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5
6 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 vs.

10 VICTOR H. KOHRING,

11 Defendant.

No. CR07-00055-01-JWS

REPLY TO GOVERNMENT'S
RESPONSE TO DEFENDANT'S
MOTION FOR DISMISSAL OF THE
INDICTMENT OR MOTION FOR
NEW TRIAL

EVIDENTIARY HEARING REQUESTED

12
13 COMES NOW the defendant, Victor H. Kohring, by and through undersigned
14 counsel, and hereby files this reply to the government's response to the defendant's
15 Motion for Dismissal or Motion for New Trial.

16 First, the defendant filed the Motion to Dismiss with "reasonable promptness"
17 after discovering the basis for the claims of the appearance of judicial impropriety. The
18 defense did not take lightly the prospect of challenging the appearance of fairness of a
19 sitting federal judge and therefore diligently researched both the factual allegations and
20 statutory and case law before presenting any such allegations in the form of a motion.

21 Second, under the reasonable person standard, any informed individual would
22 find that the animosity between Deborah Sedwick, the presiding judge's wife, and the
23 defendant, creates an appearance of judicial partiality. This contentious relationship
24 between the wife of the presiding judge and the defendant, bolstered by the location of
the Sedwick estate catty-corner from the residence of star government witness Bill Allen
and Judge Sedwick's high school association with the other chief government witness,
Rick Smith, generates a serious appearance of unfairness so that Judge Sedwick should
have recused himself before any proceedings in this case commenced.

REPLY TO GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS OR
MOTION FOR NEW TRIAL- 1

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1 **I. Facts Relevant to Motion**

2 A. Mr. Kohring's Antagonistic Relationship with Ms. Sedwick

3 As Chairman of the Department of Commerce and Economic Development
4 (DCED) Budget Subcommittee in 1997 and 1998, former Representative Kohring was
5 responsible for first stripping the agency of funding and then completely dismantling it.
6 Deborah Sedwick, wife of Judge John Sedwick, was the Assistant Commissioner of
7 DCED in 1997 and was then appointed Commissioner in 1998. During that time, Mr.
8 Kohring and Ms. Sedwick became both ideological and personal combatants as Mr.
9 Kohring proceeded to enact changes that eliminated Ms. Sedwick's job as well as her
10 entire department, over boisterous and contentious opposition.

11 The tension began in 1997, when Mr. Kohring personally effectuated major
12 funding cuts to Ms. Sedwick's Division of Trade and Development (prior to her
13 promotion to Assistant Commissioner of DCED in late 1997). Mr. Kohring's legislation
14 eliminated eight positions directly under Ms. Sedwick and cut 25% of Ms. Sedwick's
15 travel budget. Mr. Kohring also successfully eliminated the Division of Tourism as a
16 separate unit of the DCED as part of his overall budget-cutting strategy by merging it
17 with Trade and Development.

18 The general public, including Ms. Sedwick, was leery of the proposed legislation.
19 Ex. A. In an analysis of Mr. Kohring's proposal dated March 16, 1997, Ms. Sedwick
20 commented: "Even with elimination of some of the professional level staff and thus a
21 reduced workload, the proposed cuts severely cripple an already struggling administrative
22 unit." Ex. B. She further noted that the proposed cuts would "severely undermine,"
23 "cripple," and "decimate" the state's trading regime. Id. Ms. Sedwick was clearly
24 displeased by Mr. Kohring's budget-slashing actions.

 Mr. Kohring, on the other hand, was quite vocal in his support for the legislation
and was featured in several newspaper articles, where he asserted his primary goal of
saving money particularly by eliminating top management jobs. Ex. C. In fact, in a guest
column in the Alaska Star newspaper dated May 1, 1997, Mr. Kohring contended that
"most of the letters on opposition come from people who are in on the receiving end of
these tax dollars, and don't want a 'cushy' program ended." Ex. D. Mr. Kohring
reiterated this sentiment in a Mat-Su Valley Frontiersman article dated May 21, 1997:

1 "Have you ever noticed that it's not the private businessman in the main who complains
2 about these cuts, but rather the government administrators themselves. At the governor's
3 direction, these folks fought the Legislature every step of the way during this session's
4 budget process." Ex. E.

