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# Divine Intervention or Unfair Influence? A Closer Look at Bibles in the Jury Room

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# Divine Intervention or Unfair Influence? A Closer Look at Bibles in the Jury Room

ABSTRACT

*The Fourth Circuit allows jurors to bring Bibles into the jury room and reference them during deliberations. A seemingly innocent action actually denies the accused his right to a fair and impartial jury. When jurors put too much weight on the Bible's passages about judgment, jurors risk overlooking the evidence and instead making decisions based on isolated verses. By generally allowing a Bible in the deliberation room, the Fourth Circuit opens the door to other religious texts coming into deliberations. Further, the Fourth Circuit blurs the line demarcating external and internal influences, risking the introduction of other external influences that some judges may perceive to be intrinsic. The Fourth Circuit should prohibit religious texts in the jury room.*

## INTRODUCTION

"Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man."[1] "Whoever strikes a man so that he dies shall be put to death."[2] "Whoever steals a man and sells him, and anyone found in possession of him, shall be put to death."[3] "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, [d]o not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also."[4] The Bible is commonly regarded as the Word of God. To Christians, this means God is speaking to man through the Scriptures to provide Divine Guidance and moral commands for believers to follow throughout their earthly life.[5] What happens when Christians are asked to judge the actions of another and given a Bible in the jury room to aid them in the process? Will those individuals be more likely to say "an eye for an eye" despite evidence to the contrary? Our justice system should not willingly take such a risk.

In *Robinson v. Polk*, the Fourth Circuit created concerning precedent when it decided a juror's recitation from a Bible while in the deliberation room was not an external influence on the jury's verdict.[6] The Fourth Circuit's decision directly and adversely affects a defendant's right to a fair, impartial jury. Despite its troublesome conclusion, *Robinson*'s analysis provides an important discussion surrounding an individual's internal thought process during deliberations. The Fourth Circuit analogized the reading of Scripture to an individual's own thoughts and prayers.[7] With a strong analysis and a clear understanding of the mental processes each individual juror must face, the Fourth Circuit explained how, why, and when an individual's faith may enter the jury room.[8] Keeping its well-thought-out analysis, the Fourth Circuit should have come to a different conclusion: the Bible is an extrinsic influence when used in the jury room.

When courts address the issue of faith in the jury room, they examine it retrospectively, after the damage has already been done. If a court chooses, it may assess the effect of "extraneous prejudicial information" or

1. *Genesis* 9:6 (King James).
2. *Exodus* 21:12 (English Standard Version).
3. *Exodus* 21:16 (English Standard Version).
4. *Matthew* 5:38–39 (English Standard Version).
5. *See* LIBRERIA EDITRICE VATICANA, CATECHISM OF THE CATHOLIC CHURCH 35–36 (U.S. Conf. of Cath. Bishops ed. & trans., 2d ed. 2019) (1994).
6. Robinson v. Polk, 438 F.3d 350, 363–64 (4th Cir. 2006).
7. *See id.*
8. *See id.* at 362–64.

"outside influence" on jury deliberations.[9] Such an inquiry is rare and requires a party to first provide evidence of the jury's use of extraneous information before the court will investigate further.[10] Extraneous information encompasses information not admitted as evidence at trial, yet used during the jury's decision-making process.[11] If the court chooses to investigate the allegations, it then must decide whether the deliberations were prejudicially affected by the external information.[12]

Likely, the court only hears of a problem if another juror makes the information known. As a result, many problems during deliberations are left unaddressed. How often do courts fail to hear about faith in the deliberation room? How do the courts know they are making the right decision regarding the prejudicial effect on defendants? Such a decision is difficult to make, and courts need a bright-line rule to guide them. Establishing a bright-line rule about faith in the jury room will help prevent prejudice before the risk of prejudice arises. Courts can remove themselves from jury decisions, and defendants can benefit fully from their right to a fair and impartial jury.

This Comment proposes the Bible should always be considered an extrinsic influence when the physical Bible itself is brought into the jury room. This Comment does not focus on bias, which is inquired into during the *voir dire* process, but instead focuses on the effect of religion and religious texts on jury verdicts. This Comment distinguishes between the use of physical religious objects and texts from the juror's use of his internal thought process. Where a juror quotes a Bible verse from memory or mentions thoughts coming from prayers, the juror is relaying his internal thoughts, which cannot be examined by the courts.

In Part IA, this Comment briefly discusses the Sixth Amendment right to a trial by jury. In Part IB, this Comment addresses key struggles courts have encountered when addressing faith in the jury room. In Part IC, this Comment analyzes *Robinson*, the pertinent Fourth Circuit case that addresses the use of a Bible during deliberations. In Part IIA, this Comment discusses why the Fourth Circuit came to the wrong conclusion in *Robinson*, coupled with why the Fourth Circuit's analysis supports the conclusion this Comment proposes. Further, Part II distinguishes between three different ways faith may enter the jury room—through: (1) the physical use of the Bible; (2) indirectly quoting from the Bible without referencing a physical copy; and (3) a juror's individual thoughts and prayers.

