think I just want to hear what he has to say about
4 that. I'm going to ask him whether he said that or something
5 like that and, if so, when he said it. And then I might just
6 leave it at that.

7 But I do -- I do want to hear if he expressed that
8 type of direct statement and when he did so. And, you know,
9 obviously, I'll have to evaluate it, depending on what he says.

10 But I think it would be -- because I do think --
11 depending on his answer to that, and depending on what the
12 court's view of that is, it may or may not affect my ultimate
13 decision, so...

14 All right. Let's have Juror 13, please.

15 (Juror No. 13 enters the courtroom.)

16 THE COURT: If you could just have a seat again, sir.
17 And I appreciate your patience with us. And I -- I want you to
18 understand I am not criticizing you or saying you did anything
19 wrong. We're just trying to figure some things out here.

20 So what I want to ask you is a fairly direct
21 question, and that is this: Did you ever say to your fellow
22 jurors or to a fellow juror during your -- during the time that
23 y'all worked together, when the 12 started, something to this
24 effect, A higher being told me that Corrine Brown was not
25 guilty on all charges? Did you say something like that? Did

1 you say that or something like that to any of your fellow
2 jurors?

3 JUROR: When we were giving why we were -- insight,
4 as far as not guilty or whatever for the first charge, yes.

5 THE COURT: Did you say the words, A higher being
6 told me that Corrine Brown was not guilty on all charges?

7 JUROR: No. I said the Holy Spirit told me that.

8 THE COURT: Okay. And you -- and I don't want to get
9 into your deliberations. But at what point in the
10 deliberations was that? Was it at the beginning? Was it early
11 in the deliberations? When was it?

12 JUROR: I mentioned it in the very beginning when we
13 were on the first charge.

14 THE COURT: Okay. Stay right there, sir.

15 MR. DUVA: Your Honor, may we approach?

16 THE COURT: Sure.

17 (Sidebar conference.)

18 MR. DUVA: Your Honor, I would stop now. And with
19 all due respect to the other side, this cannot be rehabilitated
20 at all.

21 THE COURT: Okay. I wasn't going to ask him anything
22 else. I was just -- I was going to ask him to go back in the
23 jury room and we were going to talk about what to do.

24 Mr. Smith, is there any other question you wish me to
25 ask of this juror?

1 MR. SMITH: I think the question -- I think the
2 question I would ask him is if he's able to follow the court's
3 instructions and has he been doing so.

4 THE COURT: Okay. I think I've already done that, so
5 I --

6 MR. DUVA: I would not ask that again.

7 THE COURT: Okay. I understand. All right. Thank
8 you.

9 MR. DUVA: So we have a clear record.

10 THE COURT: All right. Thank you.

11 (The following proceedings occurred in open court, in the
12 presence of Juror No. 13:)

13 THE COURT: Thank you very much, sir. I'm going to
14 ask you to go into the jury room. And we will go from there.
15 Thanks so much.

16 JUROR: Thank you.

17 (Juror No. 13 exits the courtroom.)

18 THE COURT: All right. Mr. Duva, what is the
19 government's position?

20 MR. DUVA: Your Honor, based on the record before the
21 court, including the note, the juror's admission saying that
22 the Holy Spirit told him -- in essence, the first quote in the
23 letter, A higher being told me Corrine Brown was not guilty on
24 all charges, Juror No. 13's admission that he said that, and he
25 said it at the outset of the deliberations, before any

1 deliberative process began, the government is asking the court
2 to remove Juror No. 13 and seat the first alternate.

3 THE COURT: So I think it's not quite fair to say it
4 was at the very beginning. He seemed to indicate it was in
5 connection with the discussion of Count One, which I assume is
6 the conspiracy charge.

7 But I take your point that it was early on in the
8 deliberations and -- all right. I understand that position
9 now. And I'll hear from Mr. Smith momentarily.

10 Well, I think we should decide what we're going to do
11 about 13 first. And then we will decide what we're going to do
12 after that.

13 So, Mr. Smith -- let me hear from Mr. Smith.

14 MR. DUVA: And --

15 THE COURT: I'm sorry. Go ahead, Mr. Duva.

16 MR. DUVA: I don't think there's any need to call in
17 all of the other jurors and ask them if this individual said
18 this or something similar to it.

19 If he would have said, No, I didn't say it, our
20 position would have been that the court needs to do that. But
21 he did admit that he said it. And I think that's where the
22 inquiry can end and the decision can be made.

