

INSIDE



October 2007 Issue #2

REPORT

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[Online Newsletter Only]

But no weapon that is formed against you shall prosper, and every tongue that shall rise against you in judgment you shall show to be in the wrong, This [peace, righteousness, security, triumph over opposition] is the heritage of the servant of the Lord [those in whom the ideal Servant of the Lord is reproduced]; this is the righteousness or the vindication which they obtain from Me [this is that which I impart to them as their justification], says the Lord. — Isaiah 54:17



Update on Eddie

This is a monthly online newsletter written by Eddie Ray: Kahn. Request a subscription by emailing FreeEddieKahn@yahoo.com. Donations to support the Free Eddie Kahn Fund are appreciated but are not required. Each issue will give an update on Eddie's current situation and share knowledge that Eddie is learning such as "chinks in the government's armor" during his illegal incarceration as a co-defendant in the Wesley Snipes Tax Case. Please do not email this address and ask for tax advice. This is for information only and should not be construed as legal advice.

I went to a Status Conference Hearing on Sept. 11, 2007. I had not ever been to one. It was interesting. Wesley Snipes' lawyers wanted another continuance, to January 2008. Normally, the Judge will grant them. Some of these cases will drag on for years before they are tried.

Judge Hodges did not seem to have a problem with it. He asked Charles Wilson, the taxpreparer's attorney, if he had a problem with it. No problem there. Then he asked me. I said I object...unless he would be willing to let me out of jail so that I could find Assistance of Counsel. I explained to him that my wife had contacted 27 law firms to date that state in their advertisements they handle Federal Criminal Tax cases. Not one has been willing to become my Assistance of Counsel. I reiterated that I was not a flight risk or a threat to the community and therefore had a Right to be released pending trial.

I told him that I could never be ready for trial without effective Assistance of Counsel. He stated that I always have Michael Nielsen, the Standby Counsel. I told him I would not accept Michael as Counsel because he is paid by my Adversary, which is a conflict of interest. No response to that. Net result: The judge does not want me out of jail! He said the trial would go on as scheduled on October 22, 2007.

Free Eddie Kahn Fund

Donations are accepted by sending to:

Kookie Kahn
P.O. Box 969
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**God Bless you for
your help.**

THIS ISSUE:

- Update on Eddie
- Assistance of Counsel
- A Legally Proper Front Page of the Indictment

Before I get into the meat of the newsletter, let me tell you that Kookie and I are OK. Many of you have been sending the \$50 suggested donation for the Inside The Beast Report Newsletter which has enabled Kookie to concentrate on preparing Court documents, filing them (it's about 1 ½ hour drive each way to the court), etc. She has even had a little time to be "Grammie" to our grandsons! Your donations have been a blessing and we thank you from the bottom of our hearts.

Now to the Nitty Gritty...



Assistance of Counsel

(I believe my case is typical of how judges will act on this matter.)

I am sure what the judge is planning on doing is trying to force me to use the Standby Counsel if I cannot hire Counsel. However, the U.S. Supreme Court just ruled in 2006 that, as long as you are willing to pay for it, the government cannot force Counsel of their choice on you (See attachment: U.S. v. Gonzalez-Lopez).

Because I anticipate that Judge Hodges will do that, I sent the Standby Counsel the letter containing the questions concerning his competence, effectiveness in cases similar to mine and qualifications. That was done June 25th. He has not attempted to answer the questions (neither has any other lawyer!) Without those questions being answered affirmatively, I would not hire any lawyer and pay him thousands of dollars. Would you?

The judge is going to have to deal with several U.S. Supreme Court decisions in this matter (U.S. v. Gonzalez-Lopez, Johnson v. Zerbst & Faretta v. California). Briefly, Lopez states you have a Right to Counsel of your choice; Zerbst states if you want counsel and don't have it, you can't be convicted and sentenced; Faretta & Zerbst state that you have a right to Counsel at all stages of the proceedings and you have Right to assistance, not necessarily representation.

Psalm 91: 1-2, 5, 15

He who dwells in the secret place of the Most High shall remain stable and fixed under the shadow of the Almighty [Whose power no foe can withstand]. I will say of the Lord, He is my Refuge and my Fortress, my God; on Him I lean and rely, and in Him I [confidently] trust!...You shall not be afraid of the terror of the night, nor of the arrow (the evil plots and slanders of the wicked) that flies by day...He shall call upon Me, and I will answer him; I will be with him in trouble, I will deliver him and honor him.

Disclaimer: Please understand this information is not to be construed as legal advice. It is for educational purposes only and disseminated under my First Amendment Right of Freedom of Speech.

Bottom Line: I have been trying since June to hire Assistance of Counsel. If I can't hire someone that can answer my voir dire questions concerning competency, effectiveness and qualifications and the judge can't force his choice on me, where do we go from there? Interesting, huh?

If someone starts out as I did, asking for Assistance of Counsel and not representation, the judge will not allow it if *they* are providing Counsel. That was my situation initially so I filed all the Motions to Dismiss, Notices, Demands, etc. that I felt were appropriate to try and get out of jail. Then, in June, when some of my family and friends began offering donations to hire counsel of my choice, I started trying to hire Counsel. However, I think one of the big reasons these lawyers don't want to become involved in this case is they don't want to argue what I have already put into the case. Example: The judge is not an Article 3 Judge and the Court is not an Article 3 Court. Therefore, it has no judicial power to try the case.

The lawyer is probably thinking to himself "Man, I am going to be back before this judge on other cases. He will remember these arguments and probably try to nail those clients to the wall!"

The lawyer is probably thinking to himself "Man, I am going to be back before this judge on other cases. He will remember these arguments and probably try to nail those clients to the wall!"

I am also asking him for his license to practice law. How many lawyers you think have that? Another killer is "How many cases like mine have you won; how many have you lost?" Since the U. S. Attorneys rarely lose in Court, I don't think most of these Attorneys want to reveal how ineffective they really are. And then there is 7 C.J.S. Section 4, which states: "*His [lawyer] first duty is to the Courts and to the Public, not to the client, and whenever the duties to his client conflict with those he owes as an officer of the Court in the administration of justice, the former must yield to the latter.*" (Emphasis added) In other words, you are not his top priority, or even second; you are last! Important: It does not matter whether you are paying him or not. You are still last

Because I am aware of the above mentioned cases, I will not budge if the judge tries to force someone on me I don't want. It should be interesting.

A Legally Proper Front Page Of The Indictment



When the U.S. government indicts you for a "tax crime", they only list on the Indictment the Penalty Code Section. They never list the Offenses Code Section. Why is this important? Because without both, the Indictment is insufficient, therefore, invalid. A partial

transcript of a case that was sent to me illustrates that point. (See Tom Hauert attachment). Even after reading that, some of you are not really understanding it, right? OK, I am giving you another document written by Dan Meador (see Dan Meador attachment), a great researcher, who died a few years ago. The document was disseminated in 2000, but it is still “right on” based on my current experience. This is a 15 page document that is a must have, must read, must understand, in my opinion.

