

IN DEFENSE OF HYBRID REPRESENTATION: THE SWORD TO WIELD AND THE SHIELD TO PROTECT

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The one place where a man ought to get a square deal is in a courtroom¹

INTRODUCTION

Hiding from view behind a concrete sign and wearing top-to-toe black clothing, Brandon Colbert waited.² Time passed, yet Colbert still waited.³ Eventually, he saw them: Carina Mancera, Luis Anya (her boyfriend), and their daughter Jenabel.⁴ Colbert stepped out from behind the sign, leveled his shotgun and fired, killing Carina “almost instantly.”⁵ Jenabel, fated to follow in her mother’s footsteps, died at the hospital a short while later.⁶ Only Anya escaped unharmed, but in a matter of a few short hours, he was left devastated by the loss of his family.⁷

Investigators linked Colbert to the crime via DNA found on the shotgun shell, and he was later charged with murder and attempted murder.⁸ In May 2017, Judge Jess Rodriquez pronounced Colbert incompetent to stand trial, ordering him to be admitted to a state hospital for treatment.⁹ Yet, in a strange turn of events, just five months later,

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¹ HARPER LEE, *TO KILL A MOCKINGBIRD* 253 (1960).

² James Queally, *A Mother and Her Child Were Gunned Down Walking Home From a Supermarket. A Suspect was Charged, but Mystery Remains*, L.A. TIMES (May 13, 2017, 11:00 AM), <http://www.latimes.com/local/lanow/la-me-long-beach-murder-mental-illness-20170512-story.html> [<https://perma.cc/9MER-XNSR>].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ James Queally, *Oklahoma Man Found Competent to Represent Himself in Killings of Long Beach Woman and Her Daughter*, L.A. TIMES (Oct. 12, 2017, 2:15 PM), <http://www.latimes.com/local/lanow/la-me-ln-brandon-colbert-competent-20171012-story.html> [<https://perma.cc/5TVA-U936>].

⁹ *Id.*

Judge Rodriguez ruled Colbert competent to stand trial.¹⁰ Somewhat more surprisingly, Judge Rodriguez also ruled that Colbert was competent enough to act as his own attorney.¹¹ This decision was all the more extraordinary given that it followed a series of bizarre court hearings over the course of the previous year, with Colbert denying involvement in the shootings and raising conspiracy theories as his means of defense.¹² In fact, Colbert claimed his victims were still alive and that he had been framed.¹³

This recent example highlights merely one of the many problems courts face when a pro se litigant stands before them, particularly a pro se defendant.¹⁴ As a result of the decision in *Faretta v. California*,¹⁵ defendants have a constitutional right to represent themselves without the assistance of counsel.¹⁶ The U.S. Supreme Court, however, offered little guidance on how this right would work in practice, leaving in its aftermath chaos at the trial level.¹⁷ As Joshua L. Howard put it:

In the wake of *Faretta*, the trial courts have been left with a myriad of problems stemming from self-representation including a defendant's lack of substantive knowledge, a defendant's lack of procedural and evidentiary expertise, potential for disrupted courtrooms, and an increased need for judicial assistance in securing the rights of pro se defendants.¹⁸

This leads to one central question: how is the judiciary to balance the constitutional rights of a pro se defendant and his right to be heard, with the competing demands

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See Jona Goldschmidt, *Autonomy and "Gray-Area" Pro Se Defendants: Ensuring Competence to Guarantee Freedom*, 6 NW. J.L. & SOC. POL'Y 130, 130 (2011) ("One of the fundamental questions facing American criminal courts is: what should be done with those persons who are legally competent to stand trial and who assert their constitutional right to represent themselves, but who have both a lack of legal knowledge and skill, and mental or emotional problems that limit their ability to represent themselves?"). For an interesting take on the difficulties pro se litigants present, see Jessica K. Phillips, *Not All Pro Se Litigants Are Created Equally: Examining the Need for New Pro Se Litigant Classifications Through the Lens Of The Sovereign Citizen Movement*, 29 GEO. J. LEGAL ETHICS 1221 (2016). Phillips's article explores the idea that pro se litigants should be classified into distinct groups to help lessen the burden on the judicial system. *Id.*

¹⁵ 422 U.S. 806 (1975).

¹⁶ *Id.* at 836.

¹⁷ John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After Faretta*, 6 SETON HALL CONST. L. J. 483, 485 (1996) ("As a consequence of *Faretta* there are 'trials' in courts throughout the country that make a mockery of justice and disrupt courtroom procedure.").

¹⁸ Joshua L. Howard, *Hybrid Representation and Standby Counsel: Let's Clear the Air for the Attorneys of South Carolina*, 52 S.C. L. REV. 851, 854 (2001).

of the judicial system, the right to a fair trial, and the constitutional protections afforded to the very same defendant?

While grappling with an answer to this question, one must consider the underlying motive behind a defendant's choice to proceed pro se at all, especially when the assistance of counsel is offered. One way to think about this is to imagine a courtroom. A courtroom is viewed from a myriad of perspectives: the judge, the jury, the lawyers, the deputies, the victim, the defendant.¹⁹ Looking from the bench affords a very different view to that of looking toward the bench. For a defendant, the courtroom can be an intimidating place: “[I]t is a theater in which the various . . . actors play out the guilt or innocence of the defendant for the trier of fact to assess.”²⁰ At the center of the stage is the defendant himself; he is observed, studied, judged.²¹ Every move the defendant makes can impact the outcome of the day.²²

In stark contrast to everyone else present, the defendant finds himself in a powerless position.²³ The procedures of the courtroom are—arguably—stacked against him. The prosecution usually has greater wealth, experience, and human resources.²⁴ The jury is, more often than not, comprised of persons different from the defendant's socioeconomic and racial background.²⁵ A “defendant walks into a courtroom where most, if not all, of the players presume that he has committed a crime. Although the law states that defendants are to be presumed innocent, the applicability of that presumption is questionable.”²⁶

In reality, this powerlessness—or perhaps the feeling of powerlessness—is not new to the defendant. Poverty is a common factor among defendants.²⁷ Nor is this a new development: “At every point in the history of criminal justice, the people arrested, prosecuted, and punished have been mainly the poor and the powerless.”²⁸ In 2015,

¹⁹ See STEVE BOGIRA, *COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE* 21 (2005) (discussing the various difficulties defendants face in the courtroom).

²⁰ Laurie L. Levenson, *Courtroom Demeanor: The Theater of the Courtroom*, 92 MINN. L. REV. 573, 573 (2008).

²¹ *Id.* at 575 (“While a defendant sits in court, exercising his Sixth Amendment right to confront the witnesses against him, he is at center stage and on display for the jury. Jurors scrutinize his every move, attaching deep importance to a quick glance or a passing remark . . .”).

²² *Id.* at 576 (“The impression that the defendant makes on the jury can thus have an enormous impact on the outcome of the trial.”).

²³ Ellen Yaroshefsky, *Balancing Victim's Rights and Vigorous Advocacy for the Defendant*, 1989 ANN. SURV. AM. L. 135, 143.

²⁴ *Id.*

²⁵ See *id.*

²⁶ *Id.*

²⁷ See generally Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, PRISON POL'Y INITIATIVE (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html> [<https://perma.cc/3MGM-Q8YY>].

²⁸ SAMUEL WALKER, *POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE* 8 (1998).

prior to their incarceration, prisoners had a median annual income of \$19,185.²⁹ This was forty-one percent less than people of the same age who were not incarcerated.³⁰ Racial disparity also plays its part: in 2014, those who identified as African Americans “constituted 2.3 million, or 34%, of the total 6.8 million correctional population.”³¹ African Americans are also far more likely to be incarcerated—five times more likely than those who identify as Caucasian.³² When faced with such realities, perhaps there is little wonder that many defendants choose to go it alone. Why change the habit of a lifetime?

Returning to the central question posited earlier, this Note suggests that hybrid representation is a potential workable solution to the judiciary in reaching that all-important balance between the constitutional rights of the pro se defendant and the competing demands of the judicial system. As defined in more detail below, hybrid representation is both representation and self-representation at the same time—a “co-counsel” approach.³³ A court can use this model as a shield to protect against the inherent problems of pro se defendants, while also providing a sword to that very same defendant to face the challenges of the judiciary. In “arming” both sides, better advocacy and better outcomes are a more likely result.

Part I of this Note briefly examines the evolution of the Sixth Amendment and the right to self-representation, surveying the *Faretta* decision to include both the majority and the dissenting opinions. Part II explores how hybrid representation is a potential sword for the serious pro se defendant to wield against the charges brought against him. More generally in this section, I consider the advantages of such a model. Part III examines the opposite side of the adversarial process: how the court can use hybrid representation as a shield against the pro se defendant who chooses to disrupt the court to, for example, propound bizarre theories or delay the judicial process by superfluous briefs, motions, and filings. Here, more generally, I note the potential protective measures of hybrid representation. Finally, Part IV offers potential considerations federal judges should acknowledge when faced with a defendant who wishes to proceed using hybrid representation.³⁴

²⁹ Rabuy & Kopf, *supra* note 27.