23 THE COURT: Thank you, sir.

24 Mr. Smith.

25 MR. SMITH: I don't believe that there's information

1 that's been presented which would give the court a valid basis
2 to excuse the juror.

3 I think the juror has simply said the Holy Spirit
4 told him something. I think based upon what he said --
5 however, he did say that he considered and has looked at the
6 evidence that was presented, and did respond to the court's
7 questions concerning, first, his ability to follow the
8 instructions given by Judge Klindt during jury selection,
9 whether or not there was any moral or religious belief that
10 would prevent him from serving as a juror.

11 I think this is nothing more than a circumstance of
12 someone who's a deep man of faith commenting and saying that
13 something he believed beforehand had been reaffirmed by the
14 evidence that he saw.

15 I can't see from the case law how it would be
16 improper for someone to make a statement that, Well, what I
17 believed beforehand has been reaffirmed.

18 I think this would be a similar circumstance -- let's
19 say if he had said, The Holy Spirit told me beforehand she was
20 not guilty and now the evidence has taken me somewhere else,
21 but I still trust the Holy Spirit -- I just -- I don't think
22 that we have a juror here who's come in and said, Despite the
23 evidence, I'm going to follow God, rather than the court. I'm
24 going to follow the Holy Spirit, rather than the instructions.

25 I think this is someone who said that he has heard

1 some information beforehand, but he's basing his decision,
2 whatever it is -- and I think the other thing, too, is we don't
3 know right now, as appropriate, what his decision is.

4 I can understand someone -- if the juror had come in
5 and said, I'm going to vote to acquit no matter what because of
6 the Holy Spirit -- I don't believe that we have that.

7 Here, I think there's a serious concern about someone
8 being discharged because they've made some deep expressions of
9 faith.

10 And my understanding of the standard is unless the
11 court is essentially convinced beyond a reasonable doubt that
12 this juror can't fulfill his responsibilities, that the juror
13 should stay on.

14 I also think, if you look at the information
15 presented by the juror in her letter, there's nothing to show
16 that it has affected other jurors, that it's affected her
17 deliberations.

18 I think she brought this to the attention of the
19 court in an abundance of caution. And I don't believe that
20 we've reached that threshold to discharge the juror.

21 THE COURT: Thank you, sir.

22 MR. DUVA: Your Honor, just briefly.

23 THE COURT: Yes.

24 MR. DUVA: I think Mr. Smith's argument completely
25 falls apart. If the quote was, A higher being told me Corrine

1 Brown was guilty on all charges, he would not be making the
2 same argument.

3 This juror disregarded Judge Klindt's voir dire
4 question. What's particularly troubling is the timing of when
5 this was brought up.

6 Again, we all pray for guidance. We do that and no
7 one else knows. But to inject that into this process, where it
8 really has no place, and say those things, like, A higher being
9 told me this or the Holy Ghost told me that, is in direct
10 contradiction to the voir dire question that was posed at the
11 outset of the case.

12 THE COURT: Thank you, sir.

13 All right. The court will be in a five-minute
14 recess. And then I'll come back out and call the play.

15 COURT SECURITY OFFICER: All rise.

16 (Recess, 9:44 a.m. to 9:52 a.m.)

17 COURT SECURITY OFFICER: All rise. This Honorable
18 Court is now in session. Please be seated.

19 THE COURT: Under the Eleventh Circuit case of *United*
20 *States versus Godwin*, 765 F.3d 1306, Eleventh Circuit, 2014,
21 once deliberations have begun, a district court may excuse a
22 juror for good cause, which includes that juror's refusal to
23 apply the law or to follow the court's instructions, citing
24 Federal Rule of Criminal Procedure 23(b)(3) and *United States*
25 *versus Abbell*, 271 F.3d 1286, 1302, Eleventh Circuit, 2001.

1 But because of the danger that a dissenting juror
2 might be excused under the mistaken view that the juror is
3 engaging in impermissible nullification, or that it's a -- just
4 a contest between jurors who disagree with each other about the
5 facts, a district court should excuse a juror during
6 deliberations only when no substantial possibility exists that
7 she's basing her decision on the sufficiency of the evidence.
8 Again, citing *Abbe11*.

9 So long as the district court applies the substantial
10 possibility standard, the factual finding of the court is
11 reviewed for clear error.

12 And the appellate court reminds itself that the
13 district court is uniquely situated to make credibility
14 determinations that must be made whenever a juror's motivations
15 and intentions are at issue.

