

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

United States of America vs. Peter Kott

THE HONORABLE JOHN W. SEDWICK 3:07-cr-00056 JWS

PROCEEDINGS: **ORDER FROM CHAMBERS** **February 8, 2010**

At docket 437, Peter Kott moves for reconsideration of this court's order at docket 429 denying his motion to dismiss. The government responds at docket 438. Kott's motion relates to documents received by Kott after the court issued its opinion on the motion to dismiss. The order at docket 429 indicated the court would not entertain a motion for reconsideration, but contemplating that failure to consider the latest documents might one day yield a remand directing this court to consider them, the court permitted briefing on the effect of the documents.

Having reviewed the new materials consisting of handwritten notes made by Bill Allen's counsel, Kott's motion, and the government's response, the court concludes that the new documents do not compel a different result. Much of Kott's briefing attacks the previous ruling, but in a manner not squarely based on the new documents. For instance, Kott challenges the court's decision that certain evidence relating to Allen's credibility would have been excluded under Rule 403, arguing that the Confrontation Clause trumps Rule 403 considerations. The cases Kott cites in support of this proposition do not support his position. A key Confrontation Clause precedent, quoted at length in the court's order at docket 429, explicitly states that the right to cross-examine is "[s]ubject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation." *Davis v. Alaska*, 415 U.S. 308, 316 (1974).

Those portions of the motion which do rely on the new documents point to the same types of statements the court addressed in deciding Kott's original motion, including some that are not particularly helpful to Kott. In short, none of the newly-disclosed documents are material in the context of all the evidence. Moreover, the government could not have disclosed them before trial, for Allen's counsel's notes were not available to the government. Even had they been, a failure to disclose them would not have prejudiced Kott. The motion for reconsideration at docket 437 is **DENIED**.