5 In 1998, Mr. Kohring introduced House Bill 400, which proposed to downgrade
6 DCED to a division within a larger administrative framework as part of a major
7 restructuring plan. By relegating DCED to division status, the proposal would dispose of
8 Ms. Sedwick's position and her large salary. This legislation was Mr. Kohring's highest
9 priority during this period. Ex. F.

10 The Anchorage Daily News carried a story on February 13, 1998 in which
11 Commerce Commissioner Sedwick stated that with only three months remaining in the
12 legislative session, "there likely will not be enough time to consider the merger." Ex. G.
13 She elaborated further: "I just don't think at this point it's going to save us any money."
14 Id. Ms. Sedwick was clearly against HB 400.

15 In a front page article of the Juneau Empire that same day, February 13, 1998, Mr.
16 Kohring commented that his proposal to merge DCED with the Department of
17 Community and Regional Affairs (DCRA) considered the "elimination of a
18 commissioner's office and some administration." Ex. H. In the same article, Ms.
19 Sedwick responded that a similar proposal two years prior would have cost \$2 million to
20 implement and would have taken five years to break even; she suggested piecemeal
21 changes within departments rather than the massive overhaul Mr. Kohring proposed. Id.

22 In a reply letter from Mr. Kohring to Ms. Sedwick dated February 20, 1998, Mr.
23 Kohring related his concern about Ms. Sedwick's comments in the Juneau Empire. Ex. I.
24 Mr. Kohring stated that his proposal "does not cut crucial programs, as cost savings
would come from higher-salaried administrative positions." Id. Mr. Kohring and Ms.
Sedwick were therefore at diametrical ends of the spectrum in their views regarding the
fate of DCED.

As Mr. Kohring's proposal gained adherents while the opposition galvanized, the
House Labor and Commerce Committee and Mr. Kohring's House Finance Committee
scheduled hearings to deliberate the matter. During the February 25, 1998 session of the
House Labor and Commerce Committee, DCED Deputy Commissioner Jeff Bush

1 testified that Mr. Kohring's bill "is a massive reorganization of government functions and
2 agencies with very little benefit ... counterproductive because it only creates short-term
3 expenses, high employee anxiety, and wasted administrative time and effort ... poorly
4 thought out." Ex. J. He stated further that Mr. Kohring's legislation would "upset the
5 apple cart," that "the disruption to lives and programs was more than intended," and the
6 proposal was simply a bad idea. Id. The bill would eliminate a commissioner and a
7 commissioner's secretary as well as "add significant responsibilities to the remaining
8 commissioner." Id. He further noted that morale was low and the department had a high
9 turnover rate as a result. Id.

10 During the same February 25, 1998 proceedings, Representative Ryan highlighted
11 the adversarial nature of the issue: "I haven't found that forthcoming from the third floor
12 (DCED). It seems to be a confrontational attitude of, 'This is what I want, and I'm not
13 about to discuss it with you,' so under those circumstances we (the legislature) take the
14 initiative." Id. Mr. Kohring also testified at the proceeding, largely in response to
15 Deputy Commissioner Bush. Mr. Kohring commented that he "thought Mr. Bush was
16 worried about losing his job, using the analogy of a rabbit backed into a corner." Id.
17 This personal statement illuminates the contentious nature of the hearings.