16 Now, I recognize in this case that we're not dealing
17 with somebody who has specifically said they won't follow the
18 law. In fact, Juror No. 13 has said he's trying to do that and
19 is trying -- feels that he is applying the court's instructions
20 properly.

21 But it is true -- in the case of *United States versus*
22 *Geffrard*, 87 F.3d 448, Eleventh Circuit, 1996, and the other
23 cases provided by the government regarding religious
24 objections, it is true that a juror's religious beliefs, as
25 implemented during jury service, can create a problem for that

1 juror, in properly following the court's instructions, to base
2 the decision on the law and the evidence as given to it by the
3 court.

4 And, of course, sincerely held religious beliefs and
5 the fact that somebody prays for guidance or is seeking
6 guidance from whatever religious tradition they come from is
7 perfectly appropriate and not a grounds to dismiss a juror,
8 necessarily.

9 But there is a reason that Judge Klindt, in all
10 voir dices, asks prospective jurors whether there is any
11 religious belief or moral belief that would interfere or
12 inhibit their ability to serve as a fair and impartial juror in
13 a case.

14 And there are those who just simply, because of their
15 religion, can't sit in judgment of others. There are others
16 who have religious expressions that are simply just
17 inconsistent with their ability to serve with others in a
18 collaborative effort to decide the case based on the evidence
19 and the facts.

20 In this case, Juror No. 13, very earnest, very
21 sincere, I'm sure believes that he is trying to follow the
22 court's instructions, I'm sure believes that he is rendering
23 proper jury service, but, upon inquiry and observing
24 Juror No. 13, there is no question that he has made statements
25 that he is, quote, receiving information from a higher

1 authority as part of his deliberative process, and in response
2 to the court's direct inquiry as to whether he had said to
3 other jurors, quote, A higher being told me Corrine Brown was
4 not guilty on all charges, closed quote, Juror No. 13 said that
5 he -- what he actually said was that the Holy Ghost or the Holy
6 Spirit told me Corrine Brown was not guilty on all charges.

7 And a juror who makes that statement to other jurors
8 and introduces that concept into the deliberations,
9 especially -- anytime, but this happened to be very early in
10 the deliberations, is a juror that is injecting religious
11 beliefs that are inconsistent with the instructions of the
12 court, that this case be decided solely on the law as the court
13 gave it to the jury and the evidence in the case.

14 Because, by definition, it's not that the person is
15 praying for guidance so that the person can be enlightened,
16 it's that the higher being -- or the Holy Spirit is directing
17 or telling the person what disposition of the charges should be
18 made.

19 And based upon my reading of the case law in other
20 cases where religious beliefs have caused a juror to be struck,
21 this statement by the juror, which he forthrightly admitted to,
22 and which was accurately, apparently, recounted by Juror No. 8,
23 who brought this to our attention, is a disqualifying
24 statement.

25 And -- and it appears to the court, looking and

1 judging the credibility of Juror No. 13, that he was hesitant
2 at first to explain to me how his religious views have come to
3 the fore during deliberations.

4 But as we progressed and as he told me he received
5 information from a higher source, and then as he later
6 confirmed the actual statement that the Holy Spirit told him
7 that Ms. Brown was not guilty on all charges, that -- that he
8 has expressed views and holds views that I think are
9 inconsistent with his sworn duty as a juror in this case,
10 because he's not able to deliberate in a way that follows the
11 law and the instructions that the court gave to him.

12 I want to be very clear that I am drawing a
13 distinction between someone who's on a jury who is religious
14 and who is praying for guidance or seeking inspiration, or
15 whatever mode that person uses to try to come to a proper
16 decision, from this situation, where the juror is actually
17 saying that an outside force, that is, a higher being, a Holy
18 Spirit, told him that Ms. Brown was not guilty on those
19 charges. And I think that's just an expression that's a bridge
20 too far, consistent with jury service as we know it.

21 I recognize that whenever you're in the area of
22 religious belief, and -- and people who have different ways of
23 expressing their religious beliefs, that you're in territory
24 that's difficult to navigate.

25 But in my view, the record is clear, and that not

1 only did Juror No. 13 make this statement, but it appears that
2 he continues to believe that he is being told by a higher power
3 how he ought to proceed in these deliberations, and he has
4 shared that with the other jurors, which, again, is essentially
5 a violation, not a -- not a willful violation by Juror No. 13,
6 but a violation of the court's instructions to base the
7 decision only on the law and the facts that were adduced at
8 trial, and in accordance with the court's instructions.

