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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Have a seat, please.

4 All right, the defendant has entered the courtroom.

5 Good morning, everyone.

6 (All say good morning.)

7 THE COURT: As everyone knows we had an incident
8 last night as the jurors were exiting. I'm going to tell you
9 what I know about it and then I'll hear from each of you and
10 then we'll decide how to proceed with it.

11 First, what I know about it is Jury Number 2
12 approached Ms. Clarke this morning and told her that as they
13 were going down in the elevator, a gentleman, who I think Jury
14 Number 2 -- Melonie, correct me if I'm wrong -- identified as
15 the defendant's father, said to them: "I haven't seen my son
16 in ten years, do you think that's fair?" And there's no
17 indication there was a response from this juror.

18 The jury, Number 2, reported it to Ms. Clarke first
19 thing this morning. Upon the report, the jury has been
20 instructed not to begin deliberations. And in addition, Jury
21 Number 2 was instructed by Ms. Clarke not to discuss this
22 incident with any of the other jurors.

23 That's pretty much what I know about it. I know a
24 little bit about what you know about it because I have and
25 have marked as Court Exhibit Number 5, the exchange of emails

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1 between Mr. Ruhnke and Mr. Tucker that allude to this
2 incident.

3 So if there's more about what the parties know about
4 it to put on the record before we decide what to do about it,
5 let me know.

6 (Court Exhibit 5, was received in evidence.)

7 MR. TUCKER: Your Honor, from the Government's
8 perspective, we don't know of anything besides what the Court
9 just said and a brief conversation I had with Mr. Ruhnke last
10 night, which is essentially recounting the email. I think
11 Mr. Ruhnke is going to explain on the record today
12 specifically what took place so I'll just sit down.

13 THE COURT: Okay.

14 MR. RUHNKE: Your Honor, I don't want to explain on
15 the record what I heard. I have no direct knowledge of what
16 took place.

17 THE COURT: Is that because of the source of your --

18 MR. RUHNKE: As Your Honor can see, this is going to
19 place me in a very uncomfortable position, vis-a-vis my
20 client. I mean perhaps being utilized as a witness versus his
21 father in a potential prosecution. I don't know what the
22 Government has in mind.

23 But what I think is important is what the jurors who
24 have firsthand knowledge remember about it. And is it only
25 Jury Number 2 who reported it?

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1 THE COURT: It is only Jury Number 2 that reported
2 it.

3 MR. RUHNKE: Did she or he -- Jury Number 2, I
4 remember, did he state whether -- who the other jurors were?

5 THE COURTROOM DEPUTY: No.

6 THE COURT: No.

7 MR. RUHNKE: Are the other -- well, are the rest of
8 the jurors all together then?

9 THE COURT: Everyone's together. They've been
10 instructed not to discuss the case in any way. So hopefully
11 they have observed that. I couldn't get 12 rooms to separate
12 each one of them in. So that's just a risk we have.

13 But obviously I think we're where going next is I've
14 got to talk to the jurors.

15 MR. RUHNKE: Yes, sir.

16 MR. TUCKER: Your Honor, with respect --

17 MR. RUHNKE: Just, by the way, I felt incumbent upon
18 myself to bring this to the attention to the Court as soon as
19 I heard about it.

20 THE COURT: No, I appreciate that. I think Jury
21 Number 2 did the right thing and you did the right thing.

22 MR. TUCKER: Respectfully, Your Honor, I think
23 Mr. Ruhnke needs to state on the record what he knows, and
24 here's why:

25 As we hear from the juror, or potentially-impacted

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1 jurors, it's certainly necessary for the Court to have all
2 possible context, and the Government to a much lesser extent,
3 in assessing whether the juror or jurors can continue. It
4 can't be that only Mr. Ruhnke has access to that information.

5 THE COURT: Well, Mr. Ruhnke, I'm not fully
6 understanding the source of the potential conflict that you've
7 identified. If the information about the incident you have is
8 from your client, you can simply say, I have the information
9 from my client, that's my only source. If your information is
10 from a third party who is not your client, then I don't see
11 how it's protected.

12 MR. RUHNKE: It is not from my client. I'm not
13 claiming an attorney/client privilege to the information that
14 I've been given. And it is simply, I think, inappropriate for
15 me to lay out on the record what I know about the incident.

16 Because what I know doesn't matter. I've already
17 heard what the sum and substance of the jurors' recollection
18 is. Suppose hypothetically I had a different report. What
19 difference would it make? It's what the juror knew and
20 understand. I don't want to sit here in court and become a
21 witness against my father's client. That's my --

22 THE COURT: I understand you might not want that,
23 but your client's father kind of put himself in that position
24 by doing what he did. And if as you seem to recognize there's
25 no privilege protecting that communication, then I can't think

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1 of a reason why the Government and I should be at a
2 disadvantage when I question the jurors in determining what
3 happened.

4 I mean, I know you're not comfortable. I'm not
5 telling you to be comfortable, but the guy put you in this
6 position and there no basis for to you keep it to yourself.

7 MR. RUHNKE: We may get into a situation, and we did
8 not have a chance to fully discuss this with Mr. Al Farekh
9 this morning because they were late, through no fault of the
10 marshals, but they were late producing Mr. Al Farekh. And
11 it may come to a point where he says, I don't want you as my
12 lawyer if you're going to be a witness against my father.

13 THE COURT: Yes, I'm not sure I'm giving him that
14 choice either.

15 MR. RUHNKE: It hasn't come to that.

16 THE COURT: Right. So but, you know, I don't know
17 that that really matters. What's the Government's -- I
18 suppose the Government's going to say you have not formed a
19 intention about how to proceed with regard to this incident
20 outside of this case.

21 MR. TUCKER: That's certainly true, Your Honor. And
22 the Court seems to be traveling in the same direction that the
23 Government is.

24 At the very least now, it's clear from the record
25 that there's a tension between what the Court and the

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1 Government knows about this incident and what Mr. Ruhnke
2 knows.

3 THE COURT: I don't think it's clear.

4 MR. TUCKER: Mr. Ruhnke was just asking the Court
5 whether only a single juror reported it. He's indicated in
6 his email that multiple jurors were affected.

7 Right from the outset Mr. Ruhnke knows something
8 that no one else knows and he is in a unique position to
9 assess whether a juror's been affected, and that's simply not
10 the process works.

11 THE COURT: It's not clear. Jury Number 2 said,
12 there were several other jurors present. Mr. Ruhnke hears
13 that Jury Number 2 said that.

14 I don't know if the defendant's father told him
15 anything different. I think there is a point that Mr. Ruhnke
16 made that it may not matter if he told them anything
17 different, but I still think we need to know what it is.