³⁰ *Id.*

³¹ *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/criminal-justice-fact-sheet> [<https://perma.cc/7B66-FAUA>] (last visited Apr. 11, 2019). The U.S. Department of Justice breaks down this 6.8 million into those in jail and prison—2.2 million—and those who are either on probation or parole—4.5 million. See Lauren E. Glaze & Danielle Kaebler, *Correctional Populations in the United States, 2013*, U.S. DEP’T JUST., NCJ 248479 (Dec. 2014), <https://www.bjs.gov/content/pub/pdf/cpus13.pdf> [<https://perma.cc/Q7DN-3VJG>].

³² *Criminal Justice Fact Sheet*, *supra* note 31.

³³ Joseph A. Colquitt, *Hybrid Representation: Standing the Two-Sided Coin On Its Edge*, 38 WAKE FOREST L. REV. 55, 74 (2003).

³⁴ This Note only considers hybrid representation as a means for indigent defendants, not non-indigent defendants who, due to their income status, do not qualify for court-appointed counsel. Such a discussion is beyond the scope of this Note.

I. THE EVOLUTION OF THE SIXTH AMENDMENT AND THE
RIGHT TO SELF-REPRESENTATION

The Sixth Amendment to the Constitution reads in part that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.”³⁵ This wording seems absolute, straightforward, and irrefutable.³⁶ But Supreme Court jurisprudence suggests the very opposite: the understanding of the Sixth Amendment has developed, grown, and changed over the years.³⁷ In fact, the Court has adopted both “expansive and constrictive conceptions of the right to counsel” at different times in its history, thereby demonstrating a continual tension that exists within the Amendment itself.³⁸

Beginning at a decisive moment, in the seminal case of *Gideon v. Wainwright*,³⁹ the Court held that the assistance of counsel was a fundamental right and enforceable against the states under the Fourteenth Amendment.⁴⁰ Just twelve years later, in *Faretta v. California*,⁴¹ the Court declared that the right to self-representation was also a fundamental right for all criminal defendants, if they voluntarily and intelligently elected to do so.⁴²

The *Faretta* Court’s analysis was thorough, with the majority detailing the history and right to self-representation back to its English roots.⁴³ The majority “posited that

³⁵ U.S. CONST. amend. VI.

³⁶ *But see* Note, “*A Prison is a Prison*”: *Mandatory Immigration Detention and the Sixth Amendment Right to Counsel*, 129 HARV. L. REV. 522, 522 (2015) (highlighting “longstanding Supreme Court precedent . . . [that] criminal defendants are not entitled to invoke Sixth Amendment’s guarantee of the right to counsel . . . [for] minor charges that do not carry the threat of jail time”).

³⁷ *See id.*

³⁸ *Id.* at 525 (quoting Alice Clapman, *Petty Offenses, Drastic Consequences: Toward a Sixth Amendment Right to Counsel for Noncitizen Defendants Facing Deportation*, 33 CARDOZO L. REV. 585, 599 (2011)).

³⁹ 372 U.S. 335 (1963).

⁴⁰ *Id.* at 342 (“We accept *Betts v. Brady*’s assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment. We think the Court in *Betts* was wrong, however, in concluding that the Sixth Amendment’s guarantee of counsel is not one of these fundamental rights.”). The Court also reaffirmed the essential right to counsel in America:

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Id. at 344.

⁴¹ 422 U.S. 806 (1975).

⁴² Decker, *supra* note 17, at 492.

⁴³ *Faretta*, 422 U.S. at 821.

although the Sixth Amendment does not expressly grant the right to self-representation, it is necessarily ‘implied’ by the amendment’s ‘structure.’”⁴⁴ Further, the Court found that counsel could not be forced upon a defendant who wanted to self-represent.⁴⁵ By doing so, a court would violate the language of the Sixth Amendment, particularly in its use of the word “assistance.”⁴⁶

The majority supported its holding with the fundamental notions of freedom and personal choice.⁴⁷ The Court noted that because it was the defendant who would bear the “personal consequences of a conviction,” it was his choice as to whether agreeing to counsel would be an advantage or not.⁴⁸ Continuing on, the Court stated “[a]nd although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of ‘that respect for the individual which is the lifeblood of the law.’”⁴⁹

The *Faretta* decision was not unanimous. Chief Justice Burger dissented alongside Justices Blackmun and Rehnquist.⁵⁰ The Chief Justice began with the premise that “there is nothing desirable or useful in permitting every accused person, even the most uneducated and inexperienced, to insist upon conducting his own defense to criminal charges.”⁵¹ Countering the majority’s expression of freedom and personal choice, he focused on the idea that even a skilled and knowledgeable defendant would face conviction because of his lack of legal understanding and inability of knowing how to prove his innocence.⁵² Chief Justice Burger continued: “[i]f th[is] be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.”⁵³ He finished by highlighting the impact of the majority’s holding on the

⁴⁴ Decker, *supra* note 17, at 494 (quoting *Faretta*, 422 U.S. at 819).

⁴⁵ *Faretta*, 422 U.S. at 820.

⁴⁶ *Id.* (“The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment.”).

⁴⁷ *Id.* at 834.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 836, 846 (Burger, C.J., Blackmun, J., Rehnquist, J., dissenting).

⁵¹ *Id.* at 836 (Burger, C.J., dissenting).

⁵² *Id.* at 838 (“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.” (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932))).

⁵³ *Id.* at 839.

criminal justice system, noting that the congestion of the courts would only increase and, as a result, the “quality of justice” would suffer.⁵⁴

In his dissent, Justice Blackmun expounded further upon Chief Justice Burger’s remarks but ended by commenting on the procedural problems that the majority’s decision would cause.⁵⁵ He listed several questions that he felt the majority had left open, including the question of when a defendant actually needed to decide whether he would proceed pro se or not, as well as whether a defendant could switch his choice mid-trial.⁵⁶ To finish, Justice Blackmun wrote what has become a most infamous line: “If there be any truth to the old proverb that ‘one who is his own lawyer has a fool for a client,’ the Court by its opinion today now bestows a *constitutional* right on one to make a fool of himself.”⁵⁷

Many of the concerns of the dissenting Justices appear to have come to fruition since the *Faretta* decision in 1975.⁵⁸ More importantly, however, it has become clear that the *Faretta* decision, when combined with *Gideon*, actually leaves criminal defendants with a far more serious dilemma: the “absolute choice . . . between self-representation or representation by counsel.”⁵⁹ As the Connecticut Supreme Court put it: “[t]he right to counsel and the right to self-representation present mutually exclusive alternatives. A criminal defendant has a constitutionally protected interest in each, but since the two rights cannot be executed simultaneously, a defendant must choose between them.”⁶⁰

Perhaps the Connecticut Supreme Court was a little stringent in its evaluation. There is a middle ground between the two exclusive alternatives: the first of these is standby counsel; a second is hybrid representation.⁶¹ Often, the boundary between

⁵⁴ *Id.* at 845.

⁵⁵ *Id.* at 846 (Blackmun, J., dissenting). Both Chief Justice Burger and Justice Rehnquist joined Justice Blackmun’s dissent.

⁵⁶ *Id.* at 852.

⁵⁷ *Id.*

⁵⁸ Notably, the Justices’ concerns are present in our society for many more reasons than criminal defendants proceeding pro se. For the current status of the federal judiciary’s caseload, see UNITED STATES COURTS, FEDERAL JUDICIAL CASELOAD STATISTICS (2017), <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2017> [<https://perma.cc/5H4B-NLHU>] (last visited Apr. 11, 2019).

⁵⁹ W. Michael Greene, Note, *Criminal Law—Hybrid Representation—An Accused Has No Constitutional Right in Texas to Representation Partially Pro Se and Partially by Counsel*, 9 TEX. TECH L. REV. 323, 328 (1977).

⁶⁰ *State v. Jordan*, 305 Conn. 1, 13 (2012).

⁶¹ See Howard, *supra* note 18, at 852 (“Still, pro se representation’s long history of creating difficulties has prompted courts across the country to devise creative measures such as standby counsel and hybrid representation to handle these problems.”); see also Colquitt, *supra* note 33, at 63 (“[H]ybrid representation [i]s a viable middle ground between representation by counsel and self-representation.”). Cf. Anne Bowen Poulin, *The Role of Standby Counsel in Criminal Cases: In the Twilight Zone of the Criminal Justice System*, 75 N.Y.U. L. REV. 676 (2000). In her article, Poulin focuses on standby counsel, but she offers an interesting note applicable to the

these two middle-ground alternatives is blurred both by courts and critics alike, further problematizing an already troubled area of trial practice.⁶² But, if a clear delineation between these two options was elucidated, criminal defendants would be afforded two further choices in their decision of how to proceed. Moreover, courts would be afforded a further option to prescribe: hybrid representation. Additionally, when considering the *Faretta* opinions—the majority and the dissents—hybrid representation addresses many of the concerns noted. For example, while maintaining the freedom of personal choice (as the majority focuses on), the defendant is not left to bungle his own defense because he has the aid of counsel (a concern of the dissenters).