9 Therefore, it is the court's decision that
10 Juror No. 13 will be excused for good cause under Rule 23(b)(3)
11 and the authority of *U.S. versus Godwin*, 765 F.3d 1306; *U.S.*
12 *versus Abbe11*, 271 F.3d 1286.

13 I am making a finding -- and let me make the proper
14 finding here so that there's no doubt about it -- that this
15 juror is being excused because the court is finding no
16 substantial possibility that he is able to base his decision
17 only on the evidence and the law as the court gave it to him in
18 the instructions and that he is using external forces to bring
19 to bear on his decision-making in a way that's inconsistent
20 with his jury service and his oath.

21 And I find that -- I make that finding that -- based
22 on the evidence before me, that that finding is made beyond a
23 reasonable doubt.

24 And I'm relying -- of course, that's the standard
25 given to me in *U.S. versus Abbe11*, 271 F.3d 1286, at page 1302.

1 And it's stated in other Eleventh Circuit cases that we've been
2 relying on as well. So the court does make that finding. I
3 will be excusing Juror No. 13 for cause.

4 So now we do have to decide what to do. And the
5 court has options. One is to seat an alternate. And, of
6 course, the court has -- perhaps fortuitously, we did maintain
7 the alternates. They have been housed separately from the
8 other jurors all throughout the deliberations. We have
9 instructed them not to discuss the case.

10 They have been supervised by a court security
11 officer. And so we do have alternates who could be seated to
12 take the place of Juror No. 13, with an instruction that the --
13 instructions that the court would give to (a) not read anything
14 into the dismissal of Juror No. 13 and (b) that they need to
15 start their deliberations anew.

16 There's a set of instructions the court could give
17 that I have from Judge Howard's case, which is the *Godwin* case,
18 that I would be prepared to give if we went that route. The
19 court does also have the ability to proceed with 11 jurors.
20 And that's another option as well.

21 So I'll now hear from the government as to what the
22 government is requesting of the court at this time.

23 (Counsel confer.)

24 MR. DUVA: Your Honor, the parties agree the court
25 should seat an alternate juror.

1 THE COURT: Okay. So let me think of logistics here.
2 So the first alternate is Juror No. 5. And if everything has
3 gone according to plan, he's up on 13 waiting with the other
4 alternates. And so that would be who I would be seating.

5 Mr. Smith, you're -- I understand you have an
6 objection to the court's decision on Juror No. 13. And I'm
7 sure that is preserved for the record.

8 But now that the court's made that decision, is it
9 Ms. Brown's desire that an alternate be seated, as opposed to
10 proceeding with 11 jurors?

11 MR. SMITH: It is, Your Honor. And, again,
12 respecting the court's decision, if I could just lay out with a
13 little more specificity our objection to the court's decision.

14 THE COURT: Sure. Please do.

15 MR. SMITH: We don't believe that the standard has
16 been met, which I interpret as beyond a reasonable doubt, that
17 Juror 13 could not have served.

18 The cases that the court cited show that there was
19 some disruption to the jury deliberation process and that the
20 jurors, when questioned, stated that despite the instructions
21 they were going to go with their sincerely held religious
22 beliefs, as opposed to the law.

23 We believe that what you have here, perhaps, is a
24 dynamic that you see frequently in juries, where there's one
25 juror who's frustrated, perhaps about a difference of opinion.

1 And respecting the court's opinion, we think that the court's
2 decision was misplaced, given the information that was here,
3 and the cases cited were not properly applied.

4 That having been said, we do ask the court to proceed
5 with 12 jurors. And it's our understanding that would be
6 Juror No. 5.

7 THE COURT: Mr. Duva, obviously, the court's made its
8 ruling. And I -- but it's a consequential decision. And I do
9 want to ask the government: Is the government satisfied that
10 the court has made the correct decision? And is the government
11 satisfied that the record the court has made is a record that
12 the government feels to be an accurate statement of the
13 situation and an accurate statement of the law?

14 MR. DUVA: Yes on all three questions, Your Honor.

15 THE COURT: All right. Obviously, it's a question
16 that if -- if there were to be a conviction in the case -- and,
17 of course, I have no prejudgment about that.

18 But if there were to be, I'm sure it will be argued
19 on appeal. And I've done the best I can to make the inquiries
20 that I think were appropriate. And I've done the best I can to
21 articulate my reasoning.