18 In a subsequent hearing by the House Labor and Commerce Committee on
19 February 27, 1998, Mr. Fred James, one of Representative Kohring's aides, testified that
20 he thought Mr. Kohring "had been dead right when he commented two days previously
21 that the commissioners were like rabbits running scared in front of headlights." Ex. K.
22 Mr. James believed that all the testimony against HB 400 was from people who were
23 benefiting from the current system; he thought "they were complaining that their 'cushy'
24 jobs were bring cut, but that they would get more productive jobs in the private sector."
Id. Mr. James thought that the managers were protecting their interests and that "their
bottom-line motivation was higher salaries and good, fat retirements with benefits." Id.

During proceedings in the Senate Labor and Commerce Committee on March 3,
1998, Ms. Sedwick testified: "She, personally, and her staff would have a real hard time
finding the time and energy it would take to go through this exercise again, having gone
through it two years ago." Ex. L. Ms. Sedwick was upset that she had not been
contacted about the pending proposal and commented that "there is a lot of dissension

1 within the ranks of the tourism industry and she has refrained from talking publicly about
2 it.” Id. In contrast to her former silence, here Ms. Sedwick formally goes on the record
3 to express her displeasure at the budget cuts affecting her department.

4 During Ms. Sedwick’s confirmation hearings for the position of Commissioner of
5 DCED in the House Labor and Commerce Committee on March 4, 1998, she testified
6 that Mr. Kohring’s proposed bill would not generate any savings while at the same time
7 harming smaller rural communities. Ex. M. Ms. Sedwick stated that she “came in
8 initially to combine international trade, economic development and tourism” and that she
9 continued to be involved in those areas. Ms. Sedwick further indicated that “there was a
10 problem with eliminating some of the budgets which would help Alaska’s economy grow
11 in the long run,” and the process had already begun with tourism. Id. As discussed
12 above, Mr. Kohring already helped to enact severe budget cuts to the Division of Tourism
13 and he was now trying to eliminate the entire DCED. Mr. Kohring’s goals, therefore,
14 were diametrically opposed to Ms. Sedwick’s and the two became antagonists as a direct
15 result of their socio-political ideologies and the pending legislation.

16 Also in the context of that same March 4, 1998 hearing before the House Labor
17 and Commerce Committee, Ms. Sedwick further denounced Mr. Kohring’s proposal
18 insofar as “if the merger was completed as currently written, she did not know how she
19 could do that job; she did not know how one person could do that job.” Id. She then
20 related that she was the highest paid commissioner in the department- in fact the highest
21 paid employee in Commerce- and that she made roughly \$110,000 in salary and benefits.
22 Id. She discussed departmental personnel losses and argued that the proposed legislation
23 was not the way to accomplish a reduction in costs. Id.

24 In a front page article of the Juneau Empire dated March 5, 1998, Sedwick
expressed her opposition to Mr. Kohring’s HB 400 in relation to the distribution of
resources. When asked to comment upon the merger of DCED and DCRA, Sedwick
replied: “I don’t know how I could do that job ... I don’t know how one person could do
that job.” Ex. N.

Mr. Kohring, meanwhile, was rather public in his campaign to garner support for
his proposed legislation to restructure DCED. Also on March 5, 1998, Mr. Kohring was
featured in a “Legislative Report” in the Alaska Star newspaper. In his guest column,

1 Mr. Kohring states that the opposition to his restructuring plan predictably emanates from
2 "from high-level government officials who stand to lose their jobs. The arguments
3 they've expressed during the public testimony have been pathetically weak ... Either
4 these department leaders have no idea of what their staff do, or they are trying to protect
5 their paychecks." Ex. O. Kohring concluded with the caution: "Watch for even more
6 laughable excuses for wasting your tax money, from government managers who wish to
7 retain their cushy jobs. It would be a hilarious situation, if it wasn't for the sad fact that
8 they're wasting so much of your hard earned tax dollars with an expensive and
9 unnecessary bureaucracy." Id.