9. FED. R. EVID. 606(b).
10. *See* Tanner v. United States, 483 U.S. 107, 117 (1987).
11. Sheppard v. Maxwell, 384 U.S. 333, 351 (1966).
12. FED. R. EVID. 606(b).

Using *Robinson*, this Comment suggests that the physical use of a religious text should be categorically described as extrinsic evidence when it has not been introduced as evidence at trial. Additionally, courts should proactively instruct jury members not to reference religious texts during deliberations. Conversely, this Comment proposes a juror's use of his own thoughts and prayers should be categorically described as intrinsic evidence, which cannot be inquired into by the courts. Categorizing religious texts as extrinsic evidence will proactively aid in lessening court inquiries into the potentially prejudicial effects of such texts on deliberations. This bright-line rule will provide greater protection to defendants because it will decrease court involvement in the jury deliberation process.

## I. THE RIGHT TO A JURY TRIAL AND WHERE THE FOURTH CIRCUIT CURRENTLY STANDS

### *A. The Sixth Amendment Right to Trial by Jury*

The Constitution of the United States guarantees its citizens the right to a trial by jury.[13] "[T]he right to [a] jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors."[14] The jury "has long served as the anchor of the criminal justice system in the United States."[15] When a jury deliberates, all jurors agree to reach a conclusion based on the evidence presented before them.[16] When jurors are required to consider only the evidence presented at trial, the accused is guaranteed full judicial protection of his constitutional rights.[17] This requirement "goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury."[18]

13. U.S. CONST. art. III, § 2; U.S. CONST. amend. VI; U.S. CONST. amend. VII.

14. Irvin v. Dowd, 366 U.S. 717, 722 (1961).

15. Gregory M. Ashley, Note, *Theology in the Jury Room: Religious Discussion as "Extraneous Material" in the Course of Capital Punishment Deliberations*, 55 VAND. L. REV. 127, 136 (2002).

16. ADMIN. OFF. OF THE U.S. CTS., HANDBOOK FOR TRIAL JURORS SERVING IN THE UNITED STATES DISTRICT COURTS 9, https://www.uscourts.gov/sites/default/files/trial-handbook.pdf [https://perma.cc/QKQ2-H92J].

17. Turner v. Louisiana, 379 U.S. 466, 472 (1965).

18. *Id.*

It is well-established that the United States court system greatly disfavors impeaching a jury verdict via juror testimony.[19] Impeaching a verdict means calling into question the validity of a final verdict in an attempt to set the verdict aside.[20] Although the Sixth Amendment gives the utmost protection to criminal defendants, "the Sixth Amendment does not require that all evidence introduced by the defendant tending to impeach the jury's verdict be considered by the courts."[21] Impeachment based on internal information is prohibited.[22] Internal influences include "any juror's mental processes concerning the verdict or indictment."[23] The Supreme Court eloquently condemned such an inquiry in *McDonald v. Pless*:

> But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation—to the destruction of all frankness and freedom of discussion and conference.[24]

The *McDonald* Court emphasized the policy reasons behind prohibiting inquiries into the minds of jurors.[25] Although such a decision may impact individual defendants, the rule also protects the trial process, which the Court prioritized.[26] "Without the prohibition there would exist a situation so vulnerable to fraud, corruption, and perjury as to greatly impair

19. *See* Tanner v. United States, 843 U.S. 107, 177 (1987) ("By the beginning of this century, if not earlier, the near-universal and firmly established common-law rule in the United States flatly prohibited the admission of juror testimony to impeach a jury verdict.").

20. *See* McDonald v. Pless, 238 U.S. 264, 267 (1915) (explaining the justification for the common-law rule prohibiting the use of juror testimony to impeach a jury verdict).

21. Robinson v. Polk, 438 F.3d 350, 359 (4th Cir. 2006) (citing *Tanner*, 483 U.S. at 117).

22. FED. R. EVID. 606(b).

23. FED. R. EVID. 606(b)(1).

24. *McDonald*, 238 U.S. at 267–68.

25. *See id.* at 267 ("[T]he court must choose between redressing the injury of the private litigant and inflicting the public injury which would result if jurors were permitted to testify as to what had happened in the jury room.").