Please go to page 3. Start reading the quote from the case U.S. v. Menk 260 F. Supp. at 784. The judge himself makes it very clear that, for instance, a Failure to File a tax return case will not stand if the government only lists 26 USC 7203 on the Indictment. That is the Penalty Code section. They must list the other Code sections to identify what law you broke. Question: Does the U.S. ever do that? I have never seen them do it.

According to the transcript of the Hauert case, his case was dismissed because the U.S. Attorney could not locate the Offense Code Section. You think they will ever find it? I don't think so. Caveat: Someone emailed Kookie stating that Hauert was reindicted and convicted later. I have no details. If anyone does, please forward them to me. However, I still feel the argument has merit.

Conclusion: If anyone ever gets charged with any tax crime, that person might want to demand to see the Offense Statute. However, that may be short sighted. Dan states that virtually all Federal crimes have a penalty code section and an Offense Code section.

One might want to ask for a dismissal of the charges or, in the alternative, the Offense Statute. If they can't come up with it, the case must be dismissed.

If that is the case, the Indictment is invalid without both listed on the front page.

Well, that's all I have for now. I hope I have given you food for thought. Until next month – Take Care, be strong and trust in the Lord.

Love you all,

Eddie

P.S. If you are an activist and want to let Judge Hodges know that his dirty deeds are not going unnoticed, I have drafted a form letter (see “I'm watching you judge” letter which follows this newsletter) that you can send to him. These Public Servants need to know they are being held accountable for their actions, don't you think?

UNITED STATES *v.* GONZALEZ-LOPEZ

certiorari to the united states court of appeals for the eighth circuit

Argued April 18, 2006--Decided June 26, 2006 No. 05-352.

Respondent hired attorney Low to represent him on a federal drug charge. The District Court denied Low's application for admission *pro hac vice* on the ground that he had violated a professional conduct rule and then, with one exception, prevented respondent from meeting or consulting with Low throughout the trial. The jury found respondent guilty. Reversing, the Eighth Circuit held that the District Court erred in interpreting the disciplinary rule, that the court's refusal to admit Low therefore violated respondent's Sixth Amendment right to paid counsel of his choosing, and that this violation was not subject to harmless-error review.

Held: A trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles him to reversal of his conviction. Pp. 3-12.

(a) In light of the Government's concession of erroneous deprivation, the trial court's error violated respondent's Sixth Amendment right to counsel of choice. The Court rejects the Government's contention that the violation is not "complete" unless the defendant can show that substitute counsel was ineffective within the meaning of *Strickland v. Washington*, [466 U. S. 668](#), 691-696--*i.e.*, that his performance was deficient and the defendant was prejudiced by it--or the defendant can demonstrate that substitute counsel's performance, while not deficient, was not as good as what his counsel of choice would have provided, creating a "reasonable probability that ... the result ... would have been different," *id.*, at 694. To support these propositions, the Government emphasizes that the right to counsel is accorded to ensure that the accused receive a fair trial, *Mickens v. Taylor*, [535 U. S. 162, 166](#), and asserts that a trial is not unfair unless a defendant has been prejudiced. The right to counsel of choice, however, commands not that a trial be fair, but that a particular guarantee of fairness be provided--to wit, that the accused be defended by the counsel he believes to be best. Cf. *Crawford v. Washington*, [541 U. S. 36, 61](#). That right was violated here; no additional showing of prejudice is required to make the violation "complete." Pp. 3-7.

(b) The Sixth Amendment violation is not subject to harmless-error analysis. Erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Sullivan v. Louisiana*, [508 U. S. 275, 282](#). It "def[ies] analysis by 'harmless error' standards" because it "affec[ts] the framework within which the trial proceeds" and is not "simply an error in the trial process itself." *Arizona v. Fulminante*, [499 U. S. 279](#), 309-310. Different attorneys will pursue different strategies with regard to myriad trial matters, and the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides to go to trial. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. This inquiry is not comparable to that required to show that a counsel's deficient performance prejudiced a defendant. Pp. 8-11.

(c) Nothing in the Court's opinion casts any doubt or places any qualification upon its previous holdings limiting the right to counsel of choice and recognizing trial courts' authority to establish criteria for admitting lawyers to argue before them. However broad a trial court's discretion may be, this Court accepts the Government's concession that the District Court erred. Pp. 11-12.

399 F. 3d 924, affirmed and remanded.

Scalia, J., delivered the opinion of the Court, in which *Stevens, Souter, Ginsburg, and Breyer, JJ.*, joined. *Alito, J.*, filed a dissenting opinion, in which *Roberts, C. J., and Kennedy and Thomas, JJ.*, joined.

UNITED STATES, PETITIONER *v.* CUAUHTEMOC GONZALEZ-LOPEZ

on writ of certiorari to the united states court of
appeals for the eighth circuit

[June 26, 2006]

Justice Scalia delivered the opinion of the Court.

We must decide whether a trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles him to a reversal of his conviction.

I

Respondent Cuauhtemoc Gonzalez-Lopez was charged in the Eastern District of Missouri with conspiracy to distribute more than 100 kilograms of marijuana. His family hired attorney John Fahle to represent him. After the arraignment, respondent called a California attorney, Joseph Low, to discuss whether Low would represent him, either in addition to or instead of Fahle. Low flew from California to meet with respondent, who hired him.

Some time later, Low and Fahle represented respondent at an evidentiary hearing before a Magistrate Judge. The Magistrate Judge accepted Low's provisional entry of appearance and permitted Low to participate in the hearing on the condition that he immediately file a motion for admission *pro hac vice*. During the hearing, however, the Magistrate Judge revoked the

provisional acceptance on the ground that, by passing notes to Fahle, Low had violated a court rule restricting the cross-examination of a witness to one counsel.

The following week, respondent informed Fahle that he wanted Low to be his only attorney. Low then filed an application for admission *pro hac vice*. The District Court denied his application without comment. A month later, Low filed a second application, which the District Court again denied without explanation. Low's appeal, in the form of an application for a writ of mandamus, was dismissed by the United States Court of Appeals for the Eighth Circuit.

Fahle filed a motion to withdraw as counsel and for a show-cause hearing to consider sanctions against Low. Fahle asserted that, by contacting respondent while respondent was represented by Fahle, Low violated Mo. Rule of Professional Conduct 4-4.2 (1993), which prohibits a lawyer "[i]n representing a client" from "communicat[ing] about the subject of the representation with a party ... represented by another lawyer" without that lawyer's consent. Low filed a motion to strike Fahle's motion. The District Court granted Fahle's motion to withdraw and granted a continuance so that respondent could find new representation. Respondent retained a local attorney, Karl Dickhaus, for the trial. The District Court then denied Low's motion to strike and, for the first time, explained that it had denied Low's motions for admission *pro hac vice* primarily because, in a separate case before it, Low had violated Rule 4-4.2 by communicating with a represented party.

The case proceeded to trial, and Dickhaus represented respondent. Low again moved for admission and was again denied. The Court also denied Dickhaus's request to have Low at counsel table with him and ordered Low to sit in the audience and to have no contact with Dickhaus during the proceedings. To enforce the Court's order, a United States Marshal sat between Low and Dickhaus at trial. Respondent was unable to meet with Low throughout the trial, except for once on the last night. The jury found respondent guilty.