10 In a March 9, 1998 Press Release, Mr. Kohring repeated his earlier indictment
11 that "[s]ince House Bill 400 calls for eliminating a large portion of the upper
12 bureaucracy, it doesn't surprise me that those who stand to lose their jobs have come out
13 of the woodwork in opposition." Ex. P. In another Press Release dated March 31, 1998,
14 Mr. Kohring observed: "It's important to note that since this is such a major piece of
15 legislation- combining two huge departments of state government into one with the intent
16 of eliminating many high paid upper management positions- even movement out of one
17 committee is considered significant." Ex. Q; see Ex. R for more examples of Mr.
18 Kohring's public stance on the proposed legislation, including his reaction to Ms.
19 Sedwick's claims that the plan is a "devastating reduction" and a "draconian action" in
20 the form of the rejoinder that DCED spending is "like drunken sailors."

21 As Mr. Kohring became more assertive about his proposed legislation,
22 correspondence with officials from DCED diminished. During the budget "closeout"
23 (when the budget is finalized) in April 1998, Mr. Kohring opened the meeting with a joke
24 about withdrawing all financial support from DCED. Although the comment was in jest,
Ms. Sedwick was clearly angered and glared at Mr. Kohring from across the table while
her face turned red. Since that moment, Ms. Sedwick has acted resentful towards Mr.
Kohring- she stopped visiting his office, she ceased communications, and she stopped
providing invites for tours or meetings with Mr. Kohring and his staff. Relations were
strained to the point that Ms. Sedwick would not acknowledge Mr. Kohring's presence as
they passed one another in the hallways.

1 Mr. Kohring fired his final salvo in a newspaper editorial distributed statewide
2 dated January 27, 1999. Kohring asserted:

3 HB 400 would leave most of the functions of the two departments in place
4 while eliminating a number of highly paid upper managers ... you should
5 have heard the frantic arguments put forth by the government workers who
6 are subject to losing their cushy jobs. For example, they concocted the
7 notion that 'Space Analysts' would have to be hired at great cost to
8 implement my proposed changes. They even complained that the
9 stationery would have to be changed! You have never heard a government
10 worker so convincing as when his or her high-paying job is on the line.

11 Ex. S.

12 Although HB 400 did not pass during the 1998 legislative session, in 1999 Mr.
13 Kohring helped guide the passage of HB 40, which was similar to the initial proposal and
14 also eliminated DCED and Ms. Sedwick's position. Fortunately for Ms. Sedwick,
15 however, she was appointed by Governor Tony Knowles to head the newly created
16 department forged in the wake of DCED and DCRA. There is no way she could have
17 possible known that she would be able to retain government employment after ratification
18 of Mr. Kohring's legislation.

19 DCED, which persisted in a modified form, issued a report dated December 15,
20 1999 critical of the harmful effects of the bill: "The merger resulted in a significantly
21 increased workload ... Further cuts in revenue sharing programs are bound to lead to
22 significant cuts in local public service, and ultimately to a wave of municipal
23 dissolutions." Ex. T.

24 From 1999 until the closing day of his jury trial, Mr. Kohring did not encounter
Ms. Sedwick. During closing arguments, on the other hand, he noticed Ms. Sedwick in
the courtroom and wondered what she was doing there. It was not until roughly two
weeks later that Mr. Kohring made the realization that Deborah Sedwick was the wife of
presiding Judge John Sedwick. See Ex. U, Affidavit of Fred James; Ex. V, Affidavit of
Elizabeth Madsen; and Ex. W, Affidavit of Mike Krieber for more details into the
contentious and antagonistic relationship between Mr. Kohring and Ms. Sedwick.

