



Questions for Candidates for Court of Appeals Conservative Coalition of Harris County

This questionnaire will be posted onto the Conservative Coalition of Harris County website for public voter viewing.

Candidate Name	Position for which Candidate is Running
Malcolm E. Whittaker	Justice, 1 st Court of Appeals, Place 3

Please give your answer to each of the following questions and please include your rationale with each answer. Please be concise and clear.

1. Please describe the qualifications and experience that make you the best candidate for the office for which you are running. What differentiates you from your opponent(s)?

Answer: Malcolm E. Whittaker brings 35 years of legal experience to the race for the First Court of Appeals, Place 3 — making him the most qualified candidate in the field. Malcolm has handled appeals throughout Texas and across the United States. Malcolm is also a strong supporter of religious rights.

As part of this support, Malcolm wrote an amicus brief in support of a juror who was removed from a jury for praying about his verdict. The oath that a juror takes ends with "so help me God." Surely, if a juror asks for God's help by privately praying, he shouldn't be removed for doing so. The 11th Circuit cited to Malcolm's amicus brief arguing that the 1st Amendment's right to freely practice his religion was violated. Malcolm is very proud of this brief and believes it is a good example of Malcolm's work. (For the lawyers reading this, the citation is United States v. Brown, 996 F.3d 1171 (11th Circuit 2021) (en banc).

In addition to Malcolm's work as an advocate for religious freedom, Malcolm specializes in intellectual property law (IP Law). This type of law affects 44% of the American economy (\$13.4 trillion/year). If Malcolm is elected, Malcolm will be the only judge with this specialized knowledge on the Court. In order to continue to have a strong economy and a legal system that strengthens and supports it, it is vital to add this specialization to the Court.

I have also served on the Board of Directors of a privately held company.

2. Please describe what you believe are the most significant issues in this race and why.
- Answer:** Intellectual property law affects 44% of the American economy (\$13.4 trillion/year). If Malcolm is elected, he will be the only judge with this specialized knowledge on the Court. In order to continue to have a strong economy and a legal system that strengthens and supports it, it is vital to add this specialization to the Court. None of Malcolm’s opponents have any specialized knowledge about IP Law.
3. Do you have judicial experience? To what extent have you practiced in the area of Civil/Family/Probate law? List the state(s) in which you are or have been licensed to practice law, and the date(s) you received such licenses.
- Answer:** Yes, as an arbitrator I have judged/decided more than 100 arbitration cases. My current practice is 100% civil law. I have appeared in Probate court on a few occasions. I am licensed in Texas (2003), Florida (1992), North Carolina (1991) and also licensed as a Registered Patent Attorney (1993).
4. What carries the greatest influence in your rulings: civil case law, the Constitution, state statutes, or other?
- Answer:** At its core, all United States & Texas law are ultimately based on the U.S. and Texas Constitutions. Next, the Texas Legislature and the U.S. Congress pass laws that govern our society, state and nation. If the Constitution or statutes don’t resolve the dispute, then a judge should rely on civil case law. A judge should not “legislate from the bench.”
5. How will technology advancements (such as AI, digital Court Hearings, etc.) impact the court system over the next few years? What issues should the public be aware of?
- Answer:** Digital Court Hearings are already widely used in both Texas State Court & Federal Courts. Digital appearances make lawyers more efficient and eliminate travel time to and from the Courthouse. I fully support this practice.
- I have experimented with AI in my practice and have found it to be potentially unreliable. For example, as noted legal periodicals have repeatedly identified, briefs written by AI have “hallucinated” precedent that does not actually exist. In terms of improving flow and readability, AI is a wonderful tool. At the current time, and for the foreseeable future, a prudent lawyer must not let AI write a brief and file it without reading it and confirming that it is accurate. I would support strong disciplinary consequences for a lawyer that doesn’t do this.

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No. 17-15470-U

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

UNITED STATES OF AMERICA
Plaintiff – Appellee,

vs.

CORRINE BROWN,
Defendant – Appellant.