Many may assert that the latter part of this example is resolved by that of standby counsel. Acknowledging the problems that some criminal defendants present in their deliberate disruption of courtroom proceedings, the *Faretta* Court noted that: “a State may—even over objection by the accused—appoint a ‘standby counsel’ to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant’s self-representation is necessary.”⁶³ However, standby counsel is a rather bleak middle ground with many significant problems of its own.⁶⁴

Hybrid representation, in contrast, differs considerably from standby counsel; as noted above, it is both representation by counsel and self-representation *simultaneously*.⁶⁵ It is the sharing of activities between counsel and the defendant.⁶⁶ “[I]t constitutes a ‘co-counsel’ model which involves actual assistance of the attorney in the trial process. . . . [I]n hybrid cases, the accused and the attorney share the role of counsel, although the defendant may well take the lead in the case.”⁶⁷ The difference to standby counsel, then, is what counsel is permitted to do: as standby counsel, a lawyer is not allowed to actively represent the defendant; in a hybrid representation relationship, counsel can participate in opening and closing arguments, jury selection, examination of witnesses, and other parts of the trial process too.⁶⁸

Unfortunately, the modern-day opinion of hybrid representation is less than favorable: it is “neither required by law nor favored by courts.”⁶⁹ Some critics concede

discussion here: “[C]ases reveal that self-representation tends to drift toward a hybrid representation, which both amplifies the ambiguity of standby counsel’s role and signals the defendant’s discomfort with pro se representation.” *Id.* at 687.

⁶² See Jona Goldschmidt, *Judging the Effectiveness of Standby Counsel: Are They Phone Psychics? Theatrical Understudies? Or Both?*, 24 S. CAL. REV. L. & SOC. JUST. 133, 139 (detailing the proposition that both “advisory” and “hybrid” designations should be eliminated due to the confusion and error introduced into the concept of standby counsel).

⁶³ *Faretta v. California*, 422 U.S. 806, 834–35 n.46 (1975).

⁶⁴ See, e.g., *infra* notes 103, 108–09.

⁶⁵ Colquitt, *supra* note 33, at 74.

⁶⁶ *Id.*

⁶⁷ *Id.* at 74–75 (internal citations omitted).

⁶⁸ *Id.* at 75.

⁶⁹ *Id.* at 58.

that it is a creative solution to the problem that pro se defendants present, but then go on to discredit the model as causing more problems than it portends to solve.⁷⁰ Others, although admittedly few, consider it as a valid alternative to standby counsel and something that should be available to criminal defendants.⁷¹ Hybrid representation, while “not constitutionally guaranteed . . . is constitutionally permissible.”⁷² Ultimately, however, it is left to the trial court’s discretion whether to make such an option available.⁷³

Although not a perfect answer, the duality of hybrid representation as both a sword and shield entitles this alternative to a more positive and understanding reception. As a sword, a defendant can wield the model in pursuit of his cause,⁷⁴ as a shield, a court can maintain justice and order.

II. A DEFENDANT’S WEAPON OF CHOICE: THE SWORD OF HYBRID REPRESENTATION

Thus far, the states have varied in their treatment of hybrid representation.⁷⁵ Texas, for example, has explicitly held that there is no constitutional right to hybrid representation.⁷⁶ It is not alone; courts across America have uniformly rejected it.⁷⁷ However, there are a few lone stars who have allowed some form of the model in their courtrooms.⁷⁸ Alongside the several advantages of the model—such as “fairness, efficiency, and even the efficacy of the trial process”⁷⁹—hybrid representation should not be dismissed out of hand just yet.

⁷⁰ Howard, *supra* note 18, at 852.

⁷¹ See Colquitt, *supra* note 33, at 127.

⁷² Decker, *supra* note 17, at 539.

⁷³ Colquitt, *supra* note 33, at 76, 77 (“Federal judges can, and sometimes do, permit hybrid representation. Generally, the issue is left to the discretion of federal trial judges.”).

⁷⁴ Cf. Meghan H. Morgan, *Standby Me: Self-Representation and Standby Counsel in a Capital Case*, 16 CAP. DEF. J. 367 (2004). Morgan notes that proponents of the use of hybrid representation argue that the jury is presented with a “humanized pro se defendant who would otherwise not have taken the stand.” *Id.* at 378. This is a powerful draw to the sword for a defendant.

⁷⁵ See J. Allison DeFoor II & Glen H. Mitchell, *Hybrid Representation: An Analysis of a Criminal Defendant’s Right to Participate as Co-Counsel at Trial*, 10 STETSON L. REV. 191, 197 (1981).

⁷⁶ Greene, *supra* note 59, at 323. Other states have also held the same, such as Pennsylvania. See, e.g., Brittaney N. Eshbach, *The Interplay of Pro Se Defendants, Standby Counsel, and Ineffective Assistance of Standby Counsel Claims: An Examination of Current Law and a Suggestion for Reform in Pennsylvania*, 121 PENN. L. REV. 875, 897 (2017).

⁷⁷ See Goldschmidt, *supra* note 14, at 170; see also *Parren v. State*, 523 A.2d 597, 599 (Md. 1987) (“There can be but one captain of the ship, and it is he alone who must assume responsibility for its passage, whether it safely reaches the destination charted or founders on a reef.”).

⁷⁸ See *infra* note 195 and accompanying text.

⁷⁹ Colquitt, *supra* note 33, at 58.

In *United States v. Kimmel*,⁸⁰ the Ninth Circuit found the district court below had the authority to allow a hybrid form of representation.⁸¹ James Kimmel, appealing his convictions for distribution and the conspiracy to distribute drugs, elected to proceed pro se.⁸² The trial court, however, provided standby counsel to assist Kimmel in building his defense.⁸³ Mr. Bronson, the advisor, performed more than the traditional functions of standby counsel; he “counsel[ed] Kimmel on technical points, he actively argued before the district court and, by the end of the proceedings, emerged as the dominant spokesman for the defense.”⁸⁴ The Ninth Circuit recognized that Mr. Bronson had not “assumed all the duties of a full-fledged counsel.”⁸⁵ For example, Kimmel presented his own defense theory questioning the court’s jurisdiction by arguing that he was a citizen of the sovereign nation of Hawaii.⁸⁶

On appeal, the Government argued that there was no need for Kimmel to formally waive counsel because in this case, the joining of the lawyer and the defense ensured “the accused receive[d] all the benefits of representation”⁸⁷ The Ninth Circuit disagreed.⁸⁸ As long as the defendant waived counsel by the *Faretta* requirements, he could proceed with a “hybrid” form of standby-counsel.⁸⁹ The court opined: “The district court has the authority to allow, if the accused desires, a hybrid form of representation in which the accused assumes some of the lawyer’s functions”⁹⁰ However, the Ninth Circuit went on to state that, although they questioned “the efficiency of hybrid arrangements, [it is] the district court [that] suffers the major inconvenience and can usually best weigh the costs and benefits.”⁹¹

⁸⁰ 672 F.2d 720 (9th Cir. 1982).

⁸¹ *Id.* at 721.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* For further discussion on sovereign citizen theories expounded by many defendants see Francis X. Sullivan, *The “Usurping Octopus of Jurisdictional Authority”: The Legal Theories of the Sovereign Citizen Movement*, 1999 WIS. L. REV. 785. Sullivan provides an extended description of the Sovereign Citizen movement to include its history and the current legal arguments it propounds in the courtroom. See also James Erickson Evans, Note, *The “Flesh and Blood” Defense*, 53 WM. & MARY L. REV. 1361 (2012).

⁸⁷ *Kimmel*, 672 F.2d at 721.

⁸⁸ *Id.* (holding that because Kimmel had a constitutional right “to have his own lawyer perform core functions,” he had to “knowingly and intelligently waive that right”).

⁸⁹ Kenneth R. Sogabe, Note, *Exercising the Right to Self-Representation in United States v. Farhad: Issues in Waiving a Criminal Defendant’s Sixth Amendment Right to Counsel*, 30 GOLDEN GATE U. L. REV. 129, 147 (2000) (discussing *United States v. Kimmel* in his note and exploring the effect of the Sixth Amendment’s right to waive counsel on a defendant’s Fifth Amendment right to a fair trial).

⁹⁰ *Kimmel*, 672 F.2d at 721.

⁹¹ *Id.*

United States v. Kimmel demonstrates that a hybrid form of representation, of some kind, is permissible in some courts.⁹² The case also shows a defendant's desire to exert some control over the litigation process.⁹³ This is a result of the power imbalance both within the courtroom and the judicial process that the defendant wishes to fight against.⁹⁴ It is this desire that often leaves a defendant stuck for choice when choosing whether to go it alone or opt for counsel, the latter often a court-appointed attorney.⁹⁵

Hybrid representation thereby provides an advantageous option to the defendant.⁹⁶ This is particularly the case when a pro se defendant wishes to use the courtroom as a means of actually defending the claims against him, rather than propound incomprehensible theories or disrupt judicial proceedings.⁹⁷ Several advantages present themselves: first, that the defendant often knows the facts of the case better than anyone else; second, that the model can be viewed as a form of compromise; and third, that it could actually lead to better outcomes.

A. *The Defendant's Knowledge*

The defendant often knows the facts of the case better than anyone else in the courtroom.⁹⁸ As a result, he is the best positioned to present those facts at trial.⁹⁹ Admittedly, this same advantage is present if a defendant chooses to proceed pro se,¹⁰⁰ however, in such a situation, any advantage is diminished by his lack of legal knowledge. In utilizing hybrid representation instead, the defendant maintains, if not bolsters, his advantage; the co-counsel attorney can step in where familiarity with

⁹² *Id.*; Marc C. McAllister, *Forfeiture-by-Wrongdoing and Faretta: Reaffirming Counsel's Vital Role When Defendants Manipulate Competing Sixth Amendment Representation Rights*, 44 HOFSTRA L. REV. 1227, 1235–36 (2016).