18 Let's move on for now because I want to get this
19 thing going and I want to get the jurors spoken to, if they're
20 going to be spoken to.

21 What I'd like to do is talk to each individual
22 juror. I'm wondering if the parties, in order to reduce the
23 anxiety that any juror might have over that, would allow me to
24 speak to the juror in camera with a court reporter and you can
25 get the transcript after.

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1 I rather not have the parties present for that. I
2 think they're not going to be able to interrogate the juror,
3 in any event, and I think I can be quite thorough with each
4 juror and get them to open up if there's anything to open up
5 about.

6 MR. RUHNKE: That's fine with the defense, Your
7 Honor. I wonder if we could use some kind of LiveNote feed
8 for the transcript? As you're questioning the jurors, can we
9 do a LiveNote if you're going to question the jurors?

10 THE COURT: As supposed to a daily or immediate
11 transcript?

12 MR. RUHNKE: In the event that we wanted to suggest
13 a follow-up question or something more along those lines.

14 THE COURT: I don't know if we can set that up. If
15 we -- well, even if we could set that up, live feed doesn't
16 given me your input, right?

17 MR. RUHNKE: No, it doesn't but it -- mechanically
18 it could be after you finished questioning the jurors you
19 could reappear and ask us if we have anything to follow up
20 with.

21 THE COURT: I really don't want to devote that much
22 time to doing this. That to mean is a hours, if not more than
23 a day-long process. If you -- you know, I think you have the
24 right to be there. If you want to be there as I speak to each
25 juror, you can be there. I think it'll be better if I do it

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1 myself. I may get more information.

2 On the other hand, I think what we could do and this
3 would not be a big deal, is I have one attorney for each side
4 with me as I speak to the juror.

5 MR. TUCKER: Your Honor, the Government has no
6 objection to the Court conducting this inquiry on your own.

7 I just have to restate for the record how
8 uncomfortable the idea that there are going to be inquiries
9 made where only the defense has access to the information,
10 particularly if Mr. Ruhnke and defense counsel anticipate
11 contributing questions to the process.

12 THE COURT: I'm not there yet. I've skipped over
13 it, I'm going to come back to that.

14 So the question for the defense then: You want one
15 representative there?

16 MR. RUHNKE: Yes, sir.

17 THE COURT: Okay, that's what we'll do.

18 Now, Mr. Ruhnke, I think you have to tell us what
19 you know.

20 MR. RUHNKE: Can we do this at sidebar under seal?

21 THE COURT: What's the basis?

22 MR. RUHNKE: All right, so the information came from
23 Mr. Al Farekh's brother, who was in court, who called and
24 texted me on my way home last night that his father had done
25 something stupid. And related to me that he had gotten on an

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1 elevator with jurors and had said something to the jurors.

2 Now Mr. Ibrahim Al Farekh, the brother, was not on
3 the elevator, was not present, did not have any personal
4 knowledge of the information. I've already spoken with
5 Dr. Al Farekh about the incident who confirmed to me that it
6 took place.

7 THE COURT: Did he tell you what he said?

8 MR. RUHNKE: What he told me was different than what
9 the juror is relating. What he told me was: Do you think
10 it's fair that I have not been able to kiss my son.

11 THE COURT: It's pretty close.

12 MR. RUHNKE: Pretty close.

13 THE COURT: Okay. Anything else you need to tell
14 us?

15 MR. RUHNKE: And I've also cut off all contact with
16 Dr. Al Farekh and told him we do not wish him to attend this
17 trial any longer. And I'm sure the Court would issue that
18 order any way.

19 THE COURT: Okay. Is the Government satisfied with
20 that?

21 MR. TUCKER: Yes, Your Honor.

22 THE COURT: Let's set up an individual interrogation
23 facility. You all decide which lawyer you're going to have
24 present for that, and we'll be back in touch as soon as we
25 can.

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1 MR. RUHNKE: Can I just add the kind of caveat that
2 always appears in complaints that I've just given Your Honor
3 the bear bones of what the exchanges were and not every single
4 detail but enough to satisfy the Court's questions.

5 THE COURT: Is there any material detail that you've
6 left out?

7 MR. RUHNKE: I'd have to go back and look at my
8 notes.

9 MR. TUCKER: Your Honor, respectfully, Mr. Ruhnke
10 should take a moment to review his notes.

11 THE COURT: I agree.

12 Mr. Ruhnke, I can't have you blindsiding us with
13 something that only you know. There's no basis for protecting
14 it.

15 MR. RUHNKE: Ibrahim told me that he told his father
16 that there were jurors on the elevator and he should not get
17 on the elevator.

18 THE COURT: I'm not concerned about what Ibrahim
19 told you, I'm concerned about what the father told you.

20 MR. RUHNKE: He's told me he is a very emotional
21 person. He told me he is treated for bipolar disorder. That
22 is his medications were not effective yesterday. And he had
23 difficulty controlling himself. I think that's all the
24 material information.

25 He contacted me this morning and I told him to have

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1 no further contact. He told me he wanted to send a letter to
2 the Court. I advised him not to send it to the Court. I
3 advised him to seek representation that he was at risk of
4 criminal prosecution, and I have not heard back from him.

5 I asked him to fax any letter he had written to my
6 office so it would not go to the Court. I have not seen any
7 letter. I just wanted to divert it so the Court didn't
8 receive it. And I think that is the essence of the material
9 exchanges I had with the father.

10 I did urge him to retain counsel, that I thought he
11 was at risk.

12 THE COURT: All right.

13 MR. TUCKER: Two points, Your Honor, perhaps while
14 Your Honor's staff's setting up the private location.

15 I think at this point I completely agree with
16 counsel that some kind of *Curcio* inquiry is appropriate here
17 because -- and related to that, Judge, I think respectfully
18 that Mr. Ruhnke should not be part of this process and that
19 that should be part and parcel with his discussion with the
20 defendant, he should understand the limitations that his
21 lawyer is under.

22 THE COURT: What's the *Curcio* issue? I'm not seeing
23 it.

24 MR. TUCKER: I see two potentially, Your Honor.

25 The first is, right now counsel has information that

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1 places him in a unique position to assess whether it makes
2 sense to make a mistrial motion on behalf of his client.

3 Now I understand Mr. Ruhnke just made a good faith
4 effort to fully recount all of the material details that he
5 has access to, but we all understand how the human memory
6 works and tone and tenor and collateral details which might
7 not seem important at the moment may take on new relevance as
8 a juror's providing information.

