

conflict that would mandate that he be prevented from representing Mazzone in this action.

II. DISCUSSION

The Sixth Amendment to the Constitution guarantees that in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. See *Wheat v. United States*, 486 U.S. 153, 158 (1988); *United States v. Voigt*, 89 F.3d 1050, 1074 (3d Cir. 1999); *United States v. Dolan*, 570 F.3d 1177, 1180 (3d Cir. 1978). The purpose of providing assistance of counsel is simply to ensure that criminal defendants receive a fair trial and that in evaluating Sixth Amendment claims, the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer. See *Wheat*, 486 U.S. at 159. Thus, while the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant, rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers. See *id.* Thus, the right to counsel is not absolute. See *id.*

A court confronted with and alerted to possible conflicts of interest must take adequate steps to ascertain whether conflicts warrant separate counsel. See *Wheat*, 486 U.S. at 160. Courts have recognized this concern as a basis to circumscribe the Sixth

Amendment right to choose one's own counsel. See *id.*; *United States v. Stewart*, 185 F.3d 112, 122 (3d Cir. 1999)(affirming disqualification of counsel based on conflict of interest); *Voigt*, 89 F.3d at 1073-80 (same). Furthermore, it is immaterial that the conflict be actual or potential. See *United States v. Voigt*, 89 F.3d 1050, 1075 (3d Cir. 1996). Upon a showing of an actual conflict or a showing of a serious potential for conflict, a presumption in favor of a defendant's counsel of choice is overcome and the district court may disqualify counsel. See *Wheat*, 486 U.S. at 164; *United States v. Moscony*, 927 F.2d 742, 749-50 (3d Cir. 1991).

Here, the government contends that Patrizio has conflicting client loyalties that arise from the multiple representation of Virelli and Mazzone. See Government's Motion to Disqualify, at 1. At present, Patrizio is counsel of record for Virelli in *United States v. Virelli, et al.*, Criminal No. 99-573, a conspiracy to distribute methamphetamine case. See *id.* at 11. Virelli, has negotiated a cooperation plea agreement with the government in an effort to obtain a possible reduction in sentence pursuant to a downward departure motion filed by the government. See *id.*

At the trial in this case, the government may call Michael Virelli as a government witness to provide background testimony regarding the violent dispute between the Philadelphia La Cosa Nostra ("LCN") and the Turra Drug organization, which preceded the

murder of Anthony Turra on March 18, 1998. See Government's Motion to Disqualify, at 12. The government states that Michael Virelli has provided information to the government about a dispute between members of the Philadelphia LCN and a methamphetamine trafficking organization run by Louis Turra and Anthony Turra. See *id.* In particular, Virelli has told the government that he and his father, Dennis Virelli, were aligned with the Turra drug organization; that he participated in an aborted effort to kill Joseph Merlino after members and associates of the Philadelphia LCN severely beat Louis Turra for failing to pay proper respect to the Philadelphia LCN; and that he was responsible for providing physical protection to members of the Turra drug organization who were attending a meeting in 1995 with Ralph Natale and Mazzone to resolve a dispute between Joseph Merlino, the Philadelphia LCN and the Turra drug organization. See *id.*

This background testimony includes no coconspirator statements and no eyewitness testimony involving Mazzone or his codefendants on any predicate act or substantive act in the RICO indictment. See Response to Stephen Patrizio, at 5. The government acknowledges that the government could establish what happened at the 1995 meeting with the testimony of Dennis Virelli, Ralph Natale or Joseph Albanese, all cooperating witnesses. See Transcript at 12-13. Based on the background nature of the information that the government proposes Virelli may offer, the government also

acknowledges that no actual conflict exists. See *id.* at 18. Considering these facts, the Court concludes that no actual conflict of interest exists.

The government also alleges a potential conflict of interest in that Patrizio cannot effectively present a defense on Mazzone's behalf without attacking the credibility of Virelli, who places Mazzone at the center of a dispute which preceded the murder in which Mazzone is charged. See Government's Motion to Disqualify, at 16; Transcript at 19. At oral argument, Patrizio stated that if Virelli does testify, his testimony will have no impact on his defense. See Transcript at 31. He continued to state that Virelli is not a key witness, but, as the government notes, his testimony would involve background testimony. See *id.* Furthermore, Patrizio has obtained from Mazzone, a waiver of any potential conflict that may result from Patrizio's representation of Virelli and Mazzone. See Response of Stephen Patrizio, exhibit B. In addition, Patrizio engaged in a colloquy with Mazzone concerning his waiver of potential conflicts. See *id.* at 35-39. In his affidavit, Mazzone stated that he "waive[s] any right to allege either through present counsel, appellate counsel, or any future counsel in any proceedings, any assignment of error as it relates to this waiver and/or the limitation of my right to cross-examine Michael Virelli in the event that he becomes a witness in my case." When asked to identify any other information that Virelli could provide which

could result in a conflict, the government failed to do so. See Transcript at 19. As a result, because the government acknowledged that no actual conflict exists and has failed to demonstrate a serious potential for conflict, this Court concludes that the government has failed to overcome the presumption in favor of Mazzone's counsel of choice.

III. CONCLUSION

The Court thus concludes that there is no actual conflict and that the government has failed to illustrate possible conflicts that may arise. Therefore, the Court denies the government's Motion disqualify Stephen P. Patrizio from representing Mazzone based on a conflict of interest.

An appropriate Order follows.