22 I have been observing this jury and this process, of
23 course, carefully. I also had an opportunity to observe
24 carefully Juror No. 13.

25 And it is my judgment that -- that he is in a place

1 where he is being guided by a higher power in a way that is
2 inconsistent with jury service. And so I am adhering to my
3 ruling, recognizing the consequence of it.

4 I am confident that we can get an alternate in and
5 ask the -- them to restart their deliberations, although I'm
6 sure that will not delight them. But that is just the way it
7 has to go. And we will -- we will do that.

8 So what I would intend to do is -- I will escort
9 Juror -- I'm going to, I think, speak to Juror No. 13 and
10 explain to him that I am dismissing him and to thank him for
11 his service. And I -- I think I will then ask him to come
12 through. We'll put him in the hallway briefly.

13 We will then bring the rest of the jury up here. I
14 will also get Alternate No. 1. I will then reconvene the jury.
15 I will make Alternate No. 1 part of the jury.

16 And I will instruct the jury that Juror No. 13 has
17 been excused and that they -- and that I am seating the
18 alternate, and that they need to put aside their previous
19 deliberations and begin anew. And then I will let them do
20 that.

21 I think once we're at the part where we bring the
22 new -- before I bring the new jury in, I think I will open the
23 matter back up to the public, because I think at that point the
24 public -- it no longer -- the court no longer needs to be in
25 camera, and I will announce that I've dismissed Juror No. 13,

1 and that I am going to be seating an alternate, so that -- and
2 then I'll bring the jury out and I'll charge them.

3 I think that's -- does that work for the government,
4 Mr. Duva?

5 MR. DUVA: Your Honor, the government agrees with the
6 court's findings and the process that the court just laid out.

7 THE COURT: Mr. Smith, preserving all objections to
8 the court's decision to dismiss Juror No. 13, do you have any
9 guidance or objection to the way the court's intending to
10 proceed?

11 MR. SMITH: Not to the way in which the court is
12 intending to proceed.

13 THE COURT: Thank you.

14 All right. So we need to bring Juror No. 13 out,
15 Marty, please.

16 (Juror No. 13 enters the courtroom.)

17 THE COURT: You can just come on up, sir. You don't
18 need to sit down. Just come on up.

19 JUROR: By the way, I like this fellow.

20 THE COURT: You do? Yeah. He's a good -- all of our
21 court security officers are -- they're very well trained and
22 highly competent, but they're also nice people. So that's a
23 good thing.

24 JUROR: Yes, sir.

25 THE COURT: Sir, I am -- I'm going to relieve you of

1 your duties as a juror in this case. And I am doing so because
2 of the expressions you made regarding your receiving guidance
3 from a higher power as to how you ought to proceed in this
4 matter.

5 And in doing so, I don't expect you to fully
6 appreciate or even agree with what I'm doing. I hope you'll
7 understand that I am in no way denigrating or -- or taking
8 lightly your religious beliefs. I respect them deeply. And I
9 can tell you do as well.

10 But sometimes the way those are expressed and the way
11 you expressed them are just inconsistent with the law as I
12 understand it and have to apply in this case.

13 I know you worked hard. I know you were sincere.
14 And I -- I'm sorry that it has to be this way. But I have to
15 do what I think is right, just like you have to do what you
16 think is right. And I think this is what's right.

17 And so what I am going to do is this, I am going to
18 ask you to -- they'll escort you. We're going to bring the
19 other folks up and take you back downstairs.

20 I'm going to ask you to stay in the jury assembly
21 room until I have an opportunity to come speak to you. And I
22 won't be speaking to you about any matters that are more about
23 the case.

24 I just want to speak to you briefly about what's
25 going to happen when you get out in the world there and who

1 might be approaching you and that type of thing. And so we
2 just want to have that discussion with you.

3 And so I am grateful for your service and I hope you
4 understand that I have to do what I think is right. And I --
5 that's all I can really say.

6 JUROR: Okay.

7 THE COURT: So if you could -- we're going to ask you
8 to go in the hallway there for a moment. And then they will
9 take you downstairs and put you in the jury assembly room.

10 And I will be down to -- to, in effect, check you out
11 so that you can go about your business. But I just do need to
12 talk to you a little bit about -- because you -- you know, I
13 don't know what's going to happen with the media and so forth.
14 So I need to talk to you about that. Okay?