⁹³ *See Kimmel*, 672 F.2d at 721.

⁹⁴ *See supra* notes 19–32 and accompanying text.

⁹⁵ *See Greene, supra* note 59, at 332–33.

⁹⁶ Howard, *supra* note 18, at 862. Courts also benefit from hybrid representation. *See infra* Part III.

⁹⁷ *See, e.g., Phillips, supra* note 14, at 1222 (exploring pro se litigants, particularly Sovereign Citizens, who use the courtroom as a “forum of protest”). Although discussing pro se litigants, many of Phillips's ideas are applicable to pro se defendants.

⁹⁸ Howard, *supra* note 18, at 862.

⁹⁹ *Id. See also Colquitt, supra* note 33, at 121 (“Special circumstances may also make hybrid representation the better choice for some defendants. Such circumstances arise, for example, when a defendant has special knowledge that may better qualify the defendant to conduct particular portions of the trial. . . . [I]n *Faretta*, the Supreme Court conceded that ‘it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense.’” (internal citations omitted)).

¹⁰⁰ Howard, *supra* note 18, at 863.

court procedures, the rules of evidence, or substantive elements of the law are required.¹⁰¹ Because of this combined approach, the defendant is afforded an opportunity to present his knowledge of the facts in the appropriate way and within the rules.¹⁰²

One could argue that this advantage is also provided by standby counsel. However, as seen in *Kimmel*, courts are struggling to define just how far standby counsel can be involved before they impinge upon a defendant's right to self-representation.¹⁰³ Hybrid representation can work around this struggle by clearly delineating from the outset what role the co-counsel will play and what role the defendant will play.¹⁰⁴ A judge could easily prescribe such boundaries.¹⁰⁵

A further rebuttal propounded against the advantage of a defendant proceeding via a hybrid representation model is that the use of this option only leads to confusion, ultimately proving detrimental to the defendant himself.¹⁰⁶ Marie Williams comments that hybrid representation confuses both the judge and the jury.¹⁰⁷ She notes that a judge "is [left] uncertain [as to] how much he should permit standby counsel to participate, knowing that too much interference by standby counsel could result in an overturned conviction."¹⁰⁸ Furthermore, it is the jury who is the most vulnerable to confusion by the hybrid representation model:

Very few jurors realize that a defendant has a right to represent himself, nor do they understand the role of standby counsel. Not knowing what exactly is going on, other than that the trial seems to be a confusing mess, it is highly likely that a jury will draw a negative inference against the defendant from the fact that he is presenting parts of his own case.¹⁰⁹

Williams raises valid concerns. But she also admits that her example of *McKaskle v. Wiggins*,¹¹⁰ which she relies on, does not use the term "hybrid representation."¹¹¹

¹⁰¹ Marie Higgins Williams, Comment, *The Pro Se Criminal Defendant, Standby Counsel, and the Judge: A Proposal for Better-Defined Roles*, 71 U. COLO. L. REV. 789, 805 (2000).

¹⁰² *Id.* ("Such advice helps the defendant exercise his right of self-representation more effectively and begins to level the playing field in the courtroom."). Williams discusses this benefit to defendants who are appointed with standby counsel, but the argument holds equal weight when considered in light of hybrid representation.

¹⁰³ See, e.g., *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984).

¹⁰⁴ See Colquitt, *supra* note 33, at 108–09.

¹⁰⁵ See *id.*

¹⁰⁶ Williams, *supra* note 101, at 808.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ 465 U.S. 168 (1984).

¹¹¹ Williams, *supra* note 101, at 808 n.115.

Instead, the case shows how “the interaction between the defendant and standby counsel is a prime example of how problematic hybrid representation can be.”¹¹²

There is room to disagree. Indeed, the proper implementation of hybrid representation may very well soothe the worries Williams presents. For example, a judge faces the potential for an overturned conviction when he appoints standby counsel, whether the attorney interferes too much or too little.¹¹³ By allowing hybrid representation, the court can clearly delineate the attorney’s role and the defendant’s role, reducing the potential for an appeal based on such interference or lack thereof. Moreover, a judge can explain hybrid representation to a jury, thereby resolving most, if not all confusion surrounding the model.¹¹⁴ We place significant faith in juries—their role provides one of the fundamental foundations of our legal justice system.¹¹⁵ It is thus more than fair to presume that juries are capable of understanding the concept of hybrid representation.

B. A Means of Compromise

The middle ground between the two Sixth Amendment extremes of the right to counsel and the right to self-representation is hazy at best. Hybrid representation can help clear the fog. “A defendant may be aware of what he loses when he chooses to proceed pro se, but he might prefer that loss over the complete surrender of control. Hybrid representation thus allows the defendant to compromise.”¹¹⁶

A rebuttal to this argument for compromise is that it is not for the court to “fulfill every desire of the defendant, especially one that has the potential to create confusion.”¹¹⁷ Joshua notes that the judicial system, in particular the trial courts, provide a structural framework of courtroom proceedings that the defendant must work within.¹¹⁸ His argument has merit, but it also reduces the rights of the defendant—rights that are clearly respected by the Supreme Court decisions this very discussion is based on.¹¹⁹

¹¹² *Id.*

¹¹³ See Goldschmidt, *supra* note 62, at 133.

¹¹⁴ See Colquitt, *supra* note 33, at 114.

¹¹⁵ Andrew Guthrie Ferguson, *Jury Instructions as Constitutional Education*, 84 U. COLO. L. REV. 233, 233 (2013) (discussing how “[j]uries are central to the constitutional structure of America” and the value of educating jurors about the role they play within the civic world to inspire increased engagement).

¹¹⁶ Howard, *supra* note 18, at 862.

¹¹⁷ *Id.* at 863. Howard raises supporting arguments for hybrid representation but then later posits rebuttals, such as the above, to show how hybrid representation is not persuasive overall. *Id.* at 859–65.

¹¹⁸ *Id.*

¹¹⁹ See, e.g., *Faretta v. California*, 422 U.S. 806, 834 (1975) (commenting that a defendant’s “choice must be honored out of ‘that respect for the individual which is the lifeblood of the law’” (internal citations omitted)).

Furthermore, it is within the trial court's discretion to permit hybrid representation.¹²⁰ The judicial system allows for such a choice within the structural framework that it provides courts to follow.

Hybrid representation fulfills the advantage of compromise for the defendant as it provides a balance—both the defendant and the attorney can choose a mutually agreed point along the spectrum of involvement.¹²¹ Additionally, the compromise allows a defendant to pull back some control—or power—over his defense within the courtroom.¹²² As a result, a defendant may be deterred from disruption.

C. A Working System

Another advantage of allowing pro se defendants to wield the sword of hybrid representation is that it may actually create a system that works. The current system leaves much to be desired—“[t]he legal system we have created for *pro se* defendants is inherently contradictory and fails to achieve any of its stated goals.”¹²³ One critic goes so far as to say that the right of defendants to proceed pro se is actually a right to “crash and burn.”¹²⁴

Paradoxically, however, the fact that pro se defendants, and pro se litigants generally are highly unlikely to win their cases does not seem to act as a deterrent. Instead, pro se cases take up a large amount of docket space. For example, at the appellate level, “[a]ppeals by pro se litigants . . . constituted 51 percent of filings. . . .”¹²⁵ Additionally, “[f]orty-six percent of all filings by pro se litigants were prisoner petitioners. Eighty-nine percent of the 13,900 prisoner petitions received were filed pro se, as were 84 percent of original proceedings and miscellaneous applications. . . .”¹²⁶

In addition to this is the court's distaste for pro se cases. Some attorneys and judges consider pro se litigants and defendants “as aberrations to the norm”¹²⁷ They view them as “a nuisance in need of reform or removal.”¹²⁸ However, as a result

¹²⁰ Colquitt, *supra* note 33, at 102.

¹²¹ See Judith Welcom, *Assistance of Counsel: A Right to Hybrid Representation*, 57 B.U. L. REV. 570, 570 (1977).

¹²² *Id.* The defendant has control of both the means of representation and the presentation of his defense. *Id.*

¹²³ See Jonathan Wood, *Persuasion, Paternalism, or Withdrawal: The Ethical Obligations to the Religious Wishes of Nidal Malik Hasan*, 27 GEO. J. LEGAL ETHICS 967, 985 (2014).

¹²⁴ See Tiffany Frigenti, *Flying Solo Without a License: The Right of Pro Se Defendants to Crash and Burn*, 28 TOURO L. REV. 1019 (2012).

¹²⁵ *U.S. Courts of Appeals—Judicial Business 2015*, U.S. CTS., <http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2015> [<https://perma.cc/62M2-2WBB>] (last visited Apr. 11, 2019).

¹²⁶ *Id.*

¹²⁷ Phillips, *supra* note 14, at 1227.