After trial, the District Court granted Fahle's motion for sanctions against Low. It read Rule 4-4.2 to forbid Low's contact with respondent without Fahle's permission. It also reiterated that it had denied Low's motions for admission on the ground that Low had violated the same Rule in a separate matter.

Respondent appealed, and the Eighth Circuit vacated the conviction. 399 F. 3d 924 (2005). The Court first held that the District Court erred in interpreting Rule 4-4.2 to prohibit Low's conduct both in this case and in the separate matter on which the District Court based its denials of his admission motions. The District Court's denials of these motions were therefore erroneous and violated respondent's Sixth Amendment right to paid counsel of his choosing. See *id.*, at 928-932. The Court then concluded that this Sixth Amendment violation was not subject to harmless-error review. See *id.*, at 932-935. We granted certiorari. 546 U. S. ____ (2006).

II

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." We have previously held that an

element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him. See *Wheat v. United States*, [486 U. S. 153, 159](#) (1988). Cf. *Powell v. Alabama*, [287 U. S. 45, 53](#) (1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice"). The Government here agrees, as it has previously, that "the Sixth Amendment guarantees the defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Caplin & Drysdale, Chartered v. United States*, [491 U. S. 617, 624-625](#) (1989). To be sure, the right to counsel of choice "is circumscribed in several important respects." *Wheat, supra*, at 159. But the Government does not dispute the Eighth Circuit's conclusion in this case that the District Court erroneously deprived respondent of his counsel of choice.

The Government contends, however, that the Sixth Amendment violation is not "complete" unless the defendant can show that substitute counsel was ineffective within the meaning of *Strickland v. Washington*, [466 U. S. 668, 691-696](#) (1984)--*i.e.*, that substitute counsel's performance was deficient and the defendant was prejudiced by it. In the alternative, the Government contends that the defendant must at least demonstrate that his counsel of choice would have pursued a different strategy that would have created a "reasonable probability that ... the result of the proceedings would have been different," *id.*, at 694--in other words, that he was prejudiced within the meaning of *Strickland* by the denial of his counsel of choice even if substitute counsel's performance was not constitutionally deficient.¹ To support these propositions, the Government points to our prior cases, which note that the right to counsel "has been accorded ... not for its own sake, but for the effect it has on the ability of the accused to receive a fair trial." *Mickens v. Taylor*, [535 U. S. 162, 166](#) (2002) (internal quotation marks omitted). A trial is not unfair and thus the Sixth Amendment is not violated, the Government reasons, unless a defendant has been prejudiced.

Stated as broadly as this, the Government's argument in effect reads the Sixth Amendment as a more detailed version of the Due Process Clause--and then proceeds to give no effect to the details. It is true enough that the purpose of the rights set forth in that Amendment is to ensure a fair trial; but it does not follow that the rights can be disregarded so long as the trial is, on the whole, fair. What the Government urges upon us here is what was urged upon us (successfully, at one time, see *Ohio v. Roberts*, [448 U. S. 56](#) (1980)) with regard to the Sixth Amendment's right of confrontation--a line of reasoning that "abstracts from the right to its purposes, and then eliminates the right." *Maryland v. Craig*, [497 U. S. 836, 862](#) (1990) (*Scalia, J.*, dissenting). Since, it was argued, the purpose of the Confrontation Clause was to ensure the reliability of evidence, so long as the testimonial hearsay bore "indicia of reliability," the Confrontation Clause was not violated. See *Roberts, supra*, at 65-66. We rejected that argument (and our prior cases that had accepted it) in *Crawford v. Washington*, [541 U. S. 36](#) (2004), saying that the Confrontation Clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Id.*, at 61.

So also with the Sixth Amendment right to counsel of choice. It commands, not that a trial be fair, but that a particular guarantee of fairness be provided--to wit, that the accused be defended by the counsel he believes to be best. "The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several

provisions of the Sixth Amendment, including the Counsel Clause." *Strickland, supra*, at 684-685. In sum, the right at stake here is the right to counsel of choice, not the right to a fair trial; and that right was violated because the deprivation of counsel was erroneous. No additional showing of prejudice is required to make the violation "complete."²

The cases the Government relies on involve the right to the effective assistance of counsel, the violation of which generally requires a defendant to establish prejudice. See, e.g., *Strickland, supra*, at 694; *Mickens, supra*, at 166; *United States v. Cronin*, [466 U. S. 648](#) (1984). The earliest case generally cited for the proposition that "the right to counsel is the right to the effective assistance of counsel," *McMann v. Richardson*, [397 U. S. 759, 771](#), n. 14 (1970), was based on the Due Process Clause rather than on the Sixth Amendment, see *Powell*, [287 U. S., at 57](#) (cited in e.g., *McMann, supra*, at 771, n. 14). And even our recognition of the right to effective counsel within the Sixth Amendment was a consequence of our perception that representation by counsel "is critical to the ability of the adversarial system to produce just results." *Strickland, supra*, at 685. Having derived the right to effective representation from the purpose of ensuring a fair trial, we have, logically enough, also derived the limits of that right from that same purpose. See *Mickens, supra*, at 166. The requirement that a defendant show prejudice in effective representation cases arises from the very nature of the specific element of the right to counsel at issue there--*effective* (not mistake-free) representation. Counsel cannot be "ineffective" unless his mistakes have harmed the defense (or, at least, unless it is reasonably likely that they have). Thus, a violation of the Sixth Amendment right to *effective* representation is not "complete" until the defendant is prejudiced. See *Strickland, supra*, at 685.

The right to select counsel of one's choice, by contrast, has never been derived from the Sixth Amendment's purpose of ensuring a fair trial.³ It has been regarded as the root meaning of the constitutional guarantee. See *Wheat*, [486 U. S., at 159](#); *Andersen v. Treat*, [172 U. S. 24](#) (1898). See generally W. Beaney, *The Right to Counsel in American Courts 18-24, 27-33* (1955). Cf. *Powell, supra*, at 53. Where the right to be assisted by counsel of one's choice is wrongly denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice--which is the right to a particular lawyer regardless of comparative effectiveness--with the right to effective counsel--which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.

III

Having concluded, in light of the Government's concession of erroneous deprivation, that the trial court violated respondent's Sixth Amendment right to counsel of choice, we must consider whether this error is subject to review for harmlessness. In *Arizona v. Fulminante*, [499 U. S. 279](#) (1991), we divided constitutional errors into two classes. The first we called "trial error," because the errors "occurred during presentation of the case to the jury" and their effect may "be quantitatively assessed in the context of other evidence presented in order to determine whether [they were] harmless beyond a reasonable doubt." *Id.*, at 307-308 (internal quotation marks

omitted). These include "most constitutional errors." *Id.*, at 306. The second class of constitutional error we called "structural defects." These "defy analysis by 'harmless-error' standards" because they "affec[t] the framework within which the trial proceeds," and are not "simply an error in the trial process itself." *Id.*, at 309-310.⁴ See also *Neder v. United States*, [527 U. S. 1, 7-9](#) (1999). Such errors include the denial of counsel, see *Gideon v. Wainwright*, [372 U. S. 335](#) (1963), the denial of the right of self-representation, see *McKaskle v. Wiggins*, [465 U. S. 168, 177-178](#), n. 8 (1984), the denial of the right to public trial, see *Waller v. Georgia*, [467 U. S. 39, 49](#), n. 9 (1984), and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction, see *Sullivan v. Louisiana*, [508 U. S. 275](#) (1993).