25 B. The Sedwicks are Neighbors with Star Government Witness Bill Allen

26 In addition to the antagonistic relationship between Mr. Kohring and Ms.
27 Sedwick, for the past six years the Sedwicks have lived on the same block as star
28 government witness Bill Allen. See Ex. X. Their houses are a mere 65 feet apart and

1 their front lawns come within 30 feet of each other. The Sedwicks therefore must have
2 had contact with Bill Allen- or at least seen him- in the past six years. Given that Bill
3 Allen was the star government witness in multiple dispositions in Judge Sedwick's
4 courtroom, it is implausible that the Sedwicks never discussed the Alaskan political
5 corruption cases which received so much publicity in the local media and in which Bill
6 Allen was the chief figure. Furthermore, it seems even less plausible that the Sedwicks
7 never discussed Mr. Kohring; Mr. Kohring had a long and bitter history with Ms.
8 Sedwick; Bill Allen, chief government witness, lived across the street; the local media
9 continually ran stories on both Allen and Kohring over the past year; and Mr. Kohring's
10 arraignment on his indictment not only occurred in Judge Sedwick's courtroom, but
11 received front page coverage in all the media outlets. It seems incredulous that the
12 Sedwicks never discussed Mr. Kohring after his indictment and assignment of his case to
13 Judge Sedwick's courtroom..

11 C. Judge Sedwick and Government Witness Rick Smith Attended the Same
12 High School

12 While typically this type of indirect relationship is immaterial under the
13 appearance of fairness doctrine, when viewed in conjunction with the contentious
14 association between Mr. Kohring and Ms. Sedwick and the fact that Bill Allen lives
15 catty-corner from the Sedwicks, all of these circumstances combined should have
16 beckoned for Judge Sedwick's recusal. As Judge Sedwick failed to abide by the self-
17 enforcing strictures of 28 U.S.C. §§ 144 and 455(a), which mandate disqualification even
18 solely by virtue of the appearance of impropriety.

18 **II. Mr. Kohring's Motion to Dismiss is Timely Because the Defense Filed the**
19 **Motion with "Reasonable Promptness" After Discovering the Relevant Facts.**

19 Given the serious nature of asserting the appearance of impropriety on the part of
20 a sitting federal judge, in conjunction with the simple fact that the defense required time
21 to research both events from nearly a decade ago as well as the applicable law, the
22 defense filed the motion for dismissal and recusal with "reasonable promptness after the
23 grounds for the motion were properly and adequately ascertained." Skokomish Indian
24 Tribe v. United States, 410 F.3d 506, 519 (9th Cir. 2005) (citing Preston v. United States,
923 F.2d 731, 733 (9th Cir.1991) (holding that recusal motion filed eighteen months after

1 assignment to a district court judge and shortly after an adverse discovery ruling was
2 nonetheless timely).

3 This motion is premised upon both 28 U.S.C. §§ 144 and 455(a). "Section 144
4 provides a procedure for a party to recuse a judge. Section 455 imposes an affirmative
5 duty upon judges to recuse themselves." Yagman v. Republic Ins., 987 F.2d 622, 626 (9th
6 Cir. 1993). Section 144 states that a party may submit a timely and sufficient affidavit
7 alleging that the judge has a personal bias or prejudice; but, the motion must be filed less
8 than ten days before the beginning of the term during which the proceeding will transpire,
9 with exception for good cause. The defendant's motion included an affidavit from Mr.
10 Kohring detailing the grounds for the appearance of Judge Sedwick's partiality. Def.
11 Mot. at Ex. D. As Judge Sedwick recused himself upon receipt of the Motion to Dismiss,
12 Mr. Kohring's affidavit must have been timely and sufficient despite Judge Sedwick's
13 representations that he had no knowledge of his wife's former antagonism toward Mr.
14 Kohring. See Dkt. 158. As for the ten day time limit, given that Mr. Kohring did not
15 realize that former DCED Commissioner Deborah Sedwick was the very wife of the
16 presiding judge in Mr. Kohring's criminal case, there is good cause for the defendant's
17 failure to submit the motion at any sooner time.