Appeal from a Judgment of the
United States District Court for the Middle District of Florida
District Court Case No. 3:16-cr-00093-TJC-JRK-1
Honorable Timothy J. Corrigan, Presiding District Judge

***EN BANC* BRIEF OF DR. TANYA MARIE LUHRMANN AS
AMICUS CURIAE IN SUPPORT OF
DEFENDANT-APPELLANT CORRINE BROWN**

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Certificate of Interest

Counsel for Amicus Professor Tanya M. Luhrmann hereby certifies the following:

1. The full name of every party presented by me is:

Amicus Tanya Marie Luhrmann

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

The real parties in interest are named in the caption.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The name of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

None

FRAP 29 Statement

Pursuant to FRAP 29(a)(2), all parties have consented to the filing of this brief.

Pursuant to FRAP 29(a)(4)(E)(i), no party or party's counsel authored Amicus Professor Tanya Luhrmann's brief in whole or part.

Pursuant to FRAP 29(a)(4)(E)(ii) and (iii), no party or party's counsel contributed money that was intended to fund preparing or submitting Amicus Professor Tanya Luhrmann's brief. Funding for the instant brief was funded solely by Amicus and Amicus' undersigned counsel.

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ARGUMENT

Background

According to the Record in the district court, after jury deliberations began, Juror 8 complained that Juror 13 had prayed to “His Father In Heaven” for guidance in his jury deliberations.

When questioned by the district judge, Juror 13 stated:

“I followed all of the things that you presented [the law/jury instructions]. My religious beliefs are going by the testimonies of people given here [the evidence], which I believe that’s what we are supposed to do, and then render a decision on those testimonies, and the evidence presented in the room.”¹

Juror 13 also stated that he had prayed about his decision and “*[the Holy Spirit] told me that [Defendant-Appellant] Corrine Brown was not guilty on all charges.*”²

Rather than acknowledging that each juror, as long as they base their decision on the evidence and the law, is free to deliberate and decide the very important issue of guilty or innocence in their own way, the district judge excused Juror 13.

¹ Dist. Ct. Doc. No. 139 at 38.

² *Id.* at 38–39, 49.

Over the objection of Defendant-Appellant Brown, the district judge found that:

“The court is finding no substantial possibility that he is able to base his decision only on the evidence and the law as the court gave it to him in the instructions and that he is using external forces to bring to bear on his decision-making in a way that’s inconsistent with his jury service and his oath.”³

An alternate juror replaced Juror 13. The reconstituted jury found Defendant-Appellant Brown guilty on 18 of 24 charges. The jury acquitted her of the remaining six charges. A divided panel affirmed Brown’s conviction. Brown requested rehearing and the present *en banc* rehearing is underway.

The Dissent in the panel decision cited extensively to Amicus Tanya Marie Luhrmann’s book *When God Talks Back* writing:

“Juror No. 13’s statement that God had communicated with him described an internal mental event, not an external instruction. The anthropologist T.M. Luhrmann, in an effort to describe the prayer life of American evangelicals in secular language, writes that ‘in effect, [believers] train the mind in such a way that they experience part of their mind as the presence of God. ... They learn to identify some thoughts as God’s voice, some images as God’s suggestions, some sensations as God’s touch or the response to his nearness. ... When believers converse with God

³*Id.* at 59.

in prayer, both their addresses to him and His replies – if any – are ‘inner mental phenomena.’”⁴

When Professor Luhrmann learned that her book had been cited in the panel decision, she elected to file the present Amicus brief to further lend her experience and study to the Court. And also to reinforce that the dissent correctly identified prayer and hearing God speak as “internal mental phenomena.” In addition, Professor Luhrmann wanted to ensure that the Court understood that when believers hear God speak as a part of everyday life, they are often referring to their own thought processes.

This way of talking about God speaking, and this type of experience, is common in many American churches and, based on her more than ten years of research and writing on the subject, likely the experience to which Juror 13 referred. Juror 13’s expressions are consistent with typical evangelical expressions referring to prayers for guidance—and their answers—as internal phenomena, rather than an impermissible external source. Professor Luhrmann’s extensive research and writing provide her with a unique perspective that should be helpful to the Court.