15 JUROR: Yes, sir.

16 THE COURT: Okay. So I appreciate it, sir. And I
17 will ask you now to go with Marty. And what I'm going to do
18 is -- is bring the other jurors up here now.

19 Can we do that?

20 COURT SECURITY OFFICER: Yes, sir.

21 THE COURT: All right. And then -- Tommy, can you
22 radio your colleagues and ask them to bring Juror No. 5 down as
23 well.

24 COURT SECURITY OFFICER: Sure.

25 THE COURT: And I think -- I think it's all right for

1 me to just bring Juror No. 5 into the jury room and then bring
2 them all out together.

3 Does anybody have a problem with that, Mr. Duva?

4 MR. DUVA: No, Your Honor.

5 THE COURT: Mr. Smith?

6 MR. SMITH: No, sir.

7 THE COURT: Okay. So if we could bring the jury from
8 up there -- downstairs up there. If we could get Juror No. 5
9 and bring him to the jury room, so that all 12 of them are in
10 the jury room. All right?

11 COURT SECURITY OFFICER: Yes, sir.

12 THE COURT: Thank you.

13 Thank you, sir. I appreciate it.

14 JUROR: Thank you.

15 THE COURT: And, Marty, once you're satisfied that
16 the jury has cleared, if Juror No. 13 -- if you could ask --
17 put him in the jury assembly room. Okay?

18 COURT SECURITY OFFICER: Will do.

19 THE COURT: Thank you.

20 (Juror No. 13 excused.)

21 THE COURT: All right. It's my intention now to open
22 the courtroom and allow the audience in and to announce that
23 Juror No. 13 has been dismissed, that we are going to replace
24 Juror No. 13 with an alternate, and that the jury will be
25 restarting their deliberations, and then to adjourn court until

1 we have everybody in the jury room.

2 Any objection to that, Mr. Duva?

3 MR. DUVA: No, Your Honor.

4 THE COURT: Mr. Smith?

5 MR. SMITH: No, sir.

6 THE COURT: All right. Deputy Santana, if you'll
7 open the doors and let people in, please.

8 (Whereupon the sealed proceedings concluded and the
9 following proceedings occurred in open court, outside the
10 presence of the jury:)

11 THE COURT: Y'all can have a seat.

12 All right. Ladies and gentlemen, we are back in
13 public session. I tell you truly I do not take lightly the
14 decision to close the proceedings to the public and to the
15 press.

16 I made the requisite findings that I think justified
17 it because we had a matter involving the jurors that needed to
18 be discussed.

19 And the reason I closed it -- the proceedings during
20 that discussion is so that matters could be discussed that were
21 sensitive, and also because the law puts a great premium on not
22 displaying to public scrutiny the jury's internal deliberations
23 or what's occurring in the internal deliberation process.

24 That's not something that is public. It is -- by definition, a
25 jury deliberates in private and then renders a verdict in

1 public.

2 And so, in order effectuate that principle of law, I
3 did make the findings that I believe the Supreme Court has
4 approved to close proceedings temporarily while we made that
5 inquiry.

6 I will now announce the result of that discussion and
7 inquiry, is that I have excused a juror, Juror No. 13, from
8 further service on the jury.

9 And I will be seating the first alternate juror as a
10 part of the 12-person jury. I will be then reconstituting that
11 jury in the courtroom with the new juror as part of it and
12 giving that jury instructions as to how they should proceed
13 with their deliberations.

14 The reasons for the court's decision are of record,
15 but that record at this point is sealed. The court did have
16 relatively lengthy proceedings.

17 And the court will make a determination at a later
18 time whether that record can be unsealed or not. But it --
19 there is a -- there is a record of it, of course. And it's a
20 question of whether it will remain sealed or be unsealed at
21 some later point.

22 But the important point now is that I have found good
23 cause to dismiss one juror and to seat an alternate. And I
24 will state for the record that because of the possibility of
25 having to seat an alternate, the court has maintained the

1 alternates in the courthouse the entire time the jury has been
2 deliberating, and they have been under instruction not to
3 discuss the case or expose themselves to any of the coverage or
4 anything to do with the case.

5 They have been in another part of the courthouse.
6 They've been doing things like watching movies and waiting for
7 any possibility that they would be called into service. And as
8 it turned out, one of those alternates is now being called into
9 service.

10 The way that we determine which alternate is picked
11 was already done by Judge Klindt when he picked the jury. The
12 alternates were picked in a -- in an order, 1 through 4, and so
13 we will be seating Alternate No. 1 as the twelfth juror.