26. *See id.*

the value, if not the eventual destruction, of trial by jury."[27] But courts do not protect from inquiry all that occurs during the jury deliberation process. Juror testimony may impeach a jury verdict when allegations show the jury prejudicially relied on an "extraneous influence" when reaching its decision, instead of relying solely on internal influences.[28]

In *Tanner v. United States*, the Supreme Court explained that the internal/external distinction turns not on whether the influence comes from inside or outside of the jury room, but rather, on "the nature of the allegation."[29] In *Tanner*, the Court determined that evidence of a juror's drug and alcohol use was not an external influence.[30] The Court emphasized that the test is not rigid, but acknowledged the limited situations in which inquiry into juror testimony could occur.[31] To further explain the test, the Court identified prior Supreme Court decisions as well as circuit court decisions that properly distinguished between internal and external.[32]

For example, the Court referenced a Seventh Circuit opinion, which held that reading a newspaper inside the jury room was an external influence because the paper was used and relied upon by some jurors.[33] Additionally, the Court referenced *Remmer v. United States*, in which the Supreme Court found allegations of attempted bribery of a juror constituted an external influence that the district court could thus investigate.[34] The Court in *Remmer* noted that "any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial."[35] Further, in *Parker v. Gladden*, the Court found that a bailiff's statement to jurors about his opinion of the defendant's guilt constituted a prejudicial external influence.[36] The Court reasoned that the bailiff's statements carried more weight because he was an officer of the state, and the jurors' lengthy deliberations showed the jury struggled to come to a verdict after they heard the statement.[37]

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27. Martin J. Greenberg, Note, *Impeachment of Jury Verdicts*, 53 MARQ. L. REV. 258, 261 (1970).

28. Tanner v. United States, 483 U.S. 107, 117 (1987).

29. *Id.*

30. *Id.* at 122.

31. *See id.* at 121 ("Federal Rule of Evidence 606(b) is grounded in the common-law rule against admission of jury testimony to impeach a verdict . . . .").

32. *Id.* at 117–21.

33. *Id.* at 118 (citing United States v. Thomas, 463 F.2d 1061 (7th Cir. 1972)).

34. *Id.* at 117 (citing Remmer v. United States, 347 U.S. 227, 228–30 (1954)).

35. *Remmer*, 347 U.S. at 229.

36. Parker v. Gladden, 385 U.S. 363, 363–64 (1966).

37. *Id.* at 364–65.

While a juror's exposure to information outside of the trial proceedings qualifies as an external influence, the Court in *Tanner* noted that a juror's actual comprehension of information is an "internal" influence not subject to post-trial inquiry.[38] The *Tanner* Court relied on the fact that most lower courts have treated "physical or mental incompetence of a juror as [an] 'internal' rather than 'external' matter[]."[39] In addition to citing numerous other lower court cases, the Court highlighted a Second Circuit case affirming a district court's decision not to inquire into a juror's competency after it was alleged that the juror suffered from a psychological disorder because an inquiry would involve questioning the juror's state of mind.[40] The Court also cited a Third Circuit case where the circuit court found that a juror's inability to hear information at trial because of a hearing impairment was not a prejudicial external influence.[41] Thus, issues of juror competency or comprehension, without more, will not be inquired into post-trial.[42]

As the *Tanner* Court acknowledged, inquiries about an individual juror's competency and thought processes are already properly inquired into and analyzed during *voir dire* and do not need to be readdressed post-trial.[43] Through the jury selection process, any potential juror bias or incompetency have been fleshed out by the judge and lawyers, and jurors have already made clear their intention to rely solely on the evidence prior to deliberations. The practice of eliminating jurors based on the presumption they are not fit to be good triers of fact dates back centuries.[44] Throughout *voir dire*, lawyers and judges question jurors in an effort to determine if any of the potential jurors have biases.[45] *Voir dire* varies based on jurisdiction, and the efforts used depends on the type of case, the complexity of the issues, and the potential for bias based on specific evidence the lawyers are seeking to introduce.[46] Overall, courts must maintain a "commitment to

38. *Tanner*, 483 U.S. at 118.

39. *Id.*

40. *Id.* at 118–19 (citing United States v. Dioguardi, 492 F.2d 70, 79 (2d Cir. 1974)).

41. *Id.* at 118 (citing Gov't of the Virgin Islands v. Nicholas, 759 F.2d 1073, 1078–81 (3d Cir. 1985)).

42. *See id.* at 119 ("Such exceptions support rather than undermine the rationale of the rule that possible *internal* abnormalities in a jury will not be inquired into except in the gravest and most important cases." (citation omitted) (internal quotation marks omitted)).

43. *See id.* at 127.

44. *See* BRIAN H. BORNSTEIN & MONICA K. MILLER, GOD IN THE COURTROOM: RELIGION'S ROLE AT TRIAL 18 (2009) (hereinafter "BORNSTEIN & MILLER").

45. *Id.* at 16.