We have little trouble concluding that erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Id.*, at 282. Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds," *Fulminante, supra*, at 310--or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe.

The Government acknowledges that the deprivation of choice of counsel pervades the entire trial, but points out that counsel's ineffectiveness may also do so and yet we do not allow reversal of a conviction for that reason without a showing of prejudice. But the requirement of showing prejudice in ineffectiveness claims stems from the very definition of the right at issue; it is not a matter of showing that the violation was harmless, but of showing that a violation of the right to effective representation *occurred*. A choice-of-counsel violation occurs *whenever* the defendant's choice is wrongfully denied. Moreover, if and when counsel's ineffectiveness "pervades" a trial, it does so (to the extent we can detect it) through identifiable mistakes. We can assess how those mistakes affected the outcome. To determine the effect of wrongful denial of choice of counsel, however, we would not be looking for mistakes committed by the actual counsel, but for differences in the defense that would have been made by the rejected counsel--in matters ranging from questions asked on *voir dire* and cross-examination to such intangibles as argument style and relationship with the prosecutors. We would have to speculate upon what matters the rejected counsel would have handled differently--or indeed, would have handled the same but with the benefit of a more jury-pleasing courtroom style or a longstanding relationship of trust with the prosecutors. And then we would have to speculate upon what effect those different choices or different intangibles might have had. The difficulties of conducting the two assessments of prejudice are not remotely comparable.⁵

IV

Nothing we have said today casts any doubt or places any qualification upon our previous holdings that limit the right to counsel of choice and recognize the authority of trial courts to establish criteria for admitting lawyers to argue before them. As the dissent too discusses, *post*, at 3, the right to counsel of choice does not extend to defendants who require counsel to be appointed for them. See *Wheat*, [486 U. S., at 159](#); *Caplin & Drysdale*, [491 U. S., at 624](#), 626. Nor may a defendant insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation. See *Wheat*, [486 U. S., at 159-160](#). We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, *id.*, at 163-164, and against the demands of its calendar, *Morris v. Slappy*, [461 U. S. 1, 11-12](#) (1983). The court has, moreover, an "independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat, supra*, at 160. None of these limitations on the right to choose one's counsel is relevant here. This is not a case about a court's power to enforce rules or adhere to practices that determine which attorneys may appear before it, or to make scheduling and other decisions that effectively exclude a defendant's first choice of counsel. However broad a court's discretion may be, the Government has conceded that the District Court here erred when it denied respondent his choice of counsel. Accepting that premise, we hold that the error violated respondent's Sixth Amendment right to counsel of choice and that this violation is not subject to harmless-error analysis.

* * *

The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

**UNITED STATES, PETITIONER v.
CUAUHTEMOC
GONZALEZ-LOPEZ**

**on writ of certiorari to the united states court of
appeals for the eighth circuit**

[June 26, 2006]

Justice Alito, with whom *The Chief Justice*, *Justice Kennedy*, and *Justice Thomas* join, dissenting.

I disagree with the Court's conclusion that a criminal conviction must automatically be reversed whenever a trial court errs in applying its rules regarding *pro hac vice* admissions and as a result prevents a defendant from being represented at trial by the defendant's first-choice attorney. Instead, a defendant should be required to make at least *some* showing that the trial court's erroneous ruling adversely affected the quality of assistance that the defendant received. In my view, the majority's contrary holding is based on an incorrect interpretation of the Sixth Amendment and a misapplication of harmless-error principles. I respectfully dissent.

I

The majority makes a subtle but important mistake at the outset in its characterization of what the Sixth Amendment guarantees. The majority states that the Sixth Amendment protects "the right of a defendant who does not require appointed counsel to choose who will represent him." *Ante*, at 3. What the Sixth Amendment actually protects, however, is the right to have *the assistance* that the defendant's counsel of choice is able to provide. It follows that if the erroneous disqualification of a defendant's counsel of choice does not impair the assistance that a defendant receives at trial, there is no violation of the Sixth Amendment.¹

The language of the Sixth Amendment supports this interpretation. The Assistance of Counsel Clause focuses on what a defendant is entitled to receive ("Assistance"), rather than on the identity of the provider. The background of the adoption of the Sixth Amendment points in the same direction. The specific evil against which the Assistance of Counsel Clause was aimed was the English common-law rule severely limiting a felony defendant's ability to be assisted by counsel. *United States v. Ash*, [413 U. S. 300, 306](#) (1973). "[T]he core purpose of the counsel guarantee was to assure 'Assistance' at trial," *id.*, at 309, and thereby "to assure fairness in the adversary criminal process," *United States v. Morrison*, [449 U. S. 361, 364](#) (1981). It was not "the essential aim of the Amendment ... to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." *Wheat v. United States*, [486 U. S. 153, 159](#) (1988); cf. *Morris v. Slappy*, [461 U. S. 1, 14](#) (1983) ("[W]e reject the claim that the Sixth Amendment guarantees a 'meaningful relationship' between an accused and his counsel").

There is no doubt, of course, that the right "to have the Assistance of Counsel" carries with it a limited right to be represented by counsel of choice. At the time of the adoption of the Bill of Rights, when the availability of appointed counsel was generally limited,² that is how the right inevitably played out: A defendant's right to have the assistance of counsel necessarily meant the right to have the assistance of whatever counsel the defendant was able to secure. But from the beginning, the right to counsel of choice has been circumscribed.

For one thing, a defendant's choice of counsel has always been restricted by the rules governing admission to practice before the court in question. The Judiciary Act of 1789 made this clear, providing that parties "in all the courts of the United States" had the right to "the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct cases therein." Ch. 20, §35, 1 Stat. 92. Therefore, if a defendant's first-choice attorney was not eligible to appear under the rules of a particular court, the defendant had no right to be represented by that attorney. Indeed, if a defendant's top 10 or

top 25 choices were all attorneys who were not eligible to appear in the court in question, the defendant had no right to be represented by any of them. Today, rules governing admission to practice before particular courts continue to limit the ability of a criminal defendant to be represented by counsel of choice. See *Wheat*, 486 U. S., at 159.

The right to counsel of choice is also limited by conflict-of-interest rules. Even if a defendant is aware that his or her attorney of choice has a conflict, and even if the defendant is eager to waive any objection, the defendant has no constitutional right to be represented by that attorney. See *id.*, at 159-160.

Similarly, the right to be represented by counsel of choice can be limited by mundane case-management considerations. If a trial judge schedules a trial to begin on a particular date and defendant's counsel of choice is already committed for other trials until some time thereafter, the trial judge has discretion under appropriate circumstances to refuse to postpone the trial date and thereby, in effect, to force the defendant to forgo counsel of choice. See, e.g., *Slappy, supra*; *United States v. Hughey*, 147 F. 3d 423, 428-431 (CA5 1998).