Introduction

Amicus Professor Tanya Luhrmann is a professor of anthropology and psychology at Stanford University and the author of *When God Talks Back: Understanding the American Evangelical Relationship with God*.⁵

⁴ Dissent at p. 86, citing to Luhrmann at xxi and 47.

⁵ *When God Talks Back*, published by Knopf 2012.

Her book was extensively cited by the Dissent.⁶ As argued by the Dissent in the Panel decision, her book confirms that it is error to assume that Juror 13 received “external information” when he spoke about a “Higher Power” or that it is “facially conclusive proof that he had failed to discharge his duties [when Juror 13 told the district court that the Higher Power had told him Brown was not guilty.]” Dissent at 96, citing to Majority opinion at 31-35.

Currently, Professor Luhrmann is the Watkins University Professor in Stanford’s Department of Anthropology. She earned her undergraduate degree from Harvard University and her Masters in Philosophy and Ph.D. from Cambridge University where she studied anthropology. She began her academic career at the University of California, San Diego [1989-2000], where she was a fully tenured professor. She served as Department Chair from 1998-1999. During this time, she was also a research fellow at Christ’s College, Cambridge University. From 2000-2007, she was a professor at the University of Chicago in the Department of Comparative Human Behavior as well as Co-director of the Clinical Ethnography program. In 2007, she was also awarded a Guggenheim Fellowship. Since 2010, she is the Watkins University Professor in Stanford’s Department of Anthropology where she teaches Research Methods in Anthropology, Ethnographic Writing, and Anthropology of Religion. She was elected to the American Academy of Arts and Sciences in 2003.

⁶ See Dissent, p. 86, and nine other citations throughout the dissent.

Professor Luhmann's book *When God Talks Back* is an anthropological and psychological study of Christian practices and particularly the role prayer plays in religious life in the contemporary United States.

Her book is based on ten years of research and study of these subjects, including four years of ethnographic⁷ participant observation. Over the course of her four years of ethnographic participation, she spent time in churches, in prayer groups, and in weekly house groups studying the role of prayer and religious practice in American evangelical churches. She also interviewed hundreds of evangelical churchgoers combining scientific and anthropological research to study the effect of intensely practiced prayer to train a congregant, such as Juror 13, to "hear" God's voice inside his head. As part of learning to "hear" God's voice, congregants are also taught that they "*have to do so in a way that does not violate the realistic demands of the everyday world.*"⁸ Professor Luhmann's research and the resulting book confirm the Dissent's conclusion that prayer is not an "external force" that renders Juror 13 "unable to base his decision only on the evidence and law."

⁷ Ethnography is the study and scientific descriptions of the customs of individuals and cultures through immersion in the lives of those studied.

⁸ *When God Talks Back*, p. 41 ("*The have to pick out the thoughts that count as God's and learn to trust that they are really God's, not their own, and they have to do so in a way that does not violate the realistic demands of the everyday world.*")

In a nutshell, Juror 13’s statement that he believed the “*Holy Spirit told me that Corrine Brown was not guilty on all counts,*”⁹ is entirely consistent with Juror 13’s responsibilities to decide Ms. Brown’s guilt or innocence based only on the evidence and consistent with his juror oath, because, as Dr. Luhrmann’s research unequivocally demonstrates, the evangelical experience of prayer is inseparable from the individual’s internal thought process. Thus, when Juror 13 told the district court “I prayed about this,” he was explaining an internal mental phenomenon.¹⁰ To decide otherwise misinterprets the role of prayer in contemporary American religious life and potentially excludes the significant percentage of Americans who pray from jury service.

Juror 13 Could Only Be Excused for “Good Cause” – The District Court Failed to Recognize That Juror 13 Was Describing “An Internal Mental Phenomenon,” Not An Impermissible External Force

Fed. R. Crim. P. 23(b)(3) allows a district court to excuse a juror after deliberations begin only for “good cause.” “Good cause” exists only when there is “no substantial possibility” that a juror “is basing her decision on the sufficiency of the evidence.” *United States v. Abbell*, 271 F.3d 1286, 1303 (11th Cir. 2001). The juror’s misconduct must be proven “beyond a reasonable doubt.” *Id.* at 1302.

⁹ Doc. 139 at 49.