46. *Id.* at 16–17.

jury selection procedures that are fair and nondiscriminatory."[47] Aside from a potential juror's race or gender, attorneys may exclude potential jurors for any other reason, such as the juror's characteristics, attitude, or even religious preferences.[48] Religion is important in the jury selection process because an individual's faith may influence that juror's ability to judge another person.[49] In a sense, the jury process both "eliminates and selects biased jurors."[50]

Removal of a juror is taken very seriously, and courts inquire into juror allegations rarely and with much hesitation.[51] Courts do not want to "disrupt the finality of the process."[52] Our Supreme Court has said analyzing a jury's conduct after the jury returns the verdict will undermine the importance of "full and frank discussion in the jury room, [the] jurors' willingness to return an unpopular verdict, and the community's trust in a system that relies on the decisions of laypeople."[53] Therefore, courts will inquire into the deliberation process through juror testimony only when evidence shows jurors relied prejudicially on an outside, extrinsic influence.[54] By contrast, courts will decline to hear about internal influences upon the jury.[55]

### *B. Faith in the Jury Room*

Courts have struggled when faith enters the deliberation room, an issue the Supreme Court has never decided. Specifically, circuit courts are split on whether a Bible in the deliberation room constitutes an external influence on a verdict.[56] Courts differ further when deciding, absent a physical Bible,

47. J.E.B. v. Alabama *ex rel*. T.B., 511 U.S. 127, 128 (1994).

48. BORNSTEIN & MILLER, *supra* note 44, at 19–20; Batson v. Kentucky, 476 U.S. 79, 89 (1986); *J.E.B.*, 511 U.S. at 131.

49. BORNSTEIN & MILLER, *supra* note 44, at 22.

50. *Id.* at 19.

51. Tanner v. United States, 483 U.S. 107, 118–19 (1987).

52. *Id.* at 120.

53. *Id.* at 120–21.

54. FED. R. EVID. 606(b).

55. *Id.*

56. *See, e.g.,* Oliver v. Quarterman, 541 F.3d 329 (5th Cir. 2008) (finding the presence of a bible in the jury room was an external influence on deliberations); Robinson v. Polk, 438 F.3d 350, 364 (4th Cir. 2006) (affirming a district court's finding that a Bible was not an external influence because it was "not an unreasonable application of clearly established law"); McNair v. Campbell, 416 F.3d 1291, 1309 (11th Cir. 2005) (concluding a trial court did not abuse its discretion in finding a juror's recitation of Bible passages was not prejudicial to the jury's verdict); United States v. Lara-Ramirez, 519 F.3d 76, 88 (1st Cir.

whether they should allow jurors to pray, quote Scripture from memory, or otherwise utilize or reference their faith in the deliberation room.[57]

When it comes to faith entering the courtroom, let alone the jury room, the likelihood is high, and the doors of entry are numerous.[58] Juries are comprised of one's peers, taken from a random pool of local citizens, with the intention to represent a diverse group of people.[59] Ninety percent of Americans believe in a higher power, with a majority of those people believing in God as described by the Bible.[60] Among the fifty-six percent of Americans who believe in a biblical God, twenty-eight percent say they talk to God and God talks to them.[61] Another study shows over seventy percent of religious Americans consider themselves Christians.[62] With these numbers, there exists a high likelihood that a majority of jurors will be religious. In other words, "religion will matter at trial simply because it matters everywhere else."[63]

Central to the life of a Christian is the role of prayer and the movement of the Holy Spirit. "Religious believers commonly describe God's guidance less as 'an outward voice' than as 'an inward whisper, a deep speaking into the heart, an interior knowing.'"[64] "The Holy Spirit . . . is the interior Master of Christian prayer."[65] God's voice, through prayer and the Holy Spirit, guides Christians.[66] Similarly, Christians view the word of God as

2008) (declining to adopt a per se rule that a Bible in the jury room "may taint a jury's deliberations").

57. *See* United States v. Brown, 996 F.3d 1171 (11th Cir. 2021) (finding no external influence when a juror referenced and relied on words he heard from God in prayer).

58. *See* BORNSTEIN & MILLER, *supra* note 44, at 81 ("Even if judges can keep religious texts out of the jury room, it may be impossible to remove the influence of religion entirely.").

59. *How Courts Work: Courts and Legal Procedure*, AMERICAN BAR ASS'N (Sept. 09, 2019), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jury_role/ [https://perma.cc/A5RV-SKC4].

60. *See When Americans Say They Believe in God, What Do They Mean?*, PEW RSCH. CTR. (April 25, 2018), https://www.pewresearch.org/religion/2018/04/25/when-americans-say-they-believe-in-god-what-do-they-mean/ [https://perma.cc/L583-WMVG].

61. *Id.*

62. *Religious Landscape Study*, PEW RSCH. CTR. (2014), https://www.pewresearch.org/religion/religious-landscape-study/ [https://perma.cc/66MD-XDJ2].