These limitations on the right to counsel of choice are tolerable because the focus of the right is the quality of the representation that the defendant receives, not the identity of the attorney who provides the representation. Limiting a defendant to those attorneys who are willing, available, and eligible to represent the defendant still leaves a defendant with a pool of attorneys to choose from--and, in most jurisdictions today, a large and diverse pool. Thus, these restrictions generally have no adverse effect on a defendant's ability to secure the best assistance that the defendant's circumstances permit.

Because the Sixth Amendment focuses on the quality of the assistance that counsel of choice would have provided, I would hold that the erroneous disqualification of counsel does not violate the Sixth Amendment unless the ruling diminishes the quality of assistance that the defendant would have otherwise received. This would not require a defendant to show that the second-choice attorney was constitutionally ineffective within the meaning of *Strickland v. Washington*, [466 U. S. 668](#) (1984). Rather, the defendant would be entitled to a new trial if the defendant could show "an identifiable difference in the quality of representation between the disqualified counsel and the attorney who represents the defendant at trial." *Rodriguez v. Chandler*, 382 F. 3d 670, 675 (CA7 2004), cert. denied, [543 U. S. 1156](#) (2005).

This approach is fully consistent with our prior decisions. We have never held that the erroneous disqualification of counsel violates the Sixth Amendment when there is no prejudice, and while we have stated in several cases that the Sixth Amendment protects a defendant's right to counsel of choice, see *Caplin & Drysdale, Chartered v. United States*, [491 U. S. 617, 624-625](#) (1989); *Wheat, supra*, at 159; *Powell v. Alabama*, [287 U. S. 45, 53](#) (1932), we had no occasion in those cases to consider whether a violation of this right can be shown where there is no prejudice. Nor do our opinions in those cases refer to that question. It is therefore unreasonable to read our general statements regarding counsel of choice as addressing the issue of prejudice.³

II

But even accepting, as the majority holds, that the erroneous disqualification of counsel of choice always violates the Sixth Amendment, it still would not follow that reversal is required in all cases. The Constitution, by its terms, does not mandate any particular remedy for violations of its own provisions. Instead, we are bound in this case by Federal Rule of Criminal Procedure 52(a), which instructs federal courts to "disregar[d]" "[a]ny error ... which does not affect substantial rights." See also 28 U. S. C. §2111; *Chapman v. California*, [386 U. S. 18, 22](#) (1967). The only exceptions we have recognized to this rule have been for "a limited class of fundamental constitutional errors that 'defy analysis by "harmless error" standards.'" *Neder v. United States*, [527 U. S. 1, 7](#) (1999) (quoting *Arizona v. Fulminante*, [499 U. S. 279, 309](#) (1991)); see also *Chapman, supra*, at 23. "Such errors ... 'necessarily render a trial fundamentally unfair' [and] deprive defendants of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence ... and no criminal punishment may be regarded as fundamentally fair.'" *Neder, supra*, at 8-9 (quoting *Rose v. Clark*, [478 U. S. 570, 577-578](#) (1986) (second omission in original)); see also *ante*, at 9 (listing such errors).

Thus, in *Neder*, we rejected the argument that the omission of an element of a crime in a jury instruction "*necessarily* render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." [527 U. S., at 9](#). In fact, in that case, "quite the opposite [was] true: *Neder* was tried before an impartial judge, under the correct standard of proof and with the assistance of counsel; a fairly selected, impartial jury was instructed to consider all of the evidence and argument in respect to *Neder's* defense . . ." *Ibid*.

Neder's situation--with an impartial judge, the correct standard of proof, assistance of counsel, and a fair jury--is much like respondent's. Fundamental unfairness does not inexorably follow from the denial of first-choice counsel. The "decision to retain a particular lawyer" is "often uninformed," *Cuyler v. Sullivan*, [446 U. S. 335, 344](#) (1980); a defendant's second-choice lawyer may thus turn out to be better than the defendant's first-choice lawyer. More often, a defendant's first- and second-choice lawyers may be simply indistinguishable. These possibilities would not justify violating the right to choice of counsel, but they do make me hard put to characterize the violation as "*always* render[ing] a trial unfair," *Neder, supra*, at 9. Fairness may not limit the right, see *ante*, at 5, but it does inform the remedy.

Nor is it always or nearly always impossible to determine whether the first choice would have provided better representation than the second choice. There are undoubtedly cases in which the prosecution would have little difficulty showing that the second-choice attorney was better qualified than or at least as qualified as the defendant's initial choice, and there are other cases in which it will be evident to the trial judge that any difference in ability or strategy could not have possibly affected the outcome of the trial.

Requiring a defendant to fall back on a second-choice attorney is not comparable to denying a defendant the right to be represented by counsel at all. Refusing to permit a defendant to receive the assistance of any counsel is the epitome of fundamental unfairness, and as far as the effect on the outcome is concerned, it is much more difficult to assess the effect of a complete denial of counsel than it is to assess the effect of merely preventing representation by the defendant's first-choice attorney. To be sure, when the effect of an erroneous disqualification is hard to gauge, the

prosecution will be unable to meet its burden of showing that the error was harmless beyond a reasonable doubt. But that does not justify eliminating the possibility of showing harmless error in all cases.

The majority's focus on the "trial error"/"structural defect" dichotomy is misleading. In *Fulminante*, we used these terms to denote two poles of constitutional error that had appeared in prior cases; trial errors always lead to harmless-error review, while structural defects always lead to automatic reversal. See [499 U. S., at 306-310](#). We did not suggest that trial errors are the *only* sorts of errors amenable to harmless-error review, or that *all* errors "affecting the framework within which the trial proceeds," *id.*, at 310, are structural. The touchstone of structural error is fundamental unfairness and unreliability. Automatic reversal is strong medicine that should be reserved for constitutional errors that "*always*" or "*necessarily*," *Neder, supra*, at 9 (emphasis in original), produce such unfairness.

III

Either of the two courses outlined above--requiring at least some showing of prejudice, or engaging in harmless-error review--would avoid the anomalous and unjustifiable consequences that follow from the majority's two-part rule of error without prejudice followed by automatic reversal.

Under the majority's holding, a defendant who is erroneously required to go to trial with a second-choice attorney is automatically entitled to a new trial even if this attorney performed brilliantly. By contrast, a defendant whose attorney was ineffective in the constitutional sense (*i.e.*, "made errors so serious that counsel was not functioning as the 'counsel' guaranteed ... by the Sixth Amendment," *Strickland*, [466 U. S., at 687](#)) cannot obtain relief without showing prejudice.

Under the majority's holding, a trial court may adopt rules severely restricting *pro hac vice* admissions, cf. *Leis v. Flynt*, [439 U. S. 438, 443](#) (1979) (*per curiam*), but if it adopts a generous rule and then errs in interpreting or applying it, the error automatically requires reversal of any conviction, regardless of whether the erroneous ruling had any effect on the defendant.