9 And I think secondly it relates to his ability to
10 participate in the inquiry process. And so to the extent that
11 his abilities, because of his oath and responsibilities as a
12 member of the bar may be intentioned with his zealous
13 representation of the defendant, I think it's important that
14 the defendant be advised of that and that Mr. Ruhnke not
15 participate in this particular aspect of the proceedings.

16 THE COURT: I'm just not sure I agree with you.
17 Because Mr. Ruhnke has absolutely no obligation towards the
18 father or the brother. Nothing compromises him in the
19 representation of Mr. Al Farekh.

20 MR. TUCKER: Your Honor, the tension is not between
21 his duty of loyalty to the defendant and the duty and loyalty
22 to the defendant's family, it's his own duties as an officer
23 of the court versus his responsibilities as an advocate for
24 the defendant.

25 THE COURT: I'm not seeing that either. What's the

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1 inconsistency?

2 Since he has no duty to the father, his duty of
3 candor to the Court is unevaded, it's unaffected by anything.
4 I'm not even seeing a potential conflict here.

5 I've instructed Mr. Ruhnke to tell it all. He's
6 told me everything material. What could impinge his freedom
7 of action or his ability to give impartial advice to this
8 client going forward? I can't see anything.

9 MR. TUCKER: It's really difficult to answer those
10 very good questions because I just don't know what I don't
11 know about.

12 My suggestion at the very least, given that
13 Mr. Farekh has two very -- well, three very abled-bodied
14 lawyers, that Mr. Ruhnke not be the lawyer in the room in this
15 process. At the very least, that will address any prejudice
16 to the Government.

17 With respect to the defendant, we'll see how it
18 goes.

19 THE COURT: What does the defense think about that?

20 MR. MAHER: I'll tell the Court, defense counsel
21 we've already conferred independently, I was going to be the
22 one.

23 THE COURT: We will do it that way.

24 MR. TUCKER: Thank you, Your Honor.

25 THE COURT: All right, let's get it set up and we'll

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1 see where we go. Thank you.

2 Oh, in the meantime, the jurors wanted some
3 materials. The parties should be working towards getting
4 that, if you haven't done it already.

5 MR. MAHER: If we might, Your Honor. We are in
6 agreement, there is a page and a half that there is a
7 disagreement, otherwise we have the materials ready. And so
8 if Your Honor wants to know the issue --

9 THE COURT: I don't want to know now, I want to get
10 this process going because the jury can't deliberate until we
11 complete this process anyway. So we'll do this first.

12 Okay, thanks.

13 (Whereupon, a recess was taken at 10:28 a.m.)

14 * * * * *

15 (In open court; Jury not present.)

16 THE COURTROOM DEPUTY: All rise.

17 THE COURT: Be seated, please.

18 Okay, first I wanted to give Mr. Tucker another
19 chance to explain to me how Mr. Ruhnke could conceivably be
20 compromised in his ability to advise Mr. Al Farekh as to
21 what to do, and I'm having a hard time seeing it.

22 MR. TUCKER: Your Honor, I'm not sure I'll be able
23 to do a better job. Your Honor knows that I'm cautious about
24 these things, perhaps overcautious at times.

25 My concern is simply that Mr. Ruhnke I think

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1 articulated a potential additional conflict, which is that he
2 himself could be a witness at some point in some kind of
3 alternative --

4 THE COURT: Not against the defendant.

5 MR. TUCKER: Not against the defendant, but in a
6 manner that could theoretically be perceived by the defendant
7 as against his interests.

8 THE COURT: How does Mr. Ruhnke stand in a different
9 position than Mr. Maher at this point?

10 MR. TUCKER: Because Mr. Ruhnke had -- I really want
11 the record to be clear, I don't mean to imply or suggest that
12 Mr. Ruhnke is acting in anything other than in good faith at
13 all. I think he has done his very best to candidly recount
14 what he remembers.

15 That said, he participated in a telephone
16 conversation with the defendant's father, which obviously
17 contained additional -- with the defendant's brother, but also
18 the defendant's father, which bears materially on this.

19 And so I think that there's that concern, there's
20 the possibility that now as -- even as Mr. Ruhnke hears what
21 just transpired behind closed doors that he will be placed in
22 an awkward situation where if somehow there's tension between
23 what he knows and what we have now been advised, he will have
24 to make a choice that creates a tension between his own duties
25 and his duties to his client.

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1 MR. RUHNKE: May I respond?

2 THE COURT: I was going to ask you.

3 MR. RUHNKE: First of all, I really don't care for
4 the tone.

5 THE COURT: Oh, no, don't be upset at the tone.
6 He's being very careful. This has nothing to do with you
7 personally, it could be any lawyer who's in your position.

8 MR. RUHNKE: A very bad situation dropped into my
9 lap last night, and I did my very best to alert everybody in
10 the situation as honestly and as soon as I had the facts.

11 THE COURT: The Government is not disputing that in
12 any way.

13 MR. RUHNKE: And based on what I've heard about the
14 interviews that occurred, there's nothing that I've heard in
15 the interviews that's different in material content.

16 I mean, there's different words that are used, all
17 the jurors heard the same thing and all of them have a
18 slightly different version of what they heard, but it's all
19 consistent with what I was told.

20 So I don't think I am in a conflict position.
21 Unfortunately, the way this morning has gone, I've not had the
22 opportunity to sit down face-to-face with Mr. Al Farekh for
23 any length of time to tell him what the possibilities are, and
24 if he doesn't want me to continue as his lawyer is sort of the
25 bottom line of it all, and I haven't had a chance to have that

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1 conversation. I don't think a *Curcio*-type hearing is at all
2 in order unless and until we advise the Court that
3 Mr. Al Farekh does not wish to proceed with case counsel.

4 MR. TUCKER: Just clear so it's clear, just two
5 quick points. I apologize, and really don't mean anything in
6 my tone. It's absolutely true that Mr. Ruhnke has been
7 forthcoming I think as best as he can be. This is a difficult
8 situation.

9 And the second, just so my request is clear, I am
10 certainly not requesting that Mr. Ruhnke be relieved at this
11 point. I'm simply thinking about this from a record
12 preservation standpoint, and that is the reason I'm making
13 this request.

14 THE COURT: Okay. I just don't know what I would
15 ask Mr. Al Farekh, because I cannot identify for him how
16 Mr. Ruhnke might conceivably be compromised. Even if I could,
17 the fact that he has Mr. Maher as his cocounsel would
18 dissipate any possible impact, but I can't see the impact in
19 the first instance. I really can't.