63. BORNSTEIN & MILLER, *supra* note 44, at 5.

64. United States v. Brown, 996 F.3d 1171, 1192 (11th Cir. 2021) (quoting RICHARD J. FOSTER, SANCTUARY OF THE SOUL: JOURNEY INTO MEDITATIVE PRAYER 11 (2011)).

65. LIBRERIA EDITRICE VATICANA, *supra* note 5, at 642.

66. *Proverbs* 3:5–6 (King James) ("Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths.").

an essential guidepost.[67] "Truth is to be sought for in Holy Scripture . . . ."[68] Often, religious people will find their beliefs are more central to their identity than other facts such as age, race, or socioeconomic position.[69] Further, jurors often rely on their religion for their own sense of morality and justice.[70] This leaves courts with a tough distinction—a distinction they have struggled to make with consistency. Where does the internal influence of religion end and the external influence of it begin?

### *C. The Fourth Circuit's Decision in* Robinson v. Polk

In *Robinson*, a juror brought a Bible into the deliberation room and quoted passages during deliberations for a death penalty case.[71] The defendant was on trial in a North Carolina state court for first-degree murder after pleading guilty to other charges, including first-degree kidnapping, robbery with a dangerous weapon, possession of a weapon of mass destruction, felonious larceny, and possession of a stolen vehicle.[72] At *voir dire*, the prosecutor inquired into the religious beliefs of each individual juror regarding the death penalty and made each juror "unequivocally state that their religious beliefs would not interfere with" sentencing the defendant.[73] Upon conclusion of the trial, the jury rendered a guilty verdict and sentenced the defendant to death.[74]

On direct appeal, the North Carolina Supreme Court unanimously affirmed both the verdict and sentence.[75] The United States Supreme Court denied the defendant's petition for certiorari review.[76] Thereafter, the defendant filed a Motion for Appropriate Relief ("MAR") under N.C. Gen. Stat. § 15A-1420, which the MAR court denied, and the North Carolina Supreme Court denied discretionary review.[77] The defendant then filed a

67. *Psalm* 119:105 (King James) ("Thy word is a lamp unto my feet, and a light unto my path.").

68. THOMAS À KEMPIS, THE IMITATION OF CHRIST 7 (Richard Challoner trans., TAN Books 2013) (1418).

69. BORNSTEIN & MILLER, *supra* note 44, at 7.

70. *Id.* at 5.

71. Robinson v. Polk, 438 F.3d 350, 357–58 (4th Cir. 2006).

72. *Id.* at 353.

73. *Id.*

74. *Id.* at 353–54.

75. *Id.* at 354; *see* State v. Robinson, 463 S.E.2d 218, 221 (N.C. 1995) (affirming the judgment and sentence of the trial court on the basis that "defendant received a fair trial, free of prejudicial error, and that the sentence of death for first-degree murder is not disproportionate in this case").

76. Robinson v. Polk, 438 F.3d 350, 354 (4th Cir. 2006).

77. *Id.*

petition in the Eastern District of North Carolina pursuant to 28 U.S.C. § 2254, arguing thirteen constitutional violations, including a Sixth Amendment claim.[78] Section 2254 gives persons in custody the ability to appeal state decisions to federal court when the individual has "exhausted the remedies available in the courts of the State" and has established "he is in custody in violation of the Constitution or laws or treaties of the United States."[79] The federal district court granted the State's motion for summary judgment and denied the defendant's petition.[80]

Ultimately, the Fourth Circuit heard the defendant's appeal, addressing two constitutional issues.[81] One of the issues—the subject of this Comment—was whether the use of a Bible in the deliberation room was extrinsic evidence that prejudicially affected the jury's decision.[82] As evidence for his appeal, the defendant presented the affidavits of two law students who spoke with some of the jurors in the defendant's case.[83] According to the affidavits, one juror revealed that a second juror had requested a Bible from the bailiff.[84] After the bailiff brought a Bible to the deliberation room, the juror allegedly read a Scripture passage involving "an eye for an eye" in an effort to sway other jurors to choose a death sentence over a life sentence.[85] A third juror testified that the second juror had a Bible during deliberations, but the third juror was unable to remember whether a bailiff provided the Bible or whether the second juror brought the

78. *Id.*; *see* 28 U.S.C. § 2254(a) ("The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.").

79. 28 U.S.C. § 2254(a), (b)(1)(A).

80. *Robinson*, 438 F.3d at 354.

81. *Id.* at 354.

82. *Id.*

83. *Id.* at 357.

84. *Id.* at 357–58.