Under the majority's holding, some defendants will be awarded new trials even though it is clear that the erroneous disqualification of their first-choice counsel did not prejudice them in the least. Suppose, for example, that a defendant is initially represented by an attorney who previously represented the defendant in civil matters and who has little criminal experience. Suppose that this attorney is erroneously disqualified and that the defendant is then able to secure the services of a nationally acclaimed and highly experienced criminal defense attorney who secures a surprisingly favorable result at trial--for instance, acquittal on most but not all counts. Under the majority's holding, the trial court's erroneous ruling automatically means that the Sixth Amendment was violated--even if the defendant makes no attempt to argue that the disqualified attorney would have done a better job. In fact, the defendant would still be entitled to a new trial on the counts of conviction even if the defendant publicly proclaimed after the verdict that the

second attorney had provided better representation than any other attorney in the country could have possibly done.

Cases as stark as the above hypothetical are unlikely, but there are certainly cases in which the erroneous disqualification of a defendant's first-choice counsel neither seriously upsets the defendant's preferences nor impairs the defendant's representation at trial. As noted above, a defendant's second-choice lawyer may sometimes be better than the defendant's first-choice lawyer. Defendants who retain counsel are frequently forced to choose among attorneys whom they do not know and about whom they have limited information, and thus a defendant may not have a strong preference for any one of the candidates. In addition, if all of the attorneys considered charge roughly comparable fees, they may also be roughly comparable in experience and ability. Under these circumstances, the erroneous disqualification of a defendant's first-choice attorney may simply mean that the defendant will be represented by an attorney whom the defendant very nearly chose initially and who is able to provide representation that is just as good as that which would have been furnished by the disqualified attorney. In light of these realities, mandating reversal without even a minimal showing of prejudice on the part of the defendant is unwarranted.

The consequences of the majority's holding are particularly severe in the federal system and in other court systems that do not allow a defendant to take an interlocutory appeal when counsel is disqualified. See *Flanagan v. United States*, [465 U. S. 259, 260](#) (1984). Under such systems, appellate review typically occurs after the defendant has been tried and convicted. At that point, if an appellate court concludes that the trial judge made a marginally incorrect ruling in applying its own *pro hac vice* rules, the appellate court has no alternative but to order a new trial--even if there is not even any claim of prejudice. The Sixth Amendment does not require such results.

Because I believe that some showing of prejudice is required to establish a violation of the Sixth Amendment, I would vacate and remand to let the Court of Appeals determine whether there was prejudice. However, assuming for the sake of argument that no prejudice is required, I believe that such a violation, like most constitutional violations, is amenable to harmless-error review. Our statutes demand it, and our precedents do not bar it. I would then vacate and remand to let the Court of Appeals determine whether the error was harmless in this case.

FOOTNOTES

Footnote [1](#)

The dissent proposes yet a third standard--viz., that the defendant must show " 'an identifiable difference in the quality of representation between the disqualified counsel and the attorney who represents the defendant at trial.' " *Post*, at 4 (opinion of *Alito*, J.). That proposal suffers from the same infirmities (outlined later in text) that beset the Government's positions. In addition, however, it greatly impairs the clarity of the law. How is a lower-court judge to know what an

"identifiable difference" consists of? Whereas the Government at least appeals to *Strickland* and the case law under it, the most the dissent can claim by way of precedential support for its rule is that it is "consistent with" cases that never discussed the issue of prejudice. *Id.*

Footnote 2

The dissent resists giving effect to our cases' recognition, and the Government's concession, that a defendant has a right to be defended by counsel of his choosing. It argues that because the Sixth Amendment guarantees the right to the "assistance of counsel," it is not violated unless "the erroneous disqualification of a defendant's counsel of choice ... impair[s] the assistance that a defendant receives at trial." *Post*, at 1-2 (opinion of *Alito, J.*). But if our cases (and the Government's concession) mean anything, it is that the Sixth Amendment is violated when the erroneous disqualification of counsel "impair[s] the assistance that a defendant receives at trial [from the counsel that he chose]."

Footnote 3

In *Wheat v. United States*, [486 U. S. 153](#) (1988), where we formulated the right to counsel of choice and discussed some of the limitations upon it, we took note of the overarching purpose of fair trial in holding that the trial court has discretion to disallow a first choice of counsel that would create serious risk of conflict of interest. *Id.*, at 159. It is one thing to conclude that the right to counsel of choice may be limited by the need for fair trial, but quite another to say that the right does not exist unless its denial renders the trial unfair.

Footnote 4

The dissent criticizes us for our trial error/structural defect dichotomy, asserting that *Fulminante* never said that "trial errors are the *only* sorts of errors amenable to harmless-error review, or that *all* errors affecting the framework within which the trial proceeds are structural," *post*, at 8 (opinion of *Alito, J.*) (internal quotation marks and citation omitted). Although it is hard to read that case as doing anything other than dividing constitutional error into two comprehensive categories, our ensuing analysis in fact relies neither upon such comprehensiveness nor upon trial error as the touchstone for the availability of harmless-error review. Rather, here, as we have done in the past, we rest our conclusion of structural error upon the difficulty of assessing the effect of the error. See *Waller v. Georgia*, [467 U. S. 39, 49](#), n. 9 (1984) (violation of the public-trial guarantee is not subject to harmless review because "the benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance"); *Vasquez v. Hillery*, [474 U. S. 254, 263](#) (1986) ("[W]hen a petit jury has been selected upon improper criteria or has been exposed to prejudicial publicity, we have required reversal of the conviction because the effect of the violation cannot be ascertained"). The dissent would use "fundamental unfairness" as the sole criterion of structural error, and cites a case in which that was the determining factor, see *Neder v. United States*, [527 U. S. 1, 9](#) (1999) (quoted by the dissent, *post*, at 6). But this has not been the only criterion we have used. In addition to the above cases using difficulty of assessment as

the test, we have also relied on the irrelevance of harmlessness, see *McKaskle v. Wiggins*, [465 U. S. 168, 177](#), n. 8 (1984) ("Since the right to self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis"). Thus, it is the dissent that creates a single, inflexible criterion, inconsistent with the reasoning of our precedents, when it asserts that *only* those errors that *always* or *necessarily* render a trial fundamentally unfair and unreliable are structural, *post*, at 8.

Footnote [5](#)

In its discussion of the analysis that would be required to conduct harmless-error review, the dissent focuses on which counsel was "better." See *post*, at 7-8 (opinion of *Alito*, J.). This focus has the effect of making the analysis look achievable, but it is fundamentally inconsistent with the principle (which the dissent purports to accept for the sake of argument) that the Sixth Amendment can be violated without a showing of harm to the quality of representation. Cf. *McKaskle*, *supra*, at 177, n. 8. By framing its inquiry in these terms and expressing indignation at the thought that a defendant may receive a new trial when his actual counsel was at least as effective as the one he wanted, the dissent betrays its misunderstanding of the nature of the right to counsel of choice and its confusion of this right with the right to effective assistance of counsel.

FOOTNOTES

Footnote [1](#)

This view is consistent with the Government's concession that "[t]he Sixth Amendment ... encompasses a non-indigent defendant's right to select counsel who will represent him in a criminal prosecution," Brief for United States 11, though this right is "circumscribed in several important respects," *id.*, at 12 (citation and internal quotation marks omitted).