¹²⁸ *Id.* at 1221.

of the *Faretta* decision,¹²⁹ proceeding pro se is now an integral part of the justice system, no matter what issues it may present.¹³⁰ Hybrid representation could be the helping hand needed under the current circumstances.

Alongside the advantages considered above, there are undoubtedly more. What is demonstrated, however, is that hybrid representation has the potential to be used effectively, particularly by defendants who wish to maintain some control and strike the right balance between their two Sixth Amendment rights. Furthermore, hybrid representation provides a potential solution to the difficulties pro se litigants and, surprisingly, standby counsel, present. Although it can be used as a sword, hybrid representation can also shield the court. It is to this angle that the following discussion now turns.

III. HYBRID REPRESENTATION AS A SHIELD: THE COURT'S WAY OF PROTECTING ITSELF

In the case of Brandon Colbert,¹³¹ Judge Rodriquez ultimately found Brandon Colbert mentally competent to stand trial and act as his own attorney.¹³² Although faced with Colbert's background of mental and emotional issues, Judge Rodriquez had no choice but to allow the defendant to assert his constitutional right to self-represent after waiving the right to counsel "voluntarily, knowingly, and intelligently."¹³³ It is in these situations that a court could adopt hybrid representation as a shield, protecting both the judicial process and defendants themselves.¹³⁴ In light of what hybrid representation offers as a safeguard, it becomes more obvious that such a solution holds real practical possibilities in the courtroom.

A. *Defeating Changing Minds*

One way a court can use hybrid representation as a source of protection is when a defendant is particularly capricious. One of the shortcomings of the *Faretta* decision was that it failed to determine the course of action to take when faced with a defendant who fails to choose between counsel or self-representation.¹³⁵ This

¹²⁹ *Faretta v. California*, 422 U.S. 806, 836 (1975).

¹³⁰ Howard, *supra* note 18, at 873.

¹³¹ See *supra* notes 2–13 and accompanying text.

¹³² Queally, *supra* note 8.

¹³³ Williams, *supra* note 101, at 805; Queally, *supra* note 8.

¹³⁴ See Williams, *supra* note 101, at 805–06 (commenting that the imposition of standby counsel in a situation where the defendant is of "questionable mental . . . fortitude" allows a judge to ensure a fair trial). Many of Williams's arguments for standby counsel are equally applicable to hybrid representation.

¹³⁵ See McAllister, *supra* note 92, at 1235; see also *United States v. Ductan*, 800 F.3d 642, 649 (4th Cir. 2015) ("[T]he right to self-representation is inescapably in tension with the right to counsel. This is so because invocation of the former 'poses a peculiar problem: it requires that the defendant waive his right to counsel.'" (quoting *Fields v. Murray*, 49 F.3d 1024, 1028 (4th Cir. 1995))).

prevarication has serious implications for the Court, particularly in consideration of the Speedy Trial Act.¹³⁶ Moreover, those defendants who do not make the choice are often difficult, unruly, disruptive in nature, and in some extreme cases, physically violent towards others in the courtroom.¹³⁷

There are a multitude of reasons why a defendant chooses to proceed pro se, ranging from a lack of respect for the court to defiant acts as a means of getting their way.¹³⁸ These issues are only further exacerbated by the “insurmountable barriers” a pro se defendant faces.¹³⁹ For example, pro se defendants are unlikely to understand the pleas that may be available to them against the charges they face.¹⁴⁰ They may not know the elements of the crime that they need to try and disprove, or comprehend the severity of the possible punishment they face.¹⁴¹

In such cases, it is common for the trial judge to either step in and offer guidance, or in the other extreme, do nothing at all.¹⁴² The latter can pose a significant problem, but courts consistently state that such defendants “should receive no greater rights or privileges than counsel would have representing him.”¹⁴³ The judge should be impartial and not provide assistance to the defendant who elected to proceed pro se.¹⁴⁴ This lack of involvement can lead to a whole host of evidentiary and procedural errors by the defendant.¹⁴⁵ A trial judge’s involvement, however, also poses difficulties particularly because of the importance that “the defendant and the prosecuting attorney both have an impartial tribunal before which they can present their cases.”¹⁴⁶ A judge needs to “avoid . . . conflicts of interest that may arise if he is supposed to make decisions neutrally while simultaneously informing the defendant of the law.”¹⁴⁷

¹³⁶ 18 U.S.C. § 3161(a) (2012) (“In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.”); McAllister, *supra* note 92, at 1229.

¹³⁷ See, e.g., *United States v. Leggett*, 162 F.3d 237, 240 (3d Cir. 1998) (“Upon seeing Gardner [assigned counsel] in the courtroom, Leggett lunged at his attorney and punched him in the head, knocking him to the ground. While Gardner lay, supine, Leggett straddled him and began to choke, scratch and spit on him. . . . Gardner was taken to a hospital by emergency medical personnel and treated for cuts, scratches and bruises.”). Leggett’s conviction and sentence were upheld and he was found to have forfeited his right to counsel at sentencing due to his physical attack on Gardner. *Id.*

¹³⁸ Decker, *supra* note 17, at 485.

¹³⁹ Greene, *supra* note 59, at 332.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* See also Paul Marcus, *The Faretta Principle: Self Representation Versus the Right to Counsel*, 30 AM. J. COMP. L. 551, 569 (1982) (Supp. 1981).

¹⁴³ Marcus, *supra* note 142, at 569 (internal citation omitted).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Williams, *supra* note 101, at 806.

¹⁴⁷ *Id.*

Some legal professionals, such as Professor Marc McAllister, have suggested solutions to such obstructionist behavior, proposing that “a court faced with an unruly defendant should . . . be permitted to make a factual finding that the defendant is intentionally refusing to make a clear choice between the right to counsel and the right to self-representation.”¹⁴⁸ As a consequence of this finding, the court has, within its discretion, “to make the Sixth Amendment election for the defendant, which should ordinarily be representation by counsel.”¹⁴⁹ This argument is persuasive. It presents a potential solution to the issue of the judge’s involvement in the trial. But what if the defendant had the option to work as co-counsel? Could the court use this as a shield to protect itself from difficult defendants?

Hybrid representation also provides a solution to unruly defendants, judges’ assistance in trials, and the numerous hurdles pro se litigants face. Concentrating on the last of these issues, a co-counsel could explain the procedural and evidentiary rules as well as explain the substantive nature of the charges.¹⁵⁰ This would reduce the risk of impartiality (and involvement) by the judge too.¹⁵¹ As Williams notes, these advantages are also present in the use of standby counsel.¹⁵² This is not a disagreeable proposition at all, as many claims that apply to the advantages of hybrid representation are also true of standby counsel. However, perhaps the biggest positive benefit of hybrid representation is the potential reduction it could have of disruptive and unruly defendants because of the choice they have been offered—to work alongside an attorney as co-counsel.¹⁵³

B. Maintaining a Court’s Control

A second use of hybrid representation as a shield is that it can ensure the court maintains control.¹⁵⁴ The idea of control has been considered as an argument against hybrid representation: “When counsel are involved, docket and trial administration are easier; pro se cases make docket and trial management more difficult; and, in the view of many appellate courts, hybrid cases place even greater demands on trial judges.”¹⁵⁵ However, if considering the inverse of this negative viewpoint of hybrid representation, there is an argument that in the long run, a court will have more control.¹⁵⁶

¹⁴⁸ McAllister, *supra* note 92, at 1231.

¹⁴⁹ *Id.*

¹⁵⁰ Williams, *supra* note 101, at 806.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *See, e.g.,* Marcus, *supra* note 142, at 572 (“Yet, it is not clear that the use of the defendant in part of the trial (perhaps in arguments and in confronting a few witnesses) and the use of an attorney in the same trial (perhaps in making motions and examining other witnesses and making objections) would necessarily be disruptive.”).

¹⁵⁴ *See* Colquitt, *supra* note 33, at 103–04.

¹⁵⁵ *Id.* at 103.

¹⁵⁶ *See id.* at 104.

Firstly, a court could use hybrid representation as a pre-emptive strike, removing the possibility of delays that a pro se defendant could attempt in the courtroom.¹⁵⁷ This, in turn, encourages “efficiency and order.”¹⁵⁸ Second, the court, in a hybrid representation relationship, actually exerts a reasonable level of control over the attorney, who has a certain level of “control” over the defendant too.¹⁵⁹ Third, the court can shield against those defendants who later in the trial change their mind and no longer wish to proceed pro se: by having hybrid representation, the court could turn to the attorney in the co-counsel relationship to continue forth with minimal disruption to the case.¹⁶⁰ Finally, a court’s control through the use of hybrid representation can extend beyond the courtroom, reducing the demands on court personnel who are often faced with legally incomprehensible documentation from pro se defendants.¹⁶¹ By allowing an attorney to act as co-counsel, they could help the defendant, or act on their behalf, to produce legally accurate, legible, and understandable briefs, motions, and so on.¹⁶²

Several rebuttal arguments are put forth to demonstrate that hybrid representation results in chaos and courtroom disorder, rather than control.¹⁶³ For example, John Pearson asserts that “[c]lashes are likely between counsel and client over the division of roles. Simply to decide these disputes in [the] defendant’s favor does not resolve the problem, since the disputes are themselves disruptive.”¹⁶⁴ A further argument is propounded by Joshua Howard, who also frames the idea of chaos in relation to the attorney-client relationship and the assumptions underlying the legal profession.¹⁶⁵ He posits that the major problem of hybrid representation is the “risk of clashing wills, putting both the attorney and the client in an unfamiliar relationship.”¹⁶⁶ He argues that, in a typical situation, the lawyer is in charge, directing the legal representation of his client and ultimately telling the client what they should say and do.¹⁶⁷ In a hybrid representation relationship, this is not the case—“an attorney

¹⁵⁷ Williams, *supra* note 101, at 805. Again, Williams argues that a trial court’s appointment of standby counsel could be considered a pre-emptive strike, but her argument is equally applicable to that of hybrid representation. *See id.*

¹⁵⁸ Joanne Williams, *Slobodan Milosevic and the Guarantee of Self-Representation*, 32 BROOK. J. INT’L L. 553, 600 (2007).