18 Under Section 455(a), on the other hand, a judge may have an obligation to
19 recuse himself or herself without a motion from one of the parties; it 'is self-enforcing on
20 the part of the judge.'" E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1295
21 (9th Cir. 1992) (citing United States v. Sibla, 624 F.2d 864, 867-68 (9th Cir.1980)). The
22 general rule is that while there is no *per se* time limit, a recusal motion must be presented
23 in timely fashion with reasonable promptness after discovery of the grounds supporting
24 the claim of an appearance of unfairness. *Id.*

25 In his affidavit in support of the Motion to Dismiss, Mr. Kohring stated that he
26 had no idea that Deborah Sedwick was the wife of Judge John Sedwick until after trial.
27 The only reason he made the connection is because Ms. Sedwick actually appeared in the
28 courtroom during closing arguments and made Mr. Kohring wonder if there was any
29 relationship between the two; had she not attended the closings, Mr. Kohring to this day
30 would not have known that Judge Sedwick is married to Deborah Sedwick. After
31 checking voter registration records and researching on the Internet, the defense realized

1 that one of Mr. Kohring's most ardent political opponents was the wife of the presiding
2 judge in Mr. Kohring's criminal case. The defense thus engaged in thorough and diligent
3 research before filing anything with the Court, for the defense does not treat lightly the
4 prospect of challenging the presumed impartiality of a sitting federal judge.

5 During the course of research, the defense conferred with colleagues, friends,
6 legal scholars, and even federal judges, all of whom echoed that under the appearance of
7 fairness doctrine, Judge Sedwick should have disqualified himself.

8 While the government claims that Mr. Kohring should have made the connection
9 between the Sedwicks due to the rarity of Sedwick as a surname, the very same argument
10 holds true for the Sedwicks with respect to Mr. Kohring. First, Mr. Kohring was
11 consumed by the criminal proceedings in which he participated; he was not thinking
12 about much other than his case. Kohring, on the other hand, is even rarer than Sedwick
13 as a surname so that in light of his legislative service, his unique last name, his media
14 exposure before, and especially after, indictment, the Sedwicks should have recognized
15 Mr. Kohring before he recognized them.

16 Deborah Sedwick, moreover, unlike most of her fellow government employees,
17 resided in Anchorage and lived at home while working for DCED. She therefore was in
18 contact with Judge Sedwick on a daily basis. As Ms. Sedwick was a commissioner- and
19 the highest paid employee in Commerce- it seems logical to assume that she and Judge
20 Sedwick must have had occasion to talk about their work. Especially in the face of the
21 massive budget cuts sponsored by Mr. Kohring, it is likely that the Sedwicks discussed
22 their lives, including their careers. Add to this equation the fact that star government
23 witness Bill Allen lives across the street and that the other primary government witness,
24 Rick Smith, went to high school with Judge Sedwick, and it seems clear that a reasonable
person would detect an appearance of unfairness.

At issue here is not a last minute grasping of straws, but rather a very serious
issue which the defense carefully and methodically researched before presenting any
allegations to the Court. Mr. Kohring did not know of the spousal relationship between
the Sedwicks until after trial so that the motion is timely presented. Additionally, there
have been no subsequent proceedings after trial so that Mr. Kohring has not expended
any irreplaceable judicial resources. Sentencing was going to be the next entry on the

1 docket; Mr. Kohring, therefore, did not squander precious judicial resources because he
2 became aware of the relationship between the Sedwicks only after trial.

3 **III. Under the Applicable Reasonable Person Standard of the Appearance of
4 Fairness Doctrine, Judge Sedwick Should Have Recused Himself.**

5 Pursuant to both Sections 144 and 455(a), recusal is appropriate where "a
6 reasonable person with knowledge of all the facts would conclude that the judge's
7 impartiality might reasonably be questioned." Yagman, 987 F.2d at 626. As the
8 Supreme Court has stated, "what matters under § 455(a) 'is not the reality of bias or
9 prejudice but its appearance.'" Microsoft Corp. v. United States, 530 U.S. 1301, 121
10 S.Ct. 25.26, 147 L.Ed.2d 1048 (2000) (citing Liteky v. United States, 510 U.S. 540, 548,
114 S.Ct. 1147, 127 L.Ed.2d 474 (1994)). This inquiry is "an objective one, made from
the perspective of a reasonable observer who is informed of all the surrounding facts and
circumstances." Id.; see Liteky, 510 U.S. at 548.