Footnote [2](#)

See Act of Apr. 30, 1790, ch. 9, §29, 1 Stat. 118 (providing for appointment of counsel in capital cases); *Betts v. Brady*, [316 U. S. 455, 467](#), n. 20 (1942) (surveying state statutes).

Footnote [3](#)

Powell is the case generally cited as first noting a defendant's right to counsel of choice. *Powell* involved an infamous trial in which the defendants were prevented from obtaining any counsel of their choice and were instead constrained to proceed with court-appointed counsel of dubious effectiveness. We held that this denied them due process and that "a fair opportunity to secure

counsel of [one's] own choice" is a necessary concomitant of the right to counsel. [287 U. S., at 53](#); cf. *id.*, at 71 ("[T]he failure of the trial court to give [petitioners] reasonable time and opportunity to secure counsel was a clear denial of due process"). It is clear from the facts of the case that we were referring to the denial of the opportunity to choose *any* counsel, and we certainly said nothing to suggest that a violation of the right to counsel of choice could be established without any showing of prejudice.

In *Wheat*, we held that the trial judge had not erred in declining the defendant's waiver of his right to conflict-free counsel, and therefore we had no need to consider whether an incorrect ruling would have required reversal of the defendant's conviction in the absence of a showing of prejudice. We noted that "the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment," 486 U. S., at 159, but we went on to stress that this right "is circumscribed in several important respects," *ibid.*, including by the requirement of bar membership and rules against conflicts of interest. *Wheat* did not suggest that a violation of the limited Sixth Amendment right to counsel of choice can be established without showing prejudice, and our statements about the Sixth Amendment's "purpose" and "essential aim"--providing effective advocacy and a fair trial, *ibid.*--suggest the opposite.

Finally, in *Caplin & Drysdale*, we held that the challenged action of the trial judge--entering an order forfeiting funds that the defendant had earmarked for use in paying his attorneys--had been proper, and, accordingly, we had no occasion to address the issue of prejudice. We recognized that "the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds," [491 U. S., at 624-625](#), but we added that "[w]hatever the full extent of the Sixth Amendment's protection of one's right to retain counsel of his choosing, that protection does not go beyond 'the individual's right to spend his own money to obtain the advice and assistance of ... counsel,'" *id.*, at 626 (omission in original).

SUPREME COURT OF THE UNITED STATES

JOHNSON v. ZERBST, 304 U.S. 458 (1938)

304 U.S. 458

JOHNSON

v.

ZERBST, Warden, United States Penitentiary, Atlanta, Ga.

No. 699.

Argued April 4, 1938.

Decided May 23, 1938.

Mr. Elbert P. Tuttle, of Atlanta, Ga., for petitioner.

Mr. Bates Booth, of Washington, D.C., for respondent.

Mr. Justice BLACK delivered the opinion of the Court.

Petitioner, while imprisoned in a federal penitentiary, was denied habeas corpus by the District Court. 1 Later, [304 U.S. 458, 459] that court granted petitioner a second hearing, prompted by 'the peculiar circumstances surrounding the case and the desire of the court to afford opportunity to present any additional facts and views which petitioner desired to present.' Upon consideration of the second petition, the court found that it did 'not substantially differ from the' first, 'and for the reasons stated in the decision in that case' the second petition was also denied.

Petitioner is serving sentence under a conviction in a United States District Court for possessing and uttering counterfeit money. It appears from the opinion of the District Judge denying habeas corpus that he believed petitioner was deprived, in the trial court, of his constitutional right under the provision of the Sixth Amendment, U.S.C.A. Const. Amend. 6, that, 'In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.' 2 However, he held that proceedings depriving petitioner of his constitutional right to assistance of counsel were not sufficient 'to make the trial void and justify its annulment in a habeas corpus proceeding, but that they constituted trial errors or irregularities which could only be corrected on appeal.'

The Court of Appeals affirmed³, and we granted certiorari due to the importance of the questions involved. 4

The record discloses that:

Petitioner and one Bridwell were arrested in Charleston, S.C., November 21, 1934, charged with [304 U.S. 458, 460] feloniously uttering and passing four counterfeit twenty-dollar Federal Reserve notes and possessing twenty-one such notes. Both were then enlisted men in the United States Marine Corps, on leave. They were bound over to await action of the United States Grand Jury, but were kept in jail due to inability to give bail. January 21, 1935, they were indicted; January 23, 1935, they were taken to court and there first give notice of the indictment; immediately were arraigned, tried, convicted, and sentenced that day to four and one-half years in the penitentiary; and January 25, were transported to the Federal Penitentiary in Atlanta. While counsel had represented them in the preliminary hearings before the commissioner in which they—some two months before their trial—were bound over to the Grand Jury, the accused were unable to employ counsel for their trial. Upon arraignment, both pleaded not guilty, said that they had no lawyer, and—in response to an inquiry of the court—stated that they were ready for trial. They were then tried, convicted, and sentenced, without assistance of counsel.

'Both petitioners lived in distant cities of other states and neither had relatives, friends, or acquaintances in Charleston. Both had little education and were without funds. They testified that they had never been guilty of nor charged with any offense before, and there was no evidence in rebuttal of these statements.' 5 In the habeas corpus hearing,

petitioner's evidence developed that no request was directed to the trial judge to appoint counsel, but that such request was made to the District Attorney, who replied that in the state of trial (South Carolina) the court did not appoint counsel unless the defendant was charged with a capital crime. The District Attorney denied that petitioner made request [304 U.S. 458, 461] to him for counsel or that he had indicated petitioner had no right to Counsel. The Assistant District Attorney testified that Bridwell 'cross examined the witnesses;' and, in his opinion, displayed more knowledge of procedure than the normal layman would possess. He did not recall whether Bridwell addressed the jury or not, but the clerk of the trial court testified 'that Mr. Johnson (Bridwell?) conducted his defense about as well as the average layman usually does in cases of a similar nature.' Concerning what he said to the jury and his cross-examination of witnesses, Bridwell testified: 'I tried to speak to the jury after the evidence was in during my trial over in the Eastern District of South Carolina. I told the jury, 'I don't consider myself a hoodlum as the District Attorney has made me out several times.' I told the jury that I was not a native of New York as the District Attorney stated, but was from Mississippi and only stationed for overnme nt service in New York. I only said fifteen or twenty words. I said I didn't think I was a hoodlum and could not have been one of very long standing because they didn't keep them in the Marine Corps.

'I objected to one witness' testimony. I didn't ask him any questions, I only objected to his whole testimony. After the prosecuting attorney was finished with the witness, he said, 'Your witness,' and I got up and objected to the testimony on the grounds that it was all false, and the Trial Judge said any objection I had I would have to bring proof or disproof.'

Reviewing the evidence on the petition for habeas corpus, the District Court said⁶ that, after trial, petitioner and Johnson '... were remanded to jail, where they asked the jailer to call a lawyer for them, but were not permitted to contact one. They did not, however, undertake to get any message to the judge. [304 U.S. 458, 462] '... January 25th, they were transported by automobile to the Federal Penitentiary in Atlanta, Ga., arriving ... the same day.