14 When you do that, you have to instruct the jury to
15 begin their deliberations again so that the alternate could --
16 begin it anew, I should say, so that the alternate has the
17 opportunity to participate fully in the deliberations. And so
18 that will be the instructions I will be giving to the newly
19 constituted jury momentarily.

20 What's the situation?

21 COURT SECURITY OFFICER: Ready to go.

22 THE COURT: All right. Hold on one second.

23 So, Counsel, my proposal will be that I will be
24 instructing the jury that I have found it appropriate to excuse
25 Juror No. 13, that they should not speculate as to why he was

1 excused, nor should they discuss or reference any statements
2 that he has previously made, that I am seating alternate -- an
3 alternate juror in this case, and that because the alternate
4 was not present during their initial deliberations, it's their
5 duty and responsibility to begin anew, just as they did after
6 the first day.

7 That will allow the alternate to be a part of all of
8 the deliberations. I would instruct them to set aside all past
9 deliberations and disregard those deliberations.

10 And there's further elucidation of that, and -- and
11 then ask them whether they can, in fact, begin anew and follow
12 my instructions with regard to that. And I think I will ask
13 each juror whether they are willing to do that.

14 Mr. Duva, does the government have any suggestion or
15 request of the court regarding the procedure?

16 MR. DUVA: No, Your Honor. We agree with that
17 process.

18 THE COURT: Mr. Smith, preserving all objections you
19 previously have made, do you have any objection or request of
20 the court?

21 MR. SMITH: No, Your Honor.

22 THE COURT: All right.

23 All right. Let's have the jury, please.

24 COURT SECURITY OFFICER: All rise for the jury.

25 (Jury enters, 10:25 a.m.)

1 COURT SECURITY OFFICER: Please be seated.

2 THE COURT: Well, good morning, ladies and gentlemen.
3 I apologize that I've kept you waiting. And I apologize that
4 we were not able to get the start this morning that we
5 expected, but a matter did arise overnight and I needed to deal
6 with it.

7 And I'm going to be asking some more of you -- I know
8 you've given so much in terms of your service so far, but I'm
9 going to be asking some more of you.

10 First, let me tell you that I have, this morning,
11 found it appropriate to excuse Juror No. 13. You should not
12 speculate as to why Juror No. 13 was excused, nor should you
13 discuss or reference any statements that Juror 13 may have
14 made.

15 I will tell you that it is not -- that that -- just
16 for now, you should just put Juror No. 13 out of your mind
17 and -- and not try to speculate or guess why he was excused,
18 other than the court found a good reason to do so. And I'll
19 ask you to accept that, if you will, please.

20 So what happens when that happens is that an
21 alternate is seated. And you may see that you have a new
22 member of your number now. That juror was Alternate No. 1.

23 The alternates have been kept separate from you, but
24 have been in the building the entire time you've been
25 deliberating and have been instructed not to discuss the case

1 or do any research, and all of the things that you had been
2 instructed to do previously. And I'm confident that the
3 alternates have followed those instructions.

4 So I've now seated Alternate No. 1, who was
5 Juror No. 5 in the original lineup. And it looks like he may
6 have taken his old seat, so -- which is fine.

7 So here's how this works now. Now that you have a
8 new member of your jury -- because he was not present during
9 your initial deliberations, it is your duty and responsibility
10 to begin your deliberations and discussions anew, just as you
11 did on the first day after I read you the court's instructions.

12 This will allow the new juror to hear your
13 discussions and participate fully in them, as if he had been
14 part of your deliberations from the first day.

15 And I recognize I'm asking a lot, but that's what I
16 need to ask you to do. And that's what the law tells me to ask
17 you to do.

18 So I'm instructing you that -- today, to set aside
19 all past deliberations and disregard those deliberations. The
20 reason for this is that the government and the defendant have
21 the right to verdicts which were reached only after a full
22 participation by all jurors who ultimately return those
23 verdicts. This right can be assured only if you begin your
24 deliberations anew.

25 Each of you should disregard your initial

1 deliberations, discussions and votes, if any, as if they had
2 not occurred, without indicating that you have or have not
3 reached any tentative verdicts or any opinions, so I don't want
4 to hear any of that, during your initial deliberations on the
5 evidence in the case.

6 I now direct you to just wipe your minds of those
7 tentative verdicts, decisions, or opinions and to begin your
8 discussions anew.