11 "The goal of section 455(a) is to avoid even the appearance of partiality. If it would
12 appear to a reasonable person that a judge has knowledge of facts that would give him an
13 interest in the litigation then an appearance of partiality is created even though no
14 partiality exists." United States v. Holland, 501 F.3d 1120, 1124 (9th Cir. 2007) (quoting
15 Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860, 108 S.Ct. 2194, 100
16 L.Ed.2d 855 (1988)). The test is "whether a reasonable person with knowledge of all the
facts would conclude that the judge's impartiality might reasonably be questioned." Id.
(citations omitted).

17 Disqualification under § 455(a) is "necessarily fact-driven and may turn on
18 subtleties in the particular case. Consequently, 'the analysis of a particular ... claim must
19 be guided, not by comparison to similar situations addressed by prior jurisprudence, but
20 rather by an independent examination of the unique facts and circumstances of the
21 particular claim at issue.'" Id. (quoting United States v. Bremers, 195 F.3d 221, 226 (5th
22 Cir. 1999)). If the question is close, a judge is obligated to recuse himself or herself.
United States v. Dandy, 998 F.2d 1344, 1349 (6th Cir. 1993).

23 Contrary to the government's assertions, the issue here arises under the
24 appearance of fairness doctrine- there is no allegation of judicial bias. The government's
citations to cases exploring actual claims of judicial bias are therefore irrelevant for the

1 purposes of this motion. The burden on a challenger under § 455(a) is not substantial;
2 rather, all a defendant must demonstrate is that a reasonable person might find that the
3 impartiality of the judge might reasonably be questioned.

4 Here, given the contentious relationship between Mr. Kohring and Ms. Sedwick,
5 Judge Sedwick should have never taken this case and should now recuse himself, vacate
6 the conviction, and order new trial. And how do we know that even after almost ten
7 years, Ms. Sedwick maintained her ill-will against Mr. Kohring so as to generate an
8 appearance of unfairness? She attended Mr. Kohring's trial on the final day during
9 closing arguments in the courtroom of her husband, Judge John Sedwick.

10 As the fact section clearly delineates through newspaper articles, press releases,
11 minutes of committee hearings, and affidavits from parties actually present at the time (as
12 opposed to the government's reliance on mere newspaper quotes from biased parties),
13 Mr. Kohring and Ms. Sedwick had a fundamental disagreement over departmental
14 budgeting that evolved into personal animosity. Ms. Sedwick was as equally outspoken
15 in favor of maintaining DCED as Mr. Kohring was committed to dismantling that
16 agency. Their debate took stage in committee hearings, newspaper articles, and even in a
17 letter written by Mr. Kohring to Ms. Sedwick in response to comments she made to the
18 press. These allegations are not rumors or innuendo, but rather corroborated and
19 substantiated facts.

20 While Ms. Sedwick may have eventually benefited from the consolidation of
21 DCED and DCRA into one department, this is irrelevant insofar as Mr. Kohring
22 sponsored and pushed legislation that eliminated her department and her position. Ms.
23 Sedwick was fortunate to have the backing of Governor Knowles, who promoted her to
24 lead the newly merged department. What matters, though, is the fact that Mr. Kohring
and Ms. Sedwick had a public and well-known divergence of opinion that led to personal
attacks and a chilling of relations to the extent that the two no longer communicated with
one another. The evidence is thus compelling in illuminating a strained relationship
between Mr. Kohring and Ms. Sedwick; Ms. Sedwick's action in attending closing
arguments in Mr. Kohring's case, however, confirms that the animosity still exists.