¹⁵⁹ *See Colquitt, supra* note 33, at 104. By control over the defendant, I refer to the attorney’s superior legal knowledge of evidentiary and procedural rules, alongside the counsel’s standing within the courtroom arena.

¹⁶⁰ *Id.* at 107.

¹⁶¹ *See Wood, supra* note 123, at 983.

¹⁶² *Id.*

¹⁶³ John H. Pearson, Comment, *Mandatory Advisory Counsel for Pro Se Defendants: Maintaining Fairness in the Criminal Trial*, 72 CALIF. L. REV. 697, 716 (1984).

¹⁶⁴ *Id.*

¹⁶⁵ Howard, *supra* note 18, at 859–60.

¹⁶⁶ *Id.* at 861.

¹⁶⁷ *Id.* at 860.

will not so easily change This will likely result in the defendant's taking second chair to the typical attorney's theory of defense and strategy direction."¹⁶⁸

Howard is correct in noting that, in a hybrid representation arrangement, an attorney is acting in an unfamiliar role alongside the defendant.¹⁶⁹ However, it is not a role completely unbeknown—many attorneys regularly work with co-counsel and act in this capacity.¹⁷⁰ And many of the advantages mentioned above outweigh the time spent in delineating the roles between defendant and counsel.¹⁷¹

C. *Mitigating Mistrust in the System*

A third means of using hybrid representation as a shield focuses on mitigating a defendant's mistrust of the judicial system and of his counsel.¹⁷² As discussed earlier, the current status of many jurisdictions is the either/or rule: a defendant has the choice of counsel or the choice to self-represent, but there is no middle ground.¹⁷³ But as Judith Welcom points out, this "imposition of an either/or reflects an institutional desire for clearly defined rules rather than a concern for the dignity and needs of the defendant."¹⁷⁴ This lack of concern is perhaps what leads, among other things, to a defendant's mistrust and disdain for the judicial system and the counsel imposed by the court.¹⁷⁵ Consequently, many defendants proceed pro se rather than with counsel.¹⁷⁶

An indigent defendant is most vulnerable to mistrust. If he does elect to have counsel, he has no choice but to rely on the court-appointed attorney or the public defender assigned to his case.¹⁷⁷ These attorneys are unknown to the defendant, and due to the increasing demands of their work, they are often overburdened.¹⁷⁸ From a defendant's point of view this is less than ideal, as many believe a lack of preparation of the attorney due to time pressures impinges upon their right to a fair trial.¹⁷⁹

¹⁶⁸ *Id.* at 860–61.

¹⁶⁹ *Id.* at 861.

¹⁷⁰ Douglas R. Richmond, *Professional Responsibilities of Co-Counsel: Joint Venturers or Scorpions in a Bottle?*, 98 KY. L.J. 461, 462 ("Co-counsel relationships between attorneys in different law firms are quite common. . . . Lawyers asked by clients to handle cases in foreign jurisdictions affiliate with local counsel and those relationships often become reciprocal. . . . Lawyers who lack experience or expertise in some aspect of the law may align with specialized co-counsel or veteran practitioners to achieve competence while preserving client relationships.").

¹⁷¹ See *supra* notes 154–62 and accompanying text.

¹⁷² Welcom, *supra* note 121, at 585.

¹⁷³ See Colquitt, *supra* note 33, at 57–58; Howard, *supra* note 18, at 852.

¹⁷⁴ Welcom, *supra* note 121, at 585.

¹⁷⁵ *Id.*

¹⁷⁶ See Howard, *supra* note 18, at 862.

¹⁷⁷ DeFoor & Mitchell, *supra* note 75, at 220.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

Furthermore, as J. Allison DeFoor II and Glenn H. Mitchell note, there is a “strong institutional pressure[] on defense attorneys to cooperate with the prosecutor’s office in order to process their heavy caseloads.”¹⁸⁰ This does not inspire confidence in the defendant who is led to the conclusion that his case received little attention and “may even [have] be[en] compromised through plea bargaining.”¹⁸¹ To the defendant in such a situation, the court-appointed attorney or public defender does not seem on his side at all, but rather simply “an extension of the prosecutor’s office.”¹⁸² If a defendant does feel this way, he is left with the option to proceed pro se (or with standby counsel)—a daunting prospect when he lacks the legal knowledge and understanding of the judicial process.¹⁸³

In his discretion, a trial judge can use hybrid representation to combat the defendant’s distrust and avoid the inherent problems with proceeding pro se.¹⁸⁴ “Thus, the hybrid representation model not only improves the acceptability of the legal process to society through preservation of orderly, accurate determination of guilt, but also renders the process more acceptable to the defendant himself.”¹⁸⁵

D. Promoting Justice

Finally, the shield of hybrid representation can be used as a means of upholding notions of justice. In his dissent in *Faretta*, Chief Justice Burger commented that both the prosecution and the trial judge are “charged with the duty of insuring that justice, in the broadest sense of that term, is achieved in every criminal trial.”¹⁸⁶ Further, Chief Justice Burger posited that such a “goal is ill-served, and the integrity of and public confidence in the system are undermined, when an easy conviction is obtained due to the defendant’s ill-advised decision to waive counsel.”¹⁸⁷

Although Chief Justice Burger was writing in dissent, many of his fears have come to fruition in allowing defendants to proceed pro se. There are, however, further

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 220–21.

¹⁸³ Phillips, *supra* note 14, at 1228 (discussing that pro se litigants cause a backlog as they attempt “to navigate the procedural and substantive complexities of the judicial system and the law”). The same idea is applicable to pro se defendants.

¹⁸⁴ DeFoor & Mitchell, *supra* note 75, at 222. Again, the authors speak in terms of standby counsel. Also note, if the defendant does not wish to proceed with hybrid representation, he is well within his right to inform the trial judge of this decision. This is all the more so given that hybrid representation is not currently an option provided in many jurisdictions. It is within the trial judge’s discretion, however, to implement hybrid representation if the defendant wishes to proceed pro se and has a history of being difficult in the courtroom. That would seem a fair and common ground for both the judicial system and the defendant.

¹⁸⁵ Welcom, *supra* note 121, at 585.

¹⁸⁶ *Faretta v. California*, 422 U.S. 806, 839 (1975) (Burger, C.J., dissenting).

¹⁸⁷ *Id.*

considerations of justice that come to light. As an example: “[W]hen the Court establishes a system . . . where a client is forced to have an attorney that may be adverse to his interests, we have created a judicial system that violates the text of the *Model Rules*, especially 1.2 and 1.9.”¹⁸⁸ Ethics and professionalism are inherently bound to the notion of justice. As can be seen from the prior discussion, proceeding *pro se* or with unwanted standby-counsel, the very underpinnings of the criminal justice system are called into question.

Thus, alongside the sword-like qualities of hybrid representation for a defendant to utilize, there are several shield-like protections courts can put into place. This means of fortification not only holds in favor of the court but also the defendant, ensuring the latter’s mistrust of the judicial system is somewhat soothed. Hybrid representation thus begins to bridge the gap between the justice system and the society it serves.

IV. THE IMPLEMENTATION OF HYBRID REPRESENTATION IN THE COURTROOM: SUGGESTED GUIDELINES TO JUDGES

In his article exploring the ethical obligations counsel face in adhering to the religious wishes of their clients, Jonathan Wood comments on hybrid representation as an alternative solution to this difficult area.¹⁸⁹ Drawing on Canada’s approach, Wood notes that hybrid representation allows a defendant to escape the ever-increasing paternalism of counsel and courts.¹⁹⁰ He explains that the model Canada offers allows the litigant (or defendant in our case) to make “his own moral and strategic decisions, yet still gain the ‘visible hand’ of expertise . . . without the pressure of a lawyer’s imputed decision-making based on fear of appeal or bar sanctions.”¹⁹¹ Wood proffers that Canada’s embrace of hybrid representation has proved a most “excellent alternative” to the standard ideas of legal representation—that of counsel or no counsel.¹⁹² He goes on to argue that the adoption of hybrid representation “would not violate a textualist reading of the current American ethical norms.”¹⁹³ Furthermore, “the standard argument of procedural justice having to be rigorously applied would hold little weight as access to legal assistance would become more widespread and tailored to the individual needs of the defendant.”¹⁹⁴

Wood’s article and his description of Canada’s approach to hybrid representation provides a way in which to consider how this would work in practice. As a

¹⁸⁸ Wood, *supra* note 123, at 972.