85. *Id.* The facts do not say which verse was used, but the Bible uses the phrase "an eye for an eye" many times, often quoting *Exodus*, where the words were first spoken by Moses. *Exodus* says, "if any mischief follow, then thou shalt give life for life, [e]ye for eye, tooth for tooth, hand for hand, foot for foot, [b]urning for burning, wound for wound, stripe for stripe." *Exodus* 21:23–25 (King James). Based on the facts, the Fourth Circuit assumed the juror was referencing the Old Testament, and not the New Testament, where mercy and forgiveness are emphasized. *Robinson*, 438 F.3d at 358, n. 8; *see Matthew* 5:38–42 (King James) ("Ye have heard that it hath been said, [a]n eye for an eye, and a tooth for a tooth: [b]ut I say unto you, [t]hat ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have *thy* cloke also. And whosoever shall compel thee to go a mile, go with him twain. Give to him that asketh thee, and from him that would borrow of thee turn not thou away." (emphasis in original)).

Bible himself.[86] Unlike the first juror, the third juror failed to recall what the second juror read from the Bible.[87] Taking the jurors' allegations as true, the Fourth Circuit assessed the defendant's constitutional challenges.[88]

The Fourth Circuit found the use of the Bible was not an external influence, and thus, a juror's use and recitation of a Bible passage during deliberations did not violate the defendant's Sixth Amendment rights.[89] The Fourth Circuit applied the internal/external analysis used in *Tanner*, and the court centered its discussion not on the physical aspect of having a Bible in the jury room, but instead, the court likened reading a Bible to an individual reflecting on his internal views.[90] The Fourth Circuit recognized that the Bible is external inasmuch as it is a material object, but the court ultimately determined its usage to be internal.[91]

The court explained "the reading of Bible passages invites the listener to examine his or her own conscience from within."[92] The juror's Bible was not like a person outside the jury room communicating with and pressuring a juror to swing one way or the other, but rather, the court found the juror was solely communicating with himself through his Bible.[93] Further, the court found reading Scripture directly from a religious text to be equivalent to quoting a Scripture verse from memory, which the court noted "assuredly would not be considered an improper influence."[94] Through its analysis, the Fourth Circuit applied the *Tanner* test to religious texts, finding a religious text is generally an internal influence unless used as the substantial evidentiary basis for the jury's decision.[95]

86. *Robinson*, 438 F.3d at 358.

87. *Id.*

88. *Id.*

89. *Id.* at 366.

90. *Id.* at 363.

91. *Id.* at 364.

92. *Id.* at 363.

93. *Id.*

94. *Id.* at 364.

95. *See id.* at 363 ("Unlike the facts at issue in *Parker* and *Turner*, no Biblical passage—including the ones we assume were read—had any evidentiary relevance to the jury's determination of the existence of these aggravating and mitigating circumstances." (footnote omitted)); *see* Barnes v. Joyner, 751 F.3d 229, 251 (4th Cir. 2014) ("Therefore, we concluded [in *Robinson*] that the Bible, standing alone, was not an 'external influence' . . . ." (citing *Robinson*, 438 F.3d at 363–64)).

Faith in the jury room often arises in death penalty cases.[96] However, the issue has presented itself in other types of cases as well.[97] For example, in *United States v. Brown*, the Eleventh Circuit addressed the issue when a juror referenced his faith during deliberations for a fraud and tax offense case.[98] In *Brown*, one juror told his fellow jurors about his prayers where he asked God for guidance to make the right decision.[99] The Eleventh Circuit concluded the juror's reliance on what the Holy Spirit spoke to him in prayer was not external, but instead involved the internal processing of the evidence before him.[100] The court found that the juror's explanation of his prayers showed he prayed about the evidence before him and came to a conclusion based on his prayer about the evidence, as opposed to any external forces.[101] Specifically, "Juror No. 13's vernacular that the Holy Spirit 'told' him Brown was 'not guilty on all charges' was no more disqualifying by itself than a secular juror's statement that his conscience or gut 'told' him the same."[102] The court compared a religious individual using prayer and spiritual dialogue to a secular individual going through any ordinary internal mental process, thereby making the religious individual's prayerful process an intrinsic influence within the jury room.[103]

## II. THE FOURTH CIRCUIT FAILED WHEN IT CONCLUDED THE USE OF A PHYSICAL BIBLE IS AN INTERNAL INFLUENCE

Effectively, the Eleventh Circuit treated prayer the same way the Fourth Circuit treated the use of the Bible: as an internal communication with a higher power. The Fourth Circuit tried to make a clear test to prevent unnecessary inquiry into the thoughts of a juror; however, the test prevents nothing. The Fourth Circuit blurred the line between internal and external when it chose to categorize a physical copy of a religious text as an internal

96. *See e.g.*, Gary J. Simson & Stephen P. Garvey, *Knockin' on Heaven's Door: Rethinking the Role of Religion on Death Penalty Cases*, 86 CORNELL L. REV. 1090 (2001) (discussing religion in the courtroom through a constitutional analysis).