20 I will revisit this after Mr. Ruhnke and Mr. Maher
21 have the ability to sit with Mr. Al Farekh and tell him what
22 happened with the jurors and they're going to then tell us
23 what they want to do. I would like to do that as quickly as
24 reasonably possible because the jurors are waiting to begin
25 deliberations again. I want to get that going.

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1 But I think we should take a 10- or 15-minute break,
2 let defense counsel talk to their client, and maybe at that
3 point I'll ask Mr. Ruhnke again whether he sees any potential
4 compromise on his ability to adequately advise Mr. Al Farekh
5 and we'll see where that leads us.

6 So let's recess for 15 minutes, and if the defendant
7 has a motion, I'll hear it at that time.

8 Okay. 11:25, please.

9 (Whereupon, a recess was taken at 11:13 a.m.)

10 * * * * *

11 (In open court; Jury not present.)

12 THE COURTROOM DEPUTY: All rise.

13 THE COURT: Be seated, please.

14 THE MARSHAL: Your Honor, counsel's requesting a few
15 more moments with the defendant.

16 THE COURT: No, just let him know we're waiting here
17 for him.

18 THE MARSHAL: Of course.

19 (Pause.)

20 THE COURT: Mr. Tucker.

21 MR. TUCKER: Judge, just before we begin, we're
22 obviously all doing our best today. The last exchange by
23 Mr. Pravda at the same time, I'm not sure was completely
24 captured, I think it's important the record accurately reflect
25 what happened.

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1 The marshal asked Your Honor if the defendant should
2 be produced immediately or whether he could have a few more
3 minutes to confer with counsel. And for the record, Your
4 Honor indicated that they more time, as much time as they
5 needed, but counsel simply needed to know that you were on the
6 bench.

7 THE COURT: Well I didn't say as much time as they
8 needed. I told the marshal that, no, he did not have to bring
9 him out immediately, because that's what the marshal had asked
10 me, I asked the marshal to just let him know that we're here
11 waiting.

12 MR. TUCKER: Thank you, Your Honor.

13 THE COURT: Have you had enough time, Mr. Maher?

14 MR. MAHER: Yes.

15 THE COURT: Okay. So where do we stand?

16 MR. MAHER: I'll address first the issue of
17 representation.

18 THE COURT: Yes.

19 MR. MAHER: Mr. Al Farekh does not wish to lose
20 Mr. Ruhnke in this trial and I see no reason that that should
21 happen, so Mr. Al Farekh is utterly fine, comfortable, good,
22 any way you want to characterize it, going forward.

23 THE COURT: Is that right, Mr. Al Farekh?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. All right, that's that.

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1 Now, where do we go next?

2 MR. MAHER: Based on what the jurors said in
3 response to Your Honor's inquiry, three of the jurors said
4 that the comments made felt that the statements that they
5 heard from who they believe was Mr. Al Farekh's father would
6 not impact them.

7 The fourth juror who was Juror Number 12, but
8 Number 2 noticeably hesitated when Your Honor asked him about
9 that issue. I'm just laying this out before I go into further
10 remarks.

11 I think because of the nature of the comment that
12 seems to be made to all four jurors, each juror had a slightly
13 different recitation of what they remembered hearing.

14 The essence, though, from each of those was that
15 Mr. Al Farekh's father told them that he had either not seen
16 his son in either seven or ten years, or had not kissed his
17 son in seven or ten years and that he was being kept from
18 either seeing or kissing his son.

19 Jury Number 2, when asked about whether this would
20 affect him or not actually tied the specificity of the
21 comments to trial evidence and said, Well, you know, the
22 gentleman, meaning Mr. Al Farekh's father, talked about not
23 seeing or kissing him in ten years, and there's been evidence
24 from the Government about the border and Canada and that
25 Mr. Al Farekh hadn't been back in at least ten years. I

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1 think he may have even said a phrase, it's a new fact an
2 external fact that now has been presented to me. And Your
3 Honor did ask him to put that out of his mind he said, Yes.

4 But from the defense's perspective, this is very
5 troubling that the jurors now have what I consider a material
6 fact in this case that goes to potentially proving the
7 Government's case, and also undercutting a part of our defense
8 theory that we squarely presented to the jury being that there
9 is no evidence that Mr. Al Farekh was not in contact with
10 his family, that his family wasn't fine with him being in
11 Pakistan. I think because that just goes to the heart of
12 that, that this is prejudicial, even to the jurors who say
13 that they believe they can discount it.

14 And why -- another indication of that is, Juror
15 Number 3, I believe, stated that her memory of what
16 Mr. Al Farekh said was that I haven't kissed or seen my son
17 in seven years. All the other three jurors said "ten years."

18 Now, I'm not psychiatrist, psychologist, but the
19 seven years is also the time frame from -- that
20 Mr. Al Farekh was missing. And it seems to be tied to
21 potential evidence in the case and not to the statement
22 itself, as you may have heard, or the other three could have
23 conflated. But the jurors could have already started to
24 conflate information from the father of our client with trial
25 evidence, despite their best efforts and honest efforts to say

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1 they can disregard that.

2 So I think that this has -- I think it's something
3 that can't be extracted from their heads. I think it's
4 presumptively prejudicial, and we are requesting that the four
5 jurors be removed from the proceedings, that the alternates be
6 placed, and that the new jury be instructed to begin
7 deliberations from the beginning.

8 THE COURT: Well, we have three alternates, so if we
9 replace four, we're down to 11 jurors, which I can do. I can
10 do an 11-person jury. Is that what you want?

11 MR. MAHER: May I have a moment please, Your Honor?

12 THE COURT: Yes.

13 MR. MAHER: May I be heard, Your Honor?

14 THE COURT: Please.

15 MR. MAHER: I would just like to add to my argument
16 that the jurors basically heard from my new witness, who is in
17 a particular position to know that Mr. Al Farekh was missing
18 and that prejudiced I believe is presumed at this point.

19 When under *Remmer II*, which is a U.S. Supreme Court
20 case of 347 U.S. 227, I believe this more than meets a
21 presumptive prejudice. And in that case actually I believe it
22 was the son of the defendant who tried to bribe a juror.

23 I'm sorry, that's *Morrison*, the citing, *Remmer*.
24 *Morrison* is at 984 F.Supp.2d 125.

25 So the relief we're requesting, Your Honor, is that

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1 the four jurors who have now been exposed to extraneous
2 factual information that bears on material facts and theories
3 in this case be removed from the jury, that the three
4 alternates would need to be questioned to make sure that they
5 also have not been approached in any way in this case.