¹⁸⁹ *Id.* at 980.

¹⁹⁰ *Id.* at 980–81.

¹⁹¹ *Id.* Canada’s system of hybrid representation is one “in which a volunteer lawyer or association of lawyers can be considered ‘on duty’ to consult with *pro se* litigants on a daily basis.” *Id.* at 980.

¹⁹² *Id.* at 982–83.

¹⁹³ *Id.* at 984.

¹⁹⁴ *Id.*

means of resolving the tension left in the wake of *Gideon* and *Faretta*, the use of hybrid representation in the courtroom must ensure a balance between the defendant's right to self-representation and other factors to include ideas of justice, fairness, and judicial efficiency.

A. Does This Court's Jurisdiction Recognize Hybrid Representation?

A few jurisdictions within the United States recognize hybrid representation as a potential procedure within the courtroom.¹⁹⁵ For example, the Tennessee Supreme Court in *State v. Franklin*¹⁹⁶ expanded an earlier test to allow hybrid representation if six conditions were met by the defendant.¹⁹⁷ The first of these conditions focused on ensuring the defendant was not seeking to disrupt the trial by asking for and ultimately utilizing hybrid representation.¹⁹⁸ Moreover, the second condition centered on the defendant's "intelligence, ability and general competence to participate in his own defense."¹⁹⁹ The remaining four conditions covered a range of points:

[B]ut the trial court must also ensure (3) that the circumstances are so exceptional as to justify the defendant's request, which circumstances must be made to appear on the record, (4) that defendant has the opportunity to confer with counsel out of the presence of the jury prior to his participation, (5) that, out of the presence of the jury, the defendant is instructed that he may not state facts not in evidence, and (6) that the defendant and the jury are instructed that the defendant is acting as his own counsel and that the defendant is not giving any evidence or testimony.²⁰⁰

Many of the factors the Tennessee Supreme Court takes into account address several concerns that have been put forth by opponents to hybrid representation.²⁰¹

Tiffany Frigenti, in her article discussing pro se defendants, posits that "there are 'several well-adhered-to rules'" regarding hybrid representation.²⁰² Perhaps one of the most important rules she suggests is that, "where hybrid representation is permitted, the court is still required to 'obtain a valid waiver of counsel from the defendant.'"²⁰³

¹⁹⁵ See Colquitt, *supra* note 33, at 102.

¹⁹⁶ 714 S.W.2d 252 (Tenn. 1986).

¹⁹⁷ *Id.* at 260.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ See, e.g., Williams, *supra* note 101, at 806–09 (discussing the problems involved with standby counsel).

²⁰² Frigenti, *supra* note 124, at 1039 (internal citation omitted).

²⁰³ *Id.* (internal citation omitted).

She goes on to note that, if a pro se defendant “welcomes ‘participation by counsel, any subsequent participation by counsel is presumed to occur with the defendant’s approval, unless the defendant expressly and unambiguously renews the request to proceed without counsel.’”²⁰⁴ Frigenti agrees, as do those states that allow the use of hybrid representation in the courtroom, that the ultimate decision lies within the discretion of the trial judge.²⁰⁵

Thus, if a judge wishes to utilize hybrid representation within his courtroom, it is perhaps prudent for him to be guided by many of the considerations noted above by other jurisdictions. There are several other potential factors to account for too, and the remainder of this Note turns to such a focus.

B. Is Hybrid Representation a Good Choice for This Particular Defendant?

As discussed previously, a defendant’s mistrust of the legal system can often lead them to choose the option of proceeding pro se as the better of two evils.²⁰⁶ Mistrust can stem from a variety of reasons: a defendant may not feel as though his attorney is fully prepared to proceed with the case due to being overburdened by a heavy caseload, or the defendant may not have faith in the criminal justice system after a series of run-ins with the law.²⁰⁷ The pressures public defenders or court-appointed attorneys feel to reach a plea bargain further exacerbate the problem.²⁰⁸ The defendant “may see the alternatives as no control on the one hand versus guaranteed failure on the other.”²⁰⁹ Facing such a dilemma, is it any wonder that many defendants opt for self-representation?

However, a defendant may also choose to proceed pro se for less legitimate reasons, such as a desire to disrupt the courtroom and propound their own, often bizarre, legal theories.²¹⁰ For example, Sovereign Citizens tend to hit the court system hard by filing jumbled and incomprehensible motions which they then utilize in courts as a means of furthering their case or defense.²¹¹ This further impacts the already backlogged and overburdened courts.²¹²

²⁰⁴ *Id.* (internal citations omitted).

²⁰⁵ *See, e.g.,* *United States v. Treff*, 924 F.2d 975, 979 n.6 (10th Cir. 1991) (“The decision to allow hybrid representation and to limit the defendant’s participation in such representation is within the discretion of the trial court.” (citations omitted)), *cert. denied*, 500 U.S. 958 (1991); *United States v. Kimmel*, 672 F.2d 720, 721 (9th Cir. 1982) (“The district court has the authority to allow . . . a hybrid form of representation” (citation omitted)).

²⁰⁶ *See supra* notes 172–85 and accompanying text.

²⁰⁷ *See* DeFoor & Mitchell, *supra* note 75, at 220.

²⁰⁸ *Id.*

²⁰⁹ Colquitt, *supra* note 33, at 119.

²¹⁰ *See* Phillips, *supra* note 14, at 1227.

²¹¹ *Id.* *See also* Sullivan, *supra* note 86, at 795–96.

²¹² *See* Phillips, *supra* note 14, at 1228.

The above two scenarios provide the judge an opportunity to allow for hybrid representation, particularly as it is within his discretion to allow for such an approach.²¹³ For example, the judge can offer hybrid representation to a defendant as a means of shielding the court from the delays and disruptive behavior of pro se defendants proceeding as some form of protest.²¹⁴ Working with co-counsel, the defendant is limited in his chances of disruption and may choose to take on a more active role fulfilling his part of the bargain. Additionally, this means of control by the judge can be useful later in the case.²¹⁵ A defendant who continually disrupts the ordered proceedings of the court may eventually be precluded from participating at all in his defense.²¹⁶ If that proves to be the case, the court is likely to remove the defendant altogether, ensuring the “dignity, order, and decorum of the courtroom” is maintained.²¹⁷ The attorney co-counsel of the hybrid representation can then continue on his own, advocating for the defendant in the traditional sense but also ensuring there are no further delays.

In contrast, the judge can also allow a serious defendant to use hybrid representation as a sword, wielding this approach as a legitimate means of advocacy.²¹⁸

C. Is the Attorney Willing to Proceed as Co-Counsel to the Defendant?

One of the many concerns countered in the preceding discussion was the idea that hybrid representation would create chaos and confusion.²¹⁹ Although rebutted above, this is a serious consideration when deciding whether to allow a defendant to utilize hybrid representation in the courtroom. Several issues can arise from the imposition of this method of defense and should be taken into account by a trial judge.²²⁰ One such problem is a recalcitrant attorney who does not wish to proceed as co-counsel with the defendant.

It is more than likely that it is within the trial judge’s discretion to impose a different attorney (public defender or court-appointed lawyer) who is willing to work in a hybrid relationship.²²¹ However, it is also fair to consider that this issue may

²¹³ Colquitt, *supra* note 33, at 76–77.

²¹⁴ See Phillips, *supra* note 14, at 1222–23.

²¹⁵ See *supra* notes 172–85 and accompanying text.

²¹⁶ DeFoor & Mitchell, *supra* note 75, at 224. DeFoor includes an analogous discussion of two cases where the defendant waived his right to counsel to proceed pro se but that decision was later reversed by the court itself for bad behavior. *Id.* As an example, DeFoor quotes the Second Circuit in its recognition that “an accused’s right to represent himself is not so absolute that it must be recognized when to do so would disrupt the court’s business.” *Id.* (internal citations removed).

²¹⁷ *Id.*

²¹⁸ See *supra* Part II.

²¹⁹ See *supra* notes 106–15 and accompanying text.

²²⁰ See, e.g., Howard, *supra* note 18, at 859–62 (discussing opposing arguments to hybrid representation).

²²¹ See *supra* note 205 and accompanying text.

actually resolve itself. A public defender, and very often a court-appointed lawyer, are paid for by public funds.²²² Once appointed, a public defender has a duty to his client—he must “fulfill the ‘overriding duty of zealous representation’”²²³ Moreover, public defenders are greatly overburdened and overworked.²²⁴ As a result, hybrid representation may actually aid the public defender’s workload, but also fall within their duty to their clients. It is a tricky issue and one which the trial judge is in the best position to decide.