Similarly, even assuming for the sake of argument that Mr. Kohring has an
inflated sense of self-importance, he did in fact sponsor and push serious legislation that

1 involved multi-million dollars and a major restructuring of state cabinet level
2 departments. The primary goal of the proposed bill was the elimination of Ms. Sedwick's
3 department, and particularly the upper management. Mr. Kohring was rather vocal in his
4 vehemence against government administrators with their "cushy" jobs and plentiful
5 benefits. His press releases, newspaper contributions, and testimony in committees make
6 clear that Mr. Kohring wanted to make budget cuts mainly by "trimming the fat" and
7 eliminating highly-paid managerial types. Mr. Kohring was actually successful in
8 passing HB 40 in 1999, and Ms. Sedwick had fortune enough to be selected by the
9 governor to fill the new leadership position created for the newly revamped department.

10 With respect to the government's distasteful allegation that Mr. Kohring's April
11 8, 1998 press release does not appear on his legislative website, this is perfectly
12 understandable given that the document is nearly ten years old. Mr. Kohring is a prolific
13 writer of news releases and has averaged between fifteen and twenty per year. However,
14 for some reason unknown to Mr. Kohring, the vast majority of his press releases from the
15 years 1997, 1998, 2000, and 2001 have been removed from his old legislative website.
16 This is probably attributable to the fact that the releases are old and stale and do not
17 comment on current events. The suggestion that Mr. Kohring did not actually release the
18 statement to the public or that he did not think the issue was sufficiently significant to
19 include on his website is as irresponsible as it is disingenuous. Gov. Mot. at 12.

20 Given the specificity of the facts in the form of affidavits, press releases,
21 newspaper columns, and minutes of committee hearings, Mr. Kohring has clearly
22 established that he and Ms. Sedwick had an antagonistic relationship. In light of the
23 media attention paid to Mr. Kohring's indictment, arrest, and trial, it stretches the bounds
24 of credulity to believe that the Sedwicks never discussed Mr. Kohring. We do know that
Ms. Sedwick still harbors resentment towards Mr. Kohring by virtue of the fact that she
attended the closing arguments in Mr. Kohring's criminal case in her husband's
courtroom. The appropriate remedy in this case is thus to vacate and remand for a new
trial before a different district court judge. Mangini v. United States, 314 F.3d 1158,
1161 (9th Cir. 2003) (citing Preston, 923 F.2d at 734-35) (after determining that the trial
judge should have disqualified himself, proper remedy was to reverse judgment and

1 remand for new trial because there was no way to "purge the perception of partiality" in
2 the case).

3 As avoiding the appearance of partiality is strictly the duty of the presiding judge,
4 "[t]he unfairness and expense which results from disqualification ... can be avoided in the
5 future only if each judge fully accepts the obligation to disqualify himself in any case in
6 which his impartiality might reasonably be questioned." Preston, 923 F.2d at 735-36
(citing Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1115 (5th Cir.), cert. denied,
449 U.S. 820, 101 S.Ct. 78, 66 L.Ed.2d 22 (1980)).

7 **III. Conclusion**

8 For the reasons stated above, Mr. Kohring respectfully requests that Judge John
9 Sedwick recuse himself and that Mr. Kohring's conviction is vacated and his case
10 remanded for new trial.

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17 RESPECTFULLY SUBMITTED this 10th day of March, 2008.

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20 s/ John Henry Browne
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 10, 2008, I electronically filed Defendant Victor Kohring's Reply to the Government's Response to Defendant's Motion to Dismiss or Motion for New Trial with the clerk of the court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendant and the government. I hereby certify that I have served any other parties of record that are non CM/ECF participants via Tele-fax/US postal mail.

Dated this 10th day of March, 2008.

s/ Lisa A. Earnest
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