¹⁰ “I prayed about this, I have looked at the information, and that I received information as to what I was told to do in relation to what I heard here today – or in the past two weeks[*of trial*].”

Professor Luhmann's book *When God Talks Back* teaches that praying and hearing God speak is an "internal mental phenomena," not reliance on an "impermissible external force."

Professor Luhmann's Book *When God Talks Back* Teaches That There is a Reasonable Probability That Juror 13 Based His Decision On the Evidence and the Law Because Juror 13 Was Free to Accept or Reject the Higher Power's Information

Around a quarter of all Americans, according to the Pew Research Center's 2006 "Spirit and Power Forum," can be described as "renewalist" Christians.¹¹ That is, they seek to experience God directly, immediately and personally, and they believe that everyone is able to experience God this way if they try. The Christian churches that exemplify this more experiential orientation are often referred to as the "new paradigm" Protestant churches, which took some of the skills and practices associated with Pentecostal Christianity and made them accessible for mainstream middle class and often white congregations. There are currently thousands of Vineyard churches, Calvary churches, Bethel churches, Foursquare churches and similar churches within the United States and abroad that are "new paradigm" Protestant churches that teach congregants learn to hear God speak through prayer.

There Are Numerous Books That Teach How to Learn to Hear God "Speak" Through Prayer

Talk of hearing God "speak" is common in the many, many books purchased by Christians on the subject. There are also hundreds of books

¹¹ <https://www.pewforum.org/2006/10/05/spirit-and-power/>

available to the Christian who seeks to learn how to pray and hear God speak.¹² Among the many books cited by Professor Luhrmann’s bibliography on this subject of having a “conversation with God” are: (i) *The Purpose-Driven Life*, Grand Rapids, Mich. (Zondervan 2002) by Rick Warren. *The Purpose Driven Life* has sold fifty million copies by 2020.¹³ Similar books about talking with God include: (ii) Dallas Willard, *Hearing God: Developing a Conversational Relationship with God*, Downers Grove, Ill. (Intervarsity 1999),¹⁴ and (iii) *Renovation of the Heart*, Colorado Springs, Colo. (NavPress 2002);¹⁵ (iv) Richard Foster’s (v) *Celebration of Discipline* and (vi) *Life with God*, New York, Harper Collins (2008);¹⁶ (vii) Henry Blackaby and Claude King *Experiencing God*, Nashville, Tenn. Broadman and Holman, (2004)¹⁷; (viii) Bruce Bickel and Stan Jantz, *Bruce & Stan’s Guide Pocket Guide to Talking with God*, Eugene, Ore. (Harvest House 1996),¹⁸ and (ix) *Guide to God*, Eugene Ore. (Harvest House 1997);¹⁹ (x) James Goll, *The Beginner’s*

¹² Luhrmann, p. 47 (“*There are hundreds of books available to the Christian who seeks to learn how to pray.*”)

¹³ Luhrmann, p. 414, *The Purpose Driven Life* (more than 25 million copies sold), *Id.* at 56. Apparently, since Professor Luhrmann’s book was published, total sales of *The Purpose Driven Life* now exceed 50 million copies. See https://en.wikipedia.org/wiki/The_Purpose_Driven_Life

¹⁴ Luhrmann, p. 414

¹⁵ *Id.* at 415

¹⁶ *Id.* at 397.

¹⁷ *Id.* at 392.

¹⁸ *Id.*

¹⁹ *Id.*

Guide to Hearing God, Ventura Calif. (Regal 2004);²⁰ (xi) Mark and Patti Virkler, *Dialogue with God*, Gainsville, Fla. (Bridge-Logos 1986);²¹ (xii) Loren Cunningham, *Is That Really You, God?*, Seattle, (YMAN 1984);²² (xiii) Cynthia Heald, *Becoming a Woman of Grace*, Nashville, Tenn. (Thomas Nelson 1998);²³ (xiv) Edward Bounds, *The Reality of Prayer*, Shippensburg, Penn. (Destiny Books 2007);²⁴ (xv) Margaret Feinberg, *God Whispers*, Orlando, Fla. (Relevant Books 2005);²⁵ (xvi) S.J. Hill, *Enjoying God*, Orlando, Fla. (Relevant Books 2001);²⁶ (xvii) Ken Wilson, *Mystically Wired*, Nashville, Tenn. (Thomas Nelson 2009);²⁷ (xviii) Bill Hybels, *Too Busy Not to Pray*, Downers Grove, Ill. (Intervarsity 1998);²⁸ (xix) Stormie Omartian, *The Power of Praying*, Eugene, Ore. (Harvest House 2004);²⁹ and (xx) a classic beloved in the evangelical world, Brother Lawrence, *The Practice of the Presence of God*, New Kensington, Penn. (Whitaker House 1982).³⁰