97. *See, e.g.,* United States v. Brown, 996 F.3d 1171 (11th Cir. 2021) (holding that removing a juror that expressed that the "Holy Spirit told him that the defendant was not guilty" of white collar crimes violated the defendant's right to a unanimous verdict by a jury of ordinary citizens); United States v. Lara-Ramirez, 519 F.3d 76, 85–87 (1st Cir. 2008) (addressing the issue in a cocaine distribution case).

98. *Id.* at 1175.

99. *Id.* at 1179.

100. *Id.* at 1191.

101. *Id.*

102. *Id.* at 1193.

103. *Id.* at 1191.

influence. Courts should allow juries to rely on prayer, memorized scripture, or other internal dialogues, but courts should draw the line at physical texts.

### *A. Why the Fourth Circuit's Decision Matters*

Although the Fourth Circuit came to the wrong conclusion, its discussion contributes significantly to the understanding of an individual's internal relationship with her religion or faith when confronted with a challenging decision. The Eleventh Circuit applied the same reasoning as the Fourth Circuit to a separate set of facts involving prayer in the jury room and came to what this Comment argues is the correct conclusion regarding prayer in the jury room.[104] The Fourth Circuit should reassess its conclusion while maintaining its strong analysis about an individual's faith.

The Fourth Circuit correctly recognized the intrinsic nature of an individual's faith.[105] Faith is a component of who people are. Every juror comes into the courtroom for *voir dire* with her own unique makeup, upbringing, experiences, and thoughts. All these characteristics work together to help a juror understand and apply the facts before her and ultimately, decide a case. "Jurors are ordinary people. They are expected to speak, debate, argue, and make decisions the way ordinary people do in their daily lives. Our Constitution places great value on this way of thinking, speaking, and deciding."[106] To expect jurors to "become fundamentally different people" when exercising their civic duty conflicts with the goal of maintaining a jury "drawn from a fair cross section of the community."[107] A religious juror need not shed his religious views at the courtroom door.[108] *Voir dire* properly determines if a juror's religion makes him biased or prevents him from judging others or otherwise considering punishment on another, and the court may exclude him from service through that process.[109] "We are a religious people whose institutions presuppose a

104. *See id.* at 1194 (finding juror "did not forsake his oath" when he referenced his prayers during deliberation).

105. *See* Robinson v. Polk, 438 F.3d 350, 363–64 (4th Cir. 2006) ("[T]he reading of Bible passages invites the listener to examine his or her own conscience from within. In this way, the Bible is not an 'external' influence.").

106. Peña-Rodriguez v. Colorado, 580 U.S. 206, 236 (2017) (Alito, J., dissenting).

107. Robinson v. Polk, 444 F.3d 225, 228–29 (4th Cir. 2006) (Wilkinson, J., concurring in the denial of rehearing en banc) (quoting Taylor v. Louisiana, 419 U.S. 522, 527 (1975)).

108. *See* Brown, 996 F.3d at 1190 ("Courts may exclude or remove jurors who make clear that they may not sit in judgment of others based on their religious beliefs." (citations omitted)).

109. *Id.*

Supreme Being."[110] Courts need to balance the individual beliefs of jurors with the constitutional rights of the accused by creating clear boundaries around the use of religious texts.

### *B. The Use of a Physical Religious Text in the Jury Room*

Clarity at the trial level surrounding the use of religious texts would prevent the later issue of determining whether jurors prejudicially relied on said religious texts. When courts allow jurors to use a physical Bible during deliberations, the court will occasionally still have to inquire into the nature and use of the Bible, thus risking inquiring too much into the thoughts of the jurors. If courts wish to avoid the risks associated with inquiring into the minds of jurors—a wish of great importance to our judicial system—courts should impose a bright line rule prohibiting the use of physical religious texts during deliberations if such texts are not admitted as evidence.

Further, allowing the actual text of the Bible to be brought into and referenced in the jury room opens wide the door for any religious text to enter, whether the text is historically recognized or not. The Fourth Circuit's decision allows any religious text in if a juror deems it essential to his beliefs. Further, "[t]he jury room is not the place to debate the respective merits of the Bible."[111] Although Christians see the Bible as the divinely inspired Word of God that provides moral commands to all people, courts should still prevent its usage. Doing so will avoid creating precedent that will allow other physical external sources to freely enter the deliberation room.

### *C. Indirectly Quoting Scripture in the Jury Room*

Although physical religious material should not be allowed in the deliberation room, the question still stands about whether a juror may quote Scripture or another religious text from memory. A distinction exists between a juror using his own sense of morality to come to a conclusion versus a juror justifying his conclusion with a physical copy of the Bible.[112] Recitation from memory differs from reading directly from a source. When a person quotes from memory, he holds the responsibility of relaying and

110. Zorach v. Clauson, 343 U.S. 306, 313 (1952).

111. *Polk*, 444 F.3d at 227 (Wilkinson, J., concurring in the denial of rehearing en banc).