6 We are not waiving a trial of less than 12 people as
7 well, Your Honor.

8 THE COURT: So then you're moving for a mistrial.

9 MR. MAHER: Which leaves me to now say that we are
10 moving for a mistrial.

11 THE COURT: I got it.

12 All right, Government's response.

13 MR. TUCKER: Your Honor, I think what makes sense
14 right at this moment is to conduct inquiries of the three
15 alternates. Based on my understanding of how the procedures
16 were being run yesterday and what we know now it seems
17 unlikely that they had any inappropriate contact, but I think
18 that data point would be useful before we proceed to decide
19 how we are going to move forward.

20 MR. MAHER: May I just say one more thing, Your
21 Honor.

22 THE COURT: Sure.

23 MR. MAHER: I believe -- I might be wrong, it might
24 have been Juror Number 4, one of the jurors who informed us
25 that he was not in the elevator but that he had heard that

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1 jurors had been in the elevator and had been approached by the
2 father.

3 We don't know how that information was conveyed to
4 that juror and there's -- there's a probability that if he
5 heard this discussion, that other jurors may have heard such
6 discussion and maybe not have disclosed it or who knows. But
7 it's another aspect of I think the presumed prejudice from
8 this unfortunate situation.

9 THE COURT: You know, I looked each one of them in
10 the eye and said very clearly, Anything, did you hear
11 anything? And I don't know think there's a basis for
12 questioning that.

13 All right, so the Government's request is before I
14 rule on the mistrial motion, I have a similar conversation
15 with the three alternate jurors. Okay.

16 We're going to take this one layer of the onion at a
17 time and so we will do that. We'll commence that right now.
18 Same ground rules, although I think we'll do it in
19 Judge Korman's courtroom, instead of his jury room, if that's
20 available. One lawyer per side, and we'll see what the
21 alternates says and then I'll hear from the Government on its
22 position. Okay. Set it up.

23 (Whereupon, a recess was taken at 11:41 a.m.)

24 * * * * *

25 (In open court; Jury not present.)

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1 THE COURTROOM DEPUTY: All rise.

2 THE COURT: Be seated, please.

3 All right, we conducted our inquiry of each of the
4 three alternate jurors in Judge Korman's jury room, as it
5 turned out.

6 What's the Government's position?

7 MR. TUCKER: I think -- Your Honor, I think that the
8 Government's view at this point is that the Government would
9 consent to the excusing of the four jurors that defense
10 counsel is moving to excuse.

11 THE COURT: Hold it a minute. I thought we had
12 agreed that could be a mistrial.

13 MR. TUCKER: Well, Your Honor --

14 THE COURT: Are you proposing that we go forward
15 with an 11-person jury?

16 MR. TUCKER: Just a moment, Your Honor, Mr. Gatta
17 has entered the well.

18 (Pause.)

19 MR. TUCKER: So, Your Honor, sorry, one of the
20 points that honestly we just need a minute more to research is
21 this: It's our understanding of the law with respect to an
22 11-person jury is that the defense need not consent to an
23 11-person jury.

24 THE COURT: That's correct.

25 MR. TUCKER: I would just like to make a record on a

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1 couple of points that I'm sure the Court was prepared to make,
2 which is that the jurors did self-report this indicating that
3 they are following the Court's instruction to the best of
4 their efforts.

5 THE COURT: One juror self-reported.

6 MR. TUCKER: Your Honor, obviously the record and
7 Your Honor's memory will control, but I think that what I took
8 from them is that they sort of agreed that one juror was going
9 to report it the next day.

10 THE COURT: That's possible. You can infer that.

11 MR. TUCKER: But I think what we heard in the jury
12 room was a fairly explicit, you know, confirmation that they
13 were making their best efforts to follow the Court's
14 instructions and put this out of their mind.

15 So I think that the Government's position is this,
16 because we're mindful of the high standard. I think that
17 there is -- I think that the Government would consent to the
18 Jury Number 2 being excused, in light of his comments. And I
19 think also -- I think also Juror Number 12, in light of the
20 fact that she was uncomfortable. I think the other two jurors
21 did not make explicit comments that they made any connection
22 to the record, to the evidence or anything like that, they
23 indicated that they can put that out of their mind. With that
24 said, I think we can proceed with an 11-person jury.

25 THE COURT: What do you want?

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1 MR. TUCKER: I'm sorry, Your Honor, just a moment,
2 this is a lot to digest.

3 THE COURT: Not for the jurors who are sitting there
4 all morning not deliberating.

5 MR. TUCKER: Your Honor, with the Court's permission
6 we'd ask for a couple of more minutes to confer with our
7 office. I apologize.

8 THE COURT: Okay.

9 MR. TUCKER: Thank you, Your Honor.

10 THE COURT: Recess ten minutes.

11 I'd like the marshals to keep him handier than he
12 was last time, please. We can't wait for 15 minutes.

13 THE MARSHAL: It's going to take a while.

14 THE COURT: This will be a real ten minutes.

15 THE MARSHAL: Of course.

16 THE COURT: Thank you.

17 (Whereupon, a recess was taken at 12:03 p.m.)

18 * * * * *

19 (In open court; Jury not present.)

20 THE COURTROOM DEPUTY: All rise.

21 THE COURT: Be seated, please.

22 MR. TUCKER: I appreciate the Court's indulgence on
23 that, Judge.

24 It remains the Government's position that it's
25 appropriate here to excuse these four jurors.

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1 THE COURT: Okay.

2 MR. TUCKER: The Government's view is that the
3 threshold here for overcoming the presumption is high. That
4 said, Your Honor, under the rule, 23, Rule 23, if the Court
5 makes this finding that the jurors are being dismissed for
6 good cause and there is a good cause to proceed with an
7 11-person jury, and this is exactly the reason defense
8 counsel --

9 THE COURT: Well, not exactly. They want a
10 mistrial.

11 MR. MAHER: Right. We're not stipulating to below
12 12, Your Honor. And I do want to add, in light of Juror 4's
13 comments again, we are moving that Juror 4 be taken off the
14 jury.

15 This is an anonymous jury. The jurors know that
16 they are anonymous. In fact, they refer to each other by
17 their numbers. And now even if Juror Number 4 stays on this
18 case, he said and he inferred to the Court that he overheard
19 that Mr. Al Farekh's father said something to other jurors
20 in the elevator. That's his understanding. He doesn't know
21 what was said, but at least he knows that.

22 He will then see that four of his fellow jurors are
23 not on the case anymore, have been replaced, and he is going
24 to know that it was because of some type of contact that
25 Mr. Al Farekh's father had with these jurors.

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1 In light that this is already an anonymous jury in a
2 terrorism case and he doesn't know the context, we can't say
3 how that could affect him, but reasonably he could think it
4 could be a contact from bribery, to threats of violence,
5 intimidation. There's a whole gamut.