Such texts invite readers to listen for God, and to pick out the voice of God in their minds. According to Professor Luhrmann, this is called “discernment.” Discernment must be learned in order to hear God speak when a person prays. Juror 13 is therefore one of millions of Americans

²⁰ *Id.* at 398.

²¹ *Id.* at 413.

²² *Id.* at 395.

²³ *Id.* at 400.

²⁴ *Id.* at 392.

²⁵ *Id.* at 397.

²⁶ *Id.* at 400.

²⁷ *Id.* at 415.

²⁸ *Id.* at 401.

²⁹ *Id.* at 407.

³⁰ *Id.* at 403.

who pray and hear God speak. Rejecting him and others who pray and hear God speak potentially affects the available pool of jurors for district courts throughout the United States. Phrased differently, the question about Juror 13 is not limited to the present case. The panel decision, if adopted by the *en banc* panel, has the potential to affect substantial numbers of future jurors throughout the United States who pray and hear God speak in response.

Prayer is the Act of Talking to God

Early in *When God Talks Back*, “prayer” is defined as “*the act of talking to God.*”³¹ Eighty-eight percent of Americans say that they pray to God and 76 percent say that “*prayer is an important part of their daily lives.*”³²

One of the first things a person must master at an evangelical, renewalist, or “new paradigm” church is to recognize when God is present and when He responds to a congregant’s prayers. This can seem odd to someone raised in a mainstream church, where God is usually not imagined as a person with whom you have back-and-forth conversation throughout the day. Many people who are congregants in these churches that Professor Luhrmann interviewed for her book speak about recognizing God’s “voice.” They talk about things God has “said” to them about very specific topics—where they should go to school, whether they

³¹ *Id.* at 47.

³² *Id.* at 47, citing to Poloma and Gallup 1991:26, similar figures are reported by Gallup and Lindsay 1999:46.

should volunteer in a daycare, whether they should move to Kansas³³— and newcomers are often confused by what they mean. Newcomers soon learn that God is understood to speak to congregants inside their own minds. They learn that someone who worships God in this way must develop the ability to recognize thoughts in their own minds that are not in fact their thoughts, but God's.³⁴ They learn that this is a skill they should master. At the beginning, like the district court, they usually find both the skill and the very idea of the skill perplexing. According to Professor Luhrmann's book, in these churches, God participates in your mind and you 'hear' what he says as if it were external speech. Her book teaches us that the general model is clear enough: God wants to be your friend; you develop that relationship through prayer; prayer is hard work and requires effort and training; and when you develop that relationship, God will answer back, through thoughts and mental images He places in your mind, and through sensations He causes in your body.³⁵ Those thoughts and images and sensations are still experienced, for the most part, as if they were your own, generated from within your own mind and body. You have to learn to experience those you have identified as God's as different.

These evangelical Christians, then, not only have to accept the basic idea that they can experience God directly, but they must develop the tools to do so in a way that what feels like inner thought can be authentically experienced as God-generated. They have to pick out the

³³ *Id.* at 64.

³⁴ *Id.* at 41.

³⁵ *Id.* at 41.

thoughts that count as God's and learn to trust that they really are God's, not their own, and "they have to do so in a way that does not violate the realistic demands of the everyday world."³⁶ The theory they develop to help them do so is partly provided by the sermons and the books and the social chatter, and partly something they infer from the ways they learn to practice. And to an observer, what is striking is how hard people work to feel confident that the God who speaks to them in their mind is also the real external God who led the Jews out from slavery and died upon the cross, and how much they come to feel that God is in fact communicating to them.