112. BORNSTEIN & MILLER, *supra* note 44, at 5.

interpreting those words.[113] Even if the person quotes perfectly with little paraphrasing, that person still separates himself from the original speaker or text and presents the referenced words in a new way.[114]

Alternatively, people find "[d]irect quotation to be more deferential to the original speaker because it maintains a clearer distinction between the voices of quoted and quoting speakers, does not presume to interpret another's words, and does not superimpose the speaker's indexical frame of reference onto that of the original speech event."[115] People naturally shift the authority they give to quoted words based on whether the words are directly or indirectly quoted.[116] It follows logically that individual jurors may consciously or subconsciously give more weight to words read from the religious text itself versus a religious text recited from a fellow juror's memory. Jurors enter deliberations hardly knowing their fellow jurors. These individuals are not going to put the same weight on an unfamiliar face's recitation of something from memory as they would if the individual read the source in front of them. If a juror is unable to remember an exact verse from Scripture or another religious text, he should not be justified in bringing the physical text into the deliberation room without it being introduced as evidence at trial.

### *D. Prayer and Religious Discussion in the Deliberation Room*

The use of prayer and religious discussions in the jury room, without referencing specific Scripture verses or reading from the Bible, should be categorized as an intrinsic influence. A juror may rely on her own beliefs, prayers, and thoughts when analyzing and deciding a case. Inquiring into an individual juror's thought process, even if it involves prayer, would open the door to inquiring into a juror's thoughts for numerous reasons, something the Supreme Court has emphasized should be avoided with the utmost effort.[117]

As described in *Brown*, the judicial system cannot and, ultimately, should not require an individual juror to separate himself totally from his

113. Webb Keane, *Religious Language*, 26 ANN. REV. ANTHROPOLOGY 47, 61–62 (1997) (citing REFLEXIVE LANGUAGE: REPORTED SPEECH AND METAPRAGMATICS (John A. Lucy ed., 1993)), https://sites.lsa.umich.edu/webbkeane/wp-content/uploads/sites/128/2014/07/religious_language.pdf [https://perma.cc/4F56-GWPT].

114. *See id.*

115. *Id.* at 62 (citing WILLIAM F. HANKS, LANGUAGE AND COMMUNICATIVE PRACTICES 211 (1996)).

116. *See id.* at 61.

117. *See generally* McDonald v. Pless, 238 U.S. 264 (1915) (emphasizing the dangerous consequences of allowing jurors to testify against the verdict).

way of processing his thoughts solely because he processes his experiences in a faith-based manner.[118] Jurors commit to making decisions by relying solely on the evidence. If courts were to pick and choose which thought processes were allowed versus which thought processes were not, then they should prohibit any thought processes that differ from what is exactly presented to the jurors at trial. Jurors must rely on the evidence, but every individual processes the evidence in his own way such that a secular process and a religious process should not be treated differently.

## III. CONCLUSION

The Fourth Circuit should reverse its decision in *Robinson* and find that a physical Bible in the jury room is impermissible extrinsic evidence. Jurors should be warned of this exclusion before deliberating, and courts should take the utmost precaution in preventing Bibles or other religious texts from entering the jury room. If the Fourth Circuit continues to allow Bibles in the jury room, there may be no limit to what other text-based sources could end up in the jury room under the guise of religion. On the other hand, jurors maintain their freedom of religion in the jury room. Jurors may pray during deliberations, reference their faith when thinking through difficult problems and decisions, and even reference Scripture or other religious texts the juror may know from memory. Courts should not view these individual actions of faith as interfering with a defendant's right to a fair and impartial jury because such actions are intrinsic to each individual juror.

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118. *See* United States v. Brown, 996 F.3d 1171, 1193 (11th Cir. 2021).

* J.D. Candidate, 2024, Campbell University, Norman Adrian Wiggins School of Law; B.A. Samford University. I would like to thank my friends and family for helping me and supporting me throughout this journey. Specifically, I would like to thank my mom, Mary Summa, graduate of Campbell Law School, class of 1984, who has been a tremendous encouragement for me in law school and in life. I would also like to thank Professor Erin Kenny for reviewing this comment and fielding my questions, as well as the Campbell Law Review staff for their diligent editing. Lastly, I would like to dedicate this comment to my late dad, Philip Summa, who was a member of the Campbell Law Review and a graduate of the class of 1983. He showed me what it means to be a Christian lawyer and supported me greatly throughout my journey towards law school and into my 1L year. I can only imagine how excited he would be for me.