6 Even if he at this point said, I think I can put it
7 out of my mind, we have no way of ensuring that. Plus the
8 fact that we don't know whether other jurors have not
9 accurately self-reported any information they have on these
10 issues.

11 Jury Number 2 said that there were five of them in
12 the elevator.

13 THE COURT: He said four or five.

14 MR. MAHER: He said four or five.

15 One juror reported to the Court what happened. And
16 I haven't seen the transcript yet. My recollection was not
17 that they -- that Juror Number 11 said that they selected one
18 person to report to the Court.

19 So another layer of concern is that other jurors
20 either could have been somebody from there, probably not, but
21 it's a possibility, but also that other jurors might have
22 heard something but were just not forthright about it. So I
23 just think looking at all the different layers of prejudice,
24 we have to ask to excuse Juror Number 4 as well.

25 THE COURT: All right. Anything further from the

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1 Government?

2 MR. TUCKER: Your Honor, simply that I don't think
3 that there's anything in the record to raise any particular
4 concerns about Juror Number 4.

5 The Second Circuit's standard in *Farhane*, if the
6 inquiry relates to two factors, the nature of the information
7 or contact at issue and its probable affect on a hypothetical
8 average jury, I think the record here is clear that Juror
9 Number 4 had a contact, to the extent he has some vague sense
10 that there may have been some kind of contact, the Court can
11 cure an issue with an instruction that the jury should infer
12 nothing from the fact that jurors have been dismissed and they
13 should renew their deliberations from the beginning.

14 THE COURT: All right. I think most of the argument
15 that Mr. Maher just raised is entirely speculative. Juror
16 Number 4 will be instructed, as will all the jurors, that they
17 should not give any consideration as to why some of the jurors
18 have been replaced.

19 I expect that they will follow my directions, they
20 have followed them very well. I will also note that having
21 reviewed the closed inquiry of the jurors, I think Mr. Tucker
22 was right that what they were suggesting was that they had
23 said, Who's going to tell the Judge about this, and one of
24 them was, that I'll do it, and that's Jury Number 2, and
25 that's why I heard from that juror. I didn't ask the question

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1 expressly, but I think that's a fair inference and I'm finding
2 that as a fact that that is indeed what happened.

3 I'm going to accede to the parties' request to
4 replace all four jurors, but I think it's abundantly clear
5 here that there's good cause to proceed with an 11-person
6 jury. This trial has been expensive, extensive, complex, and
7 the selection of this jury took a long time and was very
8 difficult. The Government brought in witnesses that we have
9 heard from from all over the country, and I think all over the
10 world. And to have to redo this again based on Mr. Maher's
11 speculation that, gee, maybe someone's not telling me the
12 truth when I look them in the eye and make sure that this is
13 not going to affect them, or maybe there's something that
14 they're not telling me for some reason? I think that's an
15 inappropriate basis to set aside all the hard work that has
16 been done and have to devote, again, resources to a new trial.

17 So I think under these circumstances, to eliminate,
18 in my view, all that, all that about that capacity of this
19 jury to deliberate fairly, I will remove the four jurors and
20 replace them with the three alternates, and we will proceed
21 with an 11-person jury.

22 I must also say, with regard to Juror Number 4,
23 there's nothing there, there is just no indication that he has
24 any indication of what happened or that he would be affected
25 by the removal of other jurors, and I'm not going to -- I'm

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1 not going to abort these proceedings based on that mere
2 possibility.

3 I also want to note, because I know the defendant's
4 were relying on *Remmer* and *Morrison*. This is very different.
5 We are prejudgment here. We have done -- spent half the day
6 doing the exhaustive investigation of what happened here. And
7 I think the Government is conceding -- is exceeding, exceeding
8 to the request to excuse three of these jurors just out of an
9 abundance of caution. I share that caution but I think it is
10 enough caution to ensure that the jury will be fair in this
11 case.

12 Okay. So, we're going to bring the jury in. I'm
13 going to direct Ms. Clarke, unless the parties have another
14 way to do this, to bring the jury in without the four members,
15 keep them back, I will speak to them separately to thank them
16 form their service, bring in the three alternates, replace
17 them. I will instruct the jury to start anew and to not
18 consider why they have to start anew and why jurors were
19 replaced and we're going to take it from there.

20 MR. RUHNKE: May I make a suggestion --

21 THE COURT: Sure.

22 MR. RUHNKE: -- in that respect? I think it would
23 be appropriate if the Court told the jury that four of your
24 members are being replaced, they did nothing wrong, they were
25 inadvertently exposed to information beyond their control.

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1 You should also understand that that information should --
2 that these circumstances do not involve any wrongdoing on the
3 Government's part nor on the defendant's part.

4 THE COURT: Got it. Good idea. Okay.

5 MR. TUCKER: I'm sorry, Your Honor, can I just have
6 a moment to confer?

7 (Pause.)

8 MR. TUCKER: Your Honor, the Government's concern,
9 and it would seem that this is error, it is invited error, but
10 the Government's concern with counsel's proposed instruction
11 is that it inevitably invites the remaining jurors to
12 speculate about the nature of the information that the other
13 jurors who have been excused have received.

14 It strikes me as a much more cautious approach to
15 simply say, don't speculate why the other jurors are gone
16 because, indeed, the remaining jurors Your Honor explicitly
17 asked them, have you had any overt contacts? And they said
18 "no". So I don't think that they're likely to make that
19 connection unless we make it for them.

20 THE COURT: I see your points, but I think the main
21 point Mr. Ruhnke is trying to get across is he doesn't want
22 the defendant to be blamed for this. So I'm going to modify
23 his request that I said I would do, and what I will do is not
24 explain why the four jurors were let go, but I will say to the
25 jury that they're being let go for reasons about which they

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1 should not speculate, and it has nothing to do with either the
2 defendant or the government having done anything wrong.

3 MR. TUCKER: That's fine, Your Honor.

4 MR. RUHNKE: That's acceptable, Your Honor.

5 MR. TUCKER: And Your Honor we'll instruct the new
6 jury to begin anew?

7 THE COURT: I will.

8 MR. TUCKER: Thank you, Your Honor.

9 THE COURT: Let's see how quickly we can engineer
10 this or, Melonie, do you think we ought to recess for a few
11 minutes?

12 Okay, let's stay in session because we have to get
13 moving.

14 MR. TUCKER: Your Honor, I guess the other point,
15 and this is new to me, but my belief is that we will disregard
16 the pending requests from the jury because deliberations are
17 commencing anew.