So how does someone even begin to identify the thoughts that are really God, or to pull out what is God from the ordinary static in the mind? According to Professor Luhrmann's research, God's voice is mingled with the flow of one's own stream of consciousness. God is always speaking to you. The Christian just needs to learn how to listen. That means learning to pay attention to our own awareness in order to hear what He says. According to one of how-to-pray manuals used in the groups Professor Luhrmann spent time with, "*God's voice normally sounds like a flow of spontaneous thoughts, rather than an audible voice. I have since discovered certain characteristics of God's interjected thoughts which help me to recognize them.*"³⁷

³⁶ *When God Talks Back*, p. 41

³⁷ Virkler and Virkler, *Dialogue with God*, p. 29

When God Talks Back observed that people used the language of “hearing God speak” to describe an ordinary, everyday experience. God comes to talk to people about where they should go for vacation; what shirt they should wear in the morning; whether they should go shopping; even what shampoo to buy.³⁸ It is hard to avoid the observation that people use this language, about God talking to them, to describe their ordinary thought process. It is also clear that while God speaks to people (as they understand it) they do not always follow what they understand God to say.³⁹

Professor Luhrmann’s book cites to a number of examples of believers praying, hearing God speak to them, and even ignoring or rejecting what God has said to them.

For example, in *When God Talks Back*, one woman, “Elaine”, explained to Professor Luhrmann how she heard God speak to her in her mind. “*It is kind of like someone was talking to me. That’s how real it is. I get responses.*” “How do you know?” Luhrmann asked. “*God speaks to me,*” she replied. “What do you mean by that?” Luhrmann asked. “You can hear him with your ears, outside your head?” “*No,*” she responded. “*For some people God speaks with a distinct voice, so you’d turn around because you think the person’s right there. For me it hasn’t happened like that. Well, I mean kinda, there has been kind of that sense, but not like you’d turn your head because someone was there.*” Can you say more about those God experiences? Luhrmann prompted. She explained that

³⁸ Luhrmann at 76.

³⁹ *Id.* at 52.

she did not hear the voice like it really was another voice, but it was more than a passing thought. It was clearly, she felt, not her thought. She went on to give an example. *“When people were praying over me and I’m just receiving it [meaning the prayer] and all of a sudden I hear, ‘go to Kansas’. Because I was debating whether to go to Kansas, but I hadn’t been thinking about it within a 24 hour period.”* That’s what made it distinctive to Elaine: she wasn’t thinking about it, it wasn’t something she would have thought about right then. *“It makes you want to say,”* Elaine continued, *‘where did that come from?’*⁴⁰

Another example of hearing God speak as an internal phenomena described in *When God Talks Back* concerns Jacob.

“Jacob” was a young professional who joined the Chicago Vineyard [a renewalist church in Chicago] because, he felt, God told him to do so. One Sunday, standing in the congregation in another State, he knew God was telling him that he and his wife should move down to the neighborhood where the new church was being ‘planted.’

“I really just felt really clearly that God put [that neighborhood] into my head. I didn’t know the church at all. I knew there was a Vineyard[church] there because I’d heard about it in another church, around the time the church was planning, but I didn’t know anything about it. I didn’t spend any time in the neighborhood. I was like this is really weird but I couldn’t shake it. The rest of the service I just prayed

⁴⁰ *Id.* at 64.

over it and God just confirmed it. There was this total peace that would be present when I would think about the neighborhood and the Vineyard there. I can't explain it any other way."⁴¹

Additional examples of prayer as an internal phenomena found in *When God Talks Back* are Stanley and Trish.

“Stanley” and “Trish” struggled when Trish, a medical student, was assigned for residency to a city that had not been her first choice. Stanley had a great job in a specialty law firm in Chicago, and there was no comparable job for him in the other city. (There were many medical students in the church and, as was often the case, the residency match took many of them to their third, fourth and even fifth choices.) For Stanley and Trish, this meant separation for at least a year, and while their daughter was still a toddler. They were not sure what to do, and whether God intended Trish to abandon medicine altogether. They prayed and prayed. The pastor held a prayer meeting at their house so that people could pray over them. Their house group prayed over them. People prayed with them in church. Eventually, in part because of what they thought, felt and experienced in prayer, they decided to accept Trish’s assignment. And as they did so, they began to feel ‘peace’: a sense of settled acceptance which they took as a sign that they had correctly interpreted God’s words to them.⁴²

⁴¹ *Id.* at 65-66.