9 And I know I'm asking a lot. And I know it's
10 difficult. And I know you've been here and working hard. But
11 I am asking you to do that because that's what the law
12 requires.

13 And we can -- all of us, in the furtherance of our
14 service, have to try to follow the law. And that's what I'm
15 trying to do and that's what I'm asking you to do.

16 And so the question is: Can you do that? Can you
17 assure me that you will do that? And I'm not going to ask you
18 to stand up. But I'm just going to ask each of you: Can you
19 follow these new instructions I've just given you about
20 beginning your deliberations anew?

21 Juror No. 1, can you do that?

22 JUROR: Yes, sir.

23 THE COURT: Juror No. 2, can you do that?

24 JUROR: Yes.

25 THE COURT: Juror No. 3, can you do that?

1 JUROR: Yes.

2 THE COURT: Juror No. 4, can you do that?

3 JUROR: Yes.

4 THE COURT: Of course, Juror No. 5 you're coming in.
5 Juror No. 6, can you do that?

6 JUROR: Yes.

7 THE COURT: Juror No. 7, can you do that?

8 JUROR: Yes.

9 THE COURT: Juror No. 8?

10 FOREPERSON: Yes, Your Honor.

11 THE COURT: Juror No. 9?

12 JUROR: Yes.

13 THE COURT: Juror No. 10?

14 JUROR: Yes, sir.

15 THE COURT: Juror No. 11?

16 JUROR: Yes, sir.

17 THE COURT: Juror No. 12?

18 JUROR: Yes, sir.

19 THE COURT: Okay. Anything else from counsel?

20 MR. DUVA: No, Your Honor.

21 MR. SMITH: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, you
23 know -- you know the expression I wouldn't ask if it wasn't
24 important? It's important. And I wouldn't ask otherwise.

25 And I appreciate your service more than you know.

1 And at the end of your service, I will be thanking each of you
2 individually. You're doing above and beyond the duty that
3 you've been asked to do, but I'm asking you to do that.

4 And so thank you very much. I'm going to ask you now
5 to retire and deliberate upon your verdict.

6 Thank you, ladies and gentlemen.

7 COURT SECURITY OFFICER: All rise for the jury.

8 (Jury exits, 10:31 a.m.)

9 THE COURT: All right. Y'all can have a seat. I
10 intend -- with counsel's blessing, I intend to go down and
11 speak to Juror No. 13 and to thank him for his service and to
12 talk to him a little bit about the aftermath and what he --
13 what he may or may not expect.

14 I hope he will be left alone, but I certainly am
15 asking that he be left alone. But I also will be recommending
16 to him that he not -- and directing that he not discuss the
17 matter at least until the trial is over with.

18 And I will also be advising him that he's never
19 required or there's nobody that can ever get him to -- to talk
20 if he doesn't want to, and that after the trial is over that
21 decision will be up to him. But I'll be recommending that he
22 not discuss his service. Along those lines -- and, again, to
23 thank him for his service and to express my appreciation.

24 Mr. Duva, do you have any objection to me doing that?

25 MR. DUVA: No, Your Honor.

1 THE COURT: Mr. Smith?

2 MR. SMITH: No, sir.

3 THE COURT: Okay. Is there anything else from the
4 government at this moment?

5 MR. DUVA: No, Your Honor.

6 THE COURT: Mr. Smith?

7 MR. SMITH: No, Your Honor.

8 THE COURT: All right. We now revert back to the
9 same situation. I'll ask counsel to be close, the way you've
10 been, until we hear from the jury. I would intend to give the
11 jury lunch when they ask for it.

12 And I would -- if there's a question from the jury, I
13 would be convening us to answer it as quickly as I can.
14 Announcements would be made both in this courtroom and in 10A,
15 if it's opened up, if there's enough people.

16 When we receive a verdict, I will make an
17 announcement in this courtroom through court personnel, and
18 also in 10A, of a verdict. And I will give at least a
19 15-minute heads-up so that all parties and those interested can
20 return to the courtroom for the reading of a verdict. Of
21 course, I have no idea when that might occur.

22 Anything else from the government?

23 MR. DUVA: No, Your Honor.

24 THE COURT: Anything else, Mr. Smith?

25 MR. SMITH: No, sir.

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THE COURT: We are in recess.

COURT SECURITY OFFICER: All rise.

(Recess, 10:34 a.m. to 11:10 a.m.)

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