D. Is There the Potential for Jury Confusion and, If So, How Can That Risk Be Mitigated?

An oft-cited means against the use of hybrid representation is that of jury confusion.²²⁵ The concern is that a jury, not knowing that a defendant has the right to represent himself, will be confused by a co-counsel relationship and hold it against the defendant when reaching a verdict.²²⁶

There is definitely a wider issue at play here. Many critics, troubled by the jury system and jury trials, focus on juror competence, “doubting the ability of the average juror to understand, remember, and integrate all the information (evidence and law) given to them in modern-day litigation.”²²⁷ To that end, other critics have shifted focus to jury instructions, demonstrating concern with the lack of understanding by jurors of these judicial instructions.²²⁸ Such explorations have called for the rewriting of instructions to improve comprehensibility and clarity.²²⁹

These concerns are noted to highlight that jury confusion is a common issue and not one solely present when hybrid representation is used. A trial judge, when deciding whether to allow hybrid representation in his courtroom, can consider the risk of jury confusion and mitigate this, to a degree, by clear and precise instructions. In the case of hybrid representation, instructions from the judge can come at two parts of

²²² See, e.g., *Your Right to a Free Attorney if You are Charged With a Crime*, OR. ST. B., http://www.osbar.org/public/legalinfo/1078_righttoattorney.htm [<https://perma.cc/6SL6-RCMN>] (last visited Apr. 11, 2019).

²²³ Harold H. Chen, Note, *Malpractice Immunity: An Illegitimate and Ineffective Response to the Indigent-Defense Crisis*, 45 DUKE L.J. 783, 792 (1996).

²²⁴ See, e.g., Alexa Van Brunt, *Poor People Rely on Public Defenders Who are Too Overworked to Defend Them*, THE GUARDIAN (June 17, 2015), <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked> [<https://perma.cc/6PPX-WJJ8>].

²²⁵ See Williams, *supra* note 101, at 808.

²²⁶ *Id.*

²²⁷ Hon. B. Michael Dann, “*Learning Lessons*” and “*Speaking Rights*”: *Creating Educated and Democratic Juries*, 68 IND. L. J. 1229, 1229 (1993). Dann furthers the idea that jurors should be taking on a more active role thereby ensuring the continued vitality of jury trials and to keep up with the increasingly complex legal disputes of today’s age. See *id.* at 1230.

²²⁸ See, e.g., Walter W. Steele, Jr. & Elizabeth G. Thornburg, *Jury Instructions: A Persistent Failure to Communicate*, 67 N.C. L. REV. 77, 77–78 (1988).

²²⁹ See *id.* at 77–79.

the trial: before it begins and before reaching a verdict. The first can be used to inform the jury.²³⁰ A judge can tell the jury that a defendant has the right to represent himself²³¹ and in this instance has chosen to proceed with hybrid representation. The same idea can be reiterated at the end of the trial, to ensure that the defendant's role in his defense is not held against him.²³² “[E]ducating jurors about what has occurred in the trial will assist them in reaching a fair verdict.”²³³

At present, the role of the jury is still considered integral to the American adversarial system.²³⁴ There is a “strong sentiment toward . . . the *institution* of the jury and its place in the democratic firmament.”²³⁵ If we trust juries enough to make decisions, literally, of life and death,²³⁶ a trial judge is well within reason to trust a jury enough to understand hybrid representation.

The four considerations above provide a good starting point in determining whether the use of hybrid representation should be implemented within a courtroom. There are further areas to think about too, such as ensuring the protection of the defendant's constitutional rights in proceeding with hybrid representation. Or, whether courtroom personnel would benefit from this arrangement, particularly in dealing with the accompanying paperwork to a trial. These are considerations which a trial judge can accommodate if considering hybrid representation as a serious alternative.

CONCLUSION

The Supreme Court's decision in *Faretta* paved the way for defendants to have the constitutional right to self-represent.²³⁷ As a result, however, courtrooms across the nation have faced numerous difficulties, including a defendant's lack of substantive knowledge, an increased potential for disruption, and an increased need for intervention

²³⁰ See Williams, *supra* note 101, at 814.

²³¹ *Id.*

²³² See *id.* at 808.

²³³ *Id.* at 814. Here, Williams is discussing instructions to the jury when a defendant has proceeded pro se, but her concerns are more widely applicable and can be considered if hybrid representation is utilized. *Id.* Williams firmly exerts that hybrid representation should not be allowed in the courtroom and instead, there should be clearer lines separating standby counsel and the defendant. See *id.* at 813–14.

²³⁴ See Ferguson, *supra* note 115, at 233.

²³⁵ Dann, *supra* note 227, at 1229.

²³⁶ Of course, there is much discussion surrounding juries and capital punishment cases. For an interesting empirical study, see John H. Blume, *An Overview of Significant Findings from the Capital Jury Project and Other Empirical Studies of the Death Penalty Relevant to Jury Selection, Presentation of Evidence and Jury Instructions in Capital Cases* (2008), <http://www.law.school.cornell.edu/research/death-penalty-project/resources.cfm> [<https://perma.cc/95TX-P2S9>] (last visited Apr. 11, 2019). Cornell's Death Penalty Project focuses on how the death penalty operates and produces a number of articles related to the death penalty. See *About the Death Penalty Project*, CORNELL L. SCH., <http://www.lawschool.cornell.edu/research/death-penalty-project/about.cfm> [<https://perma.cc/SZY8-WNAD>] (last visited Apr. 11, 2019).

²³⁷ See Decker, *supra* note 17, at 492.

from the trial judge to provide guidance for the unwitting pro se litigant.²³⁸ Hybrid representation poses an attractive and efficient solution to such problems and further provides additional benefits to both the defendant and the court.

As a sword, a defendant can use hybrid representation to present a more favorable and advantageous defense. The defendant is often in the best position; he knows the facts of his case better than anyone in the courtroom.²³⁹ Alongside co-counsel, he can ensure that his defense falls within the trial rules and courtroom procedures.²⁴⁰ Surely, this fits squarely within the constitutional protections afforded by the Sixth Amendment.

Additionally, hybrid representation can be a means of compromise; the middle ground between the right to counsel and the right to self-representation.²⁴¹ It allows a defendant to utilize a method which encompasses elements of both of these rights and can be viewed as a better means of proceeding to trial than electing to proceed pro se. Related to this, hybrid representation thus creates a system that actually has the potential to practically work.²⁴²

Hybrid representation can also be used as a shield, as a means of protection, by the court. If co-counsel is present, this ensures that the trial judge is freed from any involvement in aiding and assisting the pro se defendant.²⁴³ When a trial judge is involved, this calls into question his discretion and impartiality, two fundamental building-blocks which the judicial systems tends to rely on.²⁴⁴ In utilizing hybrid representation, no such questions arise. Furthermore, hybrid representation allows for more control by the judge.²⁴⁵ It can be used as a pre-emptive strike, preventing a potential loose-cannon defendant from proceeding pro se and causing long disruptions and delays.²⁴⁶ Additionally, a judge often has some control over the attorney acting as co-counsel and, thus, via a causal link, has more control over the defendant.²⁴⁷ By exerting this control, a judge can ensure that a trial proceeds in a manner both judicially correct and efficient. Finally, by utilizing hybrid representation in this manner, a judge can ensure that the demands on court personnel are reduced when handling complaints, motions, pleadings, etc.²⁴⁸

The benefits of the shield of hybrid representation do not stop there. It also has the potential to mitigate a defendant's mistrust of the judicial system,²⁴⁹ which has

²³⁸ See, e.g., Howard, *supra* note 18, at 855–56 (discussing issues with self-representation).

²³⁹ See *supra* notes 98–102 and accompanying text.

²⁴⁰ See *supra* notes 101–02 and accompanying text.

²⁴¹ See *supra* notes 116–22 and accompanying text.

²⁴² See *supra* notes 123–30 and accompanying text.

²⁴³ See *supra* notes 142–47 and accompanying text.

²⁴⁴ See *supra* notes 142–47 and accompanying text.

²⁴⁵ See *supra* notes 154–62 and accompanying text.

²⁴⁶ See *supra* notes 154–62 and accompanying text.

²⁴⁷ See *supra* notes 159–63 and accompanying text.

²⁴⁸ See *supra* notes 161–62 and accompanying text.

²⁴⁹ See *supra* notes 172–85 and accompanying text.

wider implications in society. By building the trust defendants have in their co-counsel counterparts, and the courtroom itself, this naturally lends itself to a more efficient and valued system. Hybrid representation can also lend itself to ensuring justice is achieved.²⁵⁰ The pro se system currently in place has many difficulties and essentially allows a defendant to “[c]rash and [b]urn.”²⁵¹ It is safe to assume that this is not what the *Faretta* court had in mind when it passed down its decision.²⁵² However, that is unfortunately the current reality. Hybrid representation at least provides a potential solution.

There are many further considerations to hybrid representation that have not been included within the discussion of this Note. For example, malpractice liability would need some thought. If an attorney is acting as co-counsel, where does the line of insurance fall? Consequently, this Note does not contend that hybrid representation is the best solution and should be immediately implemented into courts across the country. Rather, this Note proposes that hybrid representation should be given its due as a potential alternative.

Although there is no constitutional guarantee for hybrid representation, it is within the trial judge’s discretion to allow a defendant to proceed in such a manner. As with anything, hybrid representation has its pros and cons, but in the right situation, at the right time, hybrid representation could be an effective and positive means to an end. “Justice may well require that balances be struck and reasonable procedural accommodations fashioned.”²⁵³ Hybrid representation may just be that balance.

²⁵⁰ See *supra* notes 186–88 and accompanying text.

²⁵¹ Frigenti, *supra* note 124, at 1019.

²⁵² *Faretta v. California*, 422 U.S. 806, 821 (1975).

²⁵³ *United States v. Nivica*, 887 F.2d 1110, 1123 (1st Cir. 1989).