⁴² *Id.* at 66-67.

Elaine Rejects God’s Instruction to “Wear the Blue Shirt”

Elaine told Luhrmann that she was trying to hear God speak in the little things, so that she could hear His voice when it really counted. So she began to ask Him what she should wear every morning. As explained in *When God Talks Back*, the Sunday Luhrmann and Elaine spoke, God told Elaine—as she experienced it—to wear the blue shirt. But when she put it on, her bra showed, so she took off the blue shirt and put on a black one. When she arrived at church, she was standing around with the worship team. The pastor walked by, smiled, and said (she reported) ‘I see you are all wearing blue today.’ Elaine told me this story to illustrate how mortified she was at having not taken God seriously. The real point, of course, was that Elaine—a deeply committed Christian who had repeatedly explained to me that every word of the Bible was accurate—did not, as she stared at her closet, treat her inference about what God was thinking (“wear the blue shirt”) as an actual insight into divine intention. It was her way of feeling connected to God.⁴³

After Elaine told her this story, Luhrmann explained in her book, she (Luhrmann) began to ask other people whether they asked God to tell them what they should wear in the morning. Rachael, a young college student, said yes. *“I definitely do that. When I can’t decide what to wear. Like, God, what should I wear?”* Then she laughed. *“And you know, then I kind of forget about the fact that I asked God. I think God cares about really, really little things in my life. I mean I know God cares, but I don’t expect him to tell me what to wear. I’m like, Oh, I think I’ll wear that and*

⁴³ *Id.* at 94.

forget I even asked God!” And still she thought it was important to ask. “*But I also believe in like looking for God in little things.*”⁴⁴ People spoke to me about how badly they felt when they fell asleep talking to God—but they still fell asleep. They said that they were embarrassed to feel that they should study in addition to praying that they would pass their exam—but they still studied.

The point here is that in Dr. Luhrmann’s experience and years of study, when congregants say that God speaks to them, they do not necessarily mean that they are ignoring evidence around them. To be clear: it does not follow that such people never ignore evidence. But it would be a mistake to automatically infer from the phrase “God spoke to me” that they are *not* describing a thought process in which they evaluated the evidence and reached a conclusion about guilt or innocence based on applying the law in the jury instructions to the evidence. Unaware of Amicus Dr. Luhrmann’s research, the district court incorrectly interpreted Juror 13’s statement that “God spoke to me” as describing an impermissible external force. Unfortunately, the district court erred when it did so.

Correctly Applying the *Abbell* Test Mandates That It Was Error to Excuse
Juror 13

Abbell, supra, mandates that a juror may only be excused after deliberations begin if there is no substantial possibility that the juror is basing his decision only on the evidence and the law. Juror misconduct must be proven beyond a reasonable doubt.

⁴⁴ *Id.*

Evaluated in light of the teaching of *When God Talks Back*, there is a substantial possibility that Juror 13 based his decision that Corrine Brown was innocent on all charges only on the evidence and the law. It is also clear that Juror 13 was referring to an internal phenomena, rather than an impermissible external force, when Juror 13 explained praying for guidance about Corrine Brown's guilt or innocence. As such, it is error to affirm the district court's decision to excuse Juror 13.

CONCLUSION

Applying Professor Luhrmann's analysis to *Abbell*'s legal test for excusing a juror after deliberations begin, there is a substantial possibility that Juror 13 based his decision that Corrine Brown was innocent on all charges only on the evidence and the law. As such, excusing Juror 13 is error and Defendant-Appellant Corrine Brown's conviction must be reversed.

Respectfully submitted:

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document was caused to be served on November 23, 2020, through the Court's ECM/CF system.

By: /s/Malcolm E. Whittaker
Malcolm E. Whittaker