

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA)	
)	Criminal No. 7:03cr00049-2
v.)	
)	<u>MEMORANDUM OPINION</u>
AKOP CHICHYAN)	
a/k/a “Jack,”)	By: Samuel G. Wilson,
)	United States District Judge
Defendant.)	

This fourteen defendant criminal case is one of three federal prosecutions arising out of an undercover operation by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Defendants allegedly transported to California for sale more than 100 million untaxed cigarettes. The two other multi-defendant federal prosecutions are pending in the Central District of California. The government has requested that the court inquire into a possible conflict of interest of George Buehler, who represents a defendant in this case, Akop Chichyan, as well as Rene Khajha and Mikhael Kamar, defendants in the Central District of California. The court finds the representation problematic and disqualifies Buehler.

I.

The United States indicted a host of defendants in the Central District of California and the Western District of Virginia for conspiracy and underlying crimes stemming from the alleged trafficking of contraband cigarettes. The government alleges, among other claims, that several defendants, including Chichyan, bought contraband cigarettes from undercover government agents in Virginia and re-sold them to others in California, including Khajha and Kamar, allowing the co-conspirators to avoid

state cigarette taxes. Buehler represents three of the defendants: Khajha and Kamar in the Central District of California and Chichyan in the Western District of Virginia.

The United States has moved both this court and the District Court for the Central District of California to inquire into potential conflicts of interest resulting from Buehler's representation of the three defendants. The district court in California considered the motion and refused to disqualify Buehler. This court has held two separate hearings in order to sort out and fully apprise itself of the potential conflicts of interest, and Buehler and Chichyan have appeared before this court on both occasions. After the first appearance, Chichyan consulted with separate counsel, who purportedly fully informed him of possible conflicts of interest caused by multiple representations, and, at all times, Chichyan has expressed his steadfast desire to waive his right to conflict-free counsel.

II.

Unfortunately for all concerned, a district court must pass on the issue whether or not to allow a waiver of a conflict of interest by a criminal defendant not with the wisdom of hindsight after the trial has taken place, but in the murkier pre-trial context when relationships between parties are seen through a glass, darkly. The likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even for those thoroughly familiar with criminal trials.

Wheat v. United States, 486 U.S. 153, 162-63 (1988).

With those precepts in mind, Buehler's representation of defendants in overlapping prosecutions arising out of a single undercover operation when those defendants could possibly offer trial testimony against one another, receive leniency by cooperating, or if convicted receive varying role adjustments is simply too problematic. Under the circumstances, the court concludes that the potential for conflict is not imagined but real and touches matters that are not merely incidental but that are

material. In drawing that conclusion, the court in no way suggests that counsel has not proceeded in utmost good faith. Nevertheless, finding the risk of a Sixth Amendment intrusion and a mistrial unacceptably high, the court disqualifies Buehler.

III.

For the reasons stated, the court reluctantly but necessarily disqualifies Buehler, and members of his firm, from representing Chichyan in this case.

ENTER: June _____, 2004.

UNITED STATES DISTRICT JUDGE

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UNITED STATES OF AMERICA)	
)	Criminal No. 7:03cr00049-2
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)	<u>ORDER</u>
AKOP CHICHYAN)	
a/k/a "Jack,")	By: Samuel G. Wilson,
)	United States District Judge
Defendant.)	

In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that George Buehler is **DISQUALIFIED** from representing Akop Chichyan in this action.

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to Buehler and to the counsel of record for the United States.

ENTER: June _____, 2004.

UNITED STATES DISTRICT JUDGE