'There, as is the custom, they were placed in isolation and so kept for sixteen days without being permitted to communicate with any one except the officers of the institution, but they did see the officers daily. They were no request of the officers to be permitted to see a lawyer, nor did they ask the officers to present to the trial judge a motion for new trial or application for appeal or notice that they desired to move for a new trial or to take an appeal.

'On May 15, 1935, petitioners filed applications for appeal which were denied because filed too late.'

The '... time for filing a motion for new trial and for taking an appeal has been limited to three and five days.' [7](#)

One. The Sixth Amendment guarantees that: 'In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.' This is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. Omitted from the Constitution as originally adopted, provisions of this and other Amendments

were submitted by the first Congress convened under that Constitution as essential barriers against arbitrary or unjust deprivation of human rights. The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not 'still be done.' [8](#) It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect [\[304 U.S. 458, 463\]](#) himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel. That which is simple, orderly, and necessary to the lawyer-to the untrained layman-may appear intricate, complex, and mysterious. Consistently with the wise policy of the Sixth Amendment and other parts of our fundamental charter, this Court has pointed to '... the humane policy of the modern criminal law ...' which now provides that a defendant '... if he be poor, ... may have counsel furnished him by the state, ... not infrequently ... more able than the attorney for the state.' [9](#)

The '... right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. 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 for 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 defence, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.' [10](#) The Sixth Amendment withholds from federal courts,¹¹ in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel. [\[304 U.S. 458, 464\]](#) Two. There is insistence here that petitioner waived this constitutional right. The District Court did not so find. It has been pointed out that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional rights¹² and that we 'do not presume acquiescence in the loss of fundamental rights.' [13](#) A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

Patton v. United States, [281 U.S. 276](#), 50 S.Ct. 253, 70 A.L.R. 263, decided that an accused may, under certain circumstances, consent to a jury of eleven and waive the right to trial and verdict by a constitutional jury of twelve men. The question of waiver was there considered on direct appeal from the conviction, and not by collateral attack on habeas corpus. However, that decision may be helpful in indicating how, and in that manner, an accused may-before his trial results in final judgment and conviction-waive the right to assistance of counsel. The Patton Case noted approvingly a state court decision¹⁴ pointing out that the humane policy of modern criminal law had altered conditions which had existed in the 'days when the accused could not testify in his own behalf, (and) was not furnished counsel,' and which had made it possible to convict a man when he was 'without money, without counsel, without ability to summon witnesses, and not permitted to tell his own story ...' [\[304 U.S. 458, 465\]](#) The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused- whose life or liberty is at stake-is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an

intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.

Three. The District Court, holding petitioner could not obtain relief by habeas corpus, said: 'It is unfortunate, if petitioners lost their right to a new trial through their ignorance or negligence, but such misfortune cannot give this court jurisdiction in a habeas corpus case to review and correct the errors complained of.'

The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution. True, habeas corpus cannot be used as a means of reviewing errors of law and irregularities-not involving the question of jurisdiction-occurring during the course of trial;¹⁵ and the 'writ of habeas corpus cannot be used as a writ of error.'¹⁶ These principles, however, must be construed and applied so as to preserve-not destroy-constitutional safeguards of human life and liberty. The scope of inquiry in habeas corpus proceedings has been broadened-not narrowed-since the adoption of the Sixth [304 U.S. 458, 466] Amendment. In such a proceeding, 'it would be clearly erroneous to confine the inquiry to the proceedings and judgment of the trial court'¹⁷ and the petitioned court has 'power to inquire with regard to the jurisdiction of the inferior court, either in respect to the subject-matter or to the person, even if such inquiry (involves) an examination of facts outside of, but not inconsistent with, the record.'¹⁸ Congress has expanded the rights of a petitioner for habeas corpus¹⁹ and the '... effect is to substitute for the bare legal review that seems to have been the limit of judicial authority under the common-law practice, and under the act of 31 Car. II, chap. 2, a more searching investigation, in which the applicant is put upon his oath to set forth the truth of the matter respecting the causes of his detention, and the court, upon determining the actual facts, is to 'dispose of the party as law and justice require.'

'There being no doubt of the authority of the Congress to thus liberalize the common-law procedure on habeas corpus in order to safeguard the liberty of all persons within the jurisdiction of the United States against infringement through any violation of the Constitution or a law or treaty established thereunder, it results that under the sections cited a prisoner in custody pursuant to the final judgment of a state court of criminal jurisdiction may have a judicial inquiry in a court of the United States into the very truth and substance of the causes of his detention, although it may become necessary to look behind and beyond the record of his conviction to a sufficient extent to test the jurisdiction of the state court to proceed to judgment against him. ... [304 U.S. 458, 467] '... it is open to the courts of the United States, upon an application for a writ of habeas corpus, to look beyond forms and inquiry into the very substance of the matter'²⁰

Petitioner, convicted and sentenced without the assistance of counsel, contends that he was ignorant of his right to counsel, and incapable of preserving his legal and constitutional rights during trial. Urging that- after conviction-he was unable to obtain a lawyer; was ignorant of the proceedings to obtain new trial or appeal and the time limits governing both; and that he did not possess the requisite skill or knowledge properly to conduct an appeal, he says that it was-as a

practical matter- impossible for him to obtain relief by appeal. If these contentions be true in fact, it necessarily follows that no legal procedural remedy is available to grant relief for a violation of constitutional rights, unless the courts protect petitioner's rights by habeas corpus. Of the contention that the law provides no effective remedy for such a deprivation of rights affecting life and liberty it may well be said-as in *Mooney v. Holohan*, [294 U.S. 103, 113](#), 55 S.Ct. 340, 342, 98 A.L.R. 406-that it 'falls with the premise.' To deprive a citizen of his only effective remedy would not only be contrary to the 'rudimentary demands of justice' ²¹ but destructive of a constitutional guaranty specifically designed to prevent injustice.

Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty. When this [\[304 U.S. 458, 468\]](#) right is properly waived, the assistance of counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. A court's jurisdiction at the hearing of trial may be lost 'in the course of the proceedings' due to failure to complete the court-as the Sixth Amendment requires-by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. ²² If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. ²³ A judge of the United States-to whom a petition for habeas corpus is addressed-should be alert to examine 'the facts for himself when if true as alleged they make the trial absolutely void.' ²⁴

It must be remembered, however, that a judgment cannot be lightly set aside by collateral attack, even on habeas corpus. When collaterally attacked, the judgment of a court carries with it a presumption of regularity. ²⁵ Where a defendant, without counsel, acquiesces in a trial resulting in his conviction and later seeks release by the extraordinary remedy of habeas corpus, the burden of proof rests upon him to establish that he did not competently and intelligently waive his constitutional [\[304 U.S. 458, 469\]](#) right to assistance of Counsel. If in a habeas corpus hearing, he does meet this burden and convinces the court by a preponderance of evidence that he neither had counsel nor properly waived his constitutional right to counsel, it is the duty of the court to grant the writ.

In this case, petitioner was convicted without enjoying the assistance