18 THE COURT: I agree.

19 MR. TUCKER: Okay. Thank you, Your Honor.

20 MR. RUHNKE: We agree, Your Honor.

21 MR. TUCKER: Your Honor, once we get the jury
22 deliberating again, the Government has an application, but
23 it's an application that we can take up once we get the jury
24 set up.

25 THE COURT: Great. I like those.

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1 I think I'll also tell them that we're not going to
2 comply with the prior note because they're starting
3 deliberations anew, just so they're not looking for it.

4 (Jury enters the courtroom.)

5 THE COURT: Be seated, everybody.

6 We're just going to do some musical chairs here.

7 (Pause.)

8 THE COURT: Okay, ladies and gentlemen, as you see,
9 we've had some rearrangement of the chairs here.

10 I don't want you to speculate in any way about why
11 some of the jurors are no longer deliberating with you, might
12 have been replaced by other jurors. That should not enter
13 into your discussions at all. Don't even mention it. All
14 I'll tell you about that is, neither the Government, nor the
15 defendant did anything wrong about that. So it has nothing do
16 with any of the parties there. Sometimes these things happen
17 in the course of a trial.

18 Now, because we have added some new people to the
19 deliberative body of the jury, I need to ask you to start your
20 deliberations all over again, don't pick up where the rest of
21 you were, just because you've added new people. The fact that
22 you've added new people means that you need to start afresh
23 and consider everything for the first time.

24 For that reason, although the jury had sent out a
25 note yesterday asking for some things, I don't have a note

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1 from this jury, so we're not going to comply with that note
2 for now. Obviously you're free to request anything that you
3 feel you should have had.

4 All right. Parties need to see me sidebar at all?

5 MR. RUHNKE: No, Your Honor.

6 MR. TUCKER: No, Your Honor.

7 THE COURT: Okay. I'll ask you then please retire
8 to the jury room and commence anew your deliberations.

9 Thank you very much.

10 (Jury retires to deliberate at 12:31 p.m.)

11 THE COURT: All right. Again, I have to tell you
12 the professionalism that is being demonstrated in this trial
13 is just a pleasure, so thank you everybody, let's see what
14 happens.

15 MR. TUCKER: I apologize, Your Honor, and I
16 appreciate the Court's comments. I have one application.

17 THE COURT: Ah, your application.

18 Be seated, yes.

19 MR. TUCKER: Of course, the way I understand Your
20 Honor and how Your Honor conducts deliberations with a jury,
21 and this may not be an issue, but if there is no verdict by
22 the end of the day, the Government is requesting that this
23 jury be partially sequestered going forward to avoid any
24 potential further inappropriate contact or taint.

25 So the record's clear, the Government's request is

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1 that we invoke the procedures that we typically do in these
2 types of partially sequestered cases, which would be that the
3 marshal's service or the CSOs take the jurors together at the
4 end of the day from the courthouse to a neutral location where
5 they can disperse, and then the next -- and they're to meet at
6 a neutral location where then the marshals or the CSOs bring
7 them back in. I believe that any potential perceptions of
8 prejudice about that can be easily addressed by explaining
9 that it's important that their deliberations proceed
10 uninterrupted and there's a lot of media presence or something
11 like that.

12 And the other point I would simply make, Your Honor,
13 because in order for the Court to impose these protections,
14 there has to be some finding there obviously was an
15 inappropriate contact, which obviously has impacted the trial,
16 and so we need to mitigate any potential mistrial.

17 MR. RUHNKE: Your Honor, one response to that is
18 that the fact of the nature of this trial has got nothing at
19 all to do with the nature of the inappropriate contact. I
20 mean any father, any disruptor of any trial could have been --
21 could have done the same thing. It's not the nature of this
22 trial. And I think to change the procedures with the jurors
23 at this point sends a clear message to them that they are in
24 danger, and I don't think it's appropriate to change
25 procedures now.

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1 If the Court wants to have the CSOs walk the jurors
2 out of the courthouse at the end of the day and let them
3 disperse, I think that would solve the Government's problem
4 rather than meeting in a secret place somewhere and then being
5 driven around by government employees.

6 THE COURT: Where is Mr. Al Farekh's father?

7 MR. RUHNKE: I assume he's going to be under arrest
8 shortly.

9 THE COURT: I don't know that.

10 MR. RUHNKE: I see the agents busily writing down
11 what I was saying in court, but I assume it's going to be in a
12 complaint affidavit, if it isn't already.

13 THE COURT: I'm not going to ask the Government to
14 respond to that for now, but that obviously is a factor that
15 he's out there, there's no telling that he won't do it again.

16 MR. RUHNKE: I have -- the last communication I had
17 with him was I instructed him to stay completely away from
18 this courthouse, do not come to the trial. And I have no --
19 no reason to think he's going to disregard that, but --

20 THE COURT: Except past conduct.

21 MR. RUHNKE: Certainly if the jurors are being
22 walked out of the courthouse would satisfy that problem.

23 THE COURT: I don't have to decide that until the
24 end of the day.

25 MR. TUCKER: Thank you, Your Honor.

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1 THE COURT: Okay.

2 (Whereupon, a recess was taken at 12:35 p.m.)

3 * * * * *

4 THE COURTROOM DEPUTY: All rise.

5 (Court Exhibit 1, was received in evidence.)

6 THE COURT: Okay, have a seat, please.

7 Okay, we have a note from the jurors that we have
8 marked as Court Exhibit 1 bearing today's date that says, "Can
9 we please leave at 4:30 p.m. and begin again tomorrow?"

10 I guess so. I'd like them to work a little later,
11 but I see no reason to force them to another half hour or
12 hour.

13 With regard the Government's motion, I have
14 determined that I'm going to grant it. The problem is, you
15 know, sometimes when we have these partial sequestration
16 motions, we look at conducts some of it quite old to determine
17 the likelihood of interference with the jury. In this case,
18 we have actual evidence of an attempt, less than 24 hours ago,
19 to interfere with the jury and the perpetrator is still at
20 large.

21 Now, I appreciate that Mr. Ruhnke advised him not to
22 do that again, but I have no guarantee that this gentleman
23 will adhere to that advice as he seems very strongly motivated
24 to interfere, and there is simply nothing stopping him from
25 stationing himself at Cadman Plaza and Tillary or across the

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1 street at Cadman Plaza Park and signaling out one juror as
2 that juror passes, and all he needs to do is one more juror to
3 taint, and I think that is just too high a risk for us to take
4 considering what we put into this case.

5 MR. RUHNKE: Your Honor, just on that factual basis
6 that Dr. Al Farekh is at liberty, I don't know that that's
7 true.

8 THE COURT: We don't know it's not.

9 MR. RUHNKE: Well, someone knows if it's true or
10 not.

11 I asked Mr. Tucker a few minutes ago whether he had
12 any information. He said he didn't have any information.
13 I've been advised that whatever emanated from this morning's
14 proceedings is being handled by different assistants within
15 the office, but I think out of fairness and out of the
16 prejudice that this is going to create, we're ought to be able
17 to answer that question whether the gentleman is at large.

18 This is not anything attributable to al-Qaeda,
19 it's not anything attributable to Mr. Al Farekh, who, if
20 truth be told, would have preferred his father never left the
21 United Arab Emirates to come to the trial, as is the case with
22 the other members of his family because of his known pattern
23 of erratic behavior.

24 So I would ask the Government to inquire, someone
25 must know in their office whether they've arrested him or not,

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1 or whether there's an arrest warrant out for him. If that's a
2 basis for the Court's ruling, which it plainly seems to be, I
3 think out of caution we should just take a break.

4 THE COURT: What's the Government's response to
5 that?

6 MR. TUCKER: I can make the call, Judge. I would
7 simply add that at this point under these circumstances, I
8 think sequestration is generally appropriate, and I think any
9 potential prejudice to the defendant can easily be made with
10 an instruction from the Court that at the conclusion of trial
11 when coverage intensifies, that's to avoid any --

12 THE COURT: Okay, I'm going to ask you to do that.
13 We've got 15 minutes until the jury wants to leave anyway.

14 I will give an instruction to mitigate any potential
15 prejudice to the defendant. When I do this, if the Government
16 confirms that the risk has not been alleviated, but I really
17 don't want to use the language that you suggested, Mr. Tucker,
18 because I want to be truthful with the jury, and that's not
19 the reason. Okay. So I think I can come up with a
20 formulation that will take care of potential prejudice and yet
21 is by being a bit more general not inaccurate at least.

22 But let's find out what's going on before we do
23 that. Let Ms. Clarke know as soon as you know, and then we'll
24 reconvene.

25 MR. TUCKER: Thanks, Judge.

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1 THE COURT: Thanks.

2 (Whereupon, a recess was taken at 4:17 p.m.)

3 * * * * *

4 THE COURTROOM DEPUTY: All rise.

5 THE COURT: Be seated, please.

6 Mr. Tucker.

7 MR. TUCKER: Your Honor, I've confirmed with one of
8 our AUSAs who's familiar with that matter and I've been
9 advised that Dr. Al Farekh is currently at liberty.

10 THE COURT: He's at liberty.

11 MR. TUCKER: Correct, Your Honor.

12 MR. RUHNKE: Your Honor, may I make a suggestion.

13 THE COURT: Sure.

14 MR. RUHNKE: I assume you're going to go ahead with
15 your earlier ruling over objection. But in the interest of
16 honesty, why don't we just level with the jury and say, Look,
17 ladies and gentlemen, what happened is somebody, not one of
18 the parties, not the Government, not the defendant spoke to
19 your fellow jurors and that caused a situation where they had
20 to leave. We're doing this to make sure it doesn't happen
21 again.

22 THE COURT: You know, as I said, I certainly don't
23 like being dishonest with the jury, but I think there's such a
24 thing as too much honesty also.

25 Here's what I propose, and it's fairly close to what

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1 you're talking about actually, but not quite as specific.

2 What I'm going to tell them is because of increased
3 attention being given to jurors, and the necessity that we
4 keep you away from anyone inquiring about the case, I'm going
5 to ask the marshal service to drive you to a set location from
6 the courthouse today and from there you can return home;
7 tomorrow you'll arrive at a set location that the marshals
8 will tell you about, and then they'll drive you here.

9 All we're attempting to do is to make sure that
10 nobody attempts to talk to you. I want to stress again that
11 these measures are not being taken because of any wrongdoing
12 by either the Government or the defense, sometimes these
13 things just happen. People who are interested in the case
14 seek out jurors in the case.

15 MR. MAHER: May I have a moment, Your Honor.

16 THE COURT: Sure.

17 (Pause.)

18 MR. RUHNKE: Mr. Maher and I both have the same
19 reaction. Would you also assure the jurors that this has
20 nothing to do with issues of their personal safety?

21 THE COURT: Yes.

22 MR. TUCKER: Judge, that's fine with the Government.

23 THE COURT: Okay. It's 4:30, let's bring them in.

24 (Pause.)

25 (Jury enters the courtroom.)

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1 THE COURT: All right, everyone be seated.

2 Ladies and gentlemen, we have your note asking to go
3 home now for the evening and come back at 9:30 tomorrow.

4 That's fine, we will do that.

5 We're going to do things a little bit differently
6 today in dismissing you, and that is because of the increased
7 attention given to jurors and the necessity to keep you away
8 from anyone inquiring about the case, I've asked the U.S.
9 Marshal Service to drive you all in a van to a set location
10 from the courthouse today, and from there you'll be able to
11 return to your home.

12 Now tomorrow morning you're going to assemble at a
13 set location that the marshals will tell you about and they'll
14 take you here, and then when you all go into jury room you can
15 start your deliberations.

16 Ms. Clarke's going to give you some more detailed
17 information about how this works, but what we're trying to do
18 here is to make sure that nobody attempts to talk to you.

19 I want to stress again that these measures are not
20 being taken because of anything that the Government or the
21 defendant has done wrong, sometimes these things just happen,
22 people who are interested in the case seek out jurors to talk
23 to in the case, and as I've told you throughout, we can't have
24 you influenced by outside people.

25 I also want to tell you to the extent you have any

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1 concern at all, this has nothing to do with your personal
2 safety. That is not an issue, you need not worry about that
3 in the least. I absolutely assure you of that. This is just
4 to prevent anyone from coming up to you and trying to ask you
5 questions. So we'll leave on that basis and we will see you
6 tomorrow at 9:30.

7 Please remember: No communicating about the case.
8 No internet research. No Googling or Yahoo-ing or Binging or
9 anything else about the case. Keep an open mind and don't
10 think about the case until you are all back together in the
11 jury room tomorrow morning.

12 Have a good and restful evening. Thank you.

13 (Jury exits the courtroom.)

14 THE COURT: Okay, recess until tomorrow morning.

15 MR. RUHNKE: Thank you, Your Honor.

16 MR. TUCKER: Thank you, Your Honor.

17 (Proceedings adjourned at 4:35 p.m. to resume on
18 September 29, 2017 at 9:30 a.m.)

19 (Whereupon, the matter was concluded.)

20 * * * * *

21 EXHIBITS

22 COURT PAGE
23 5 1664
24 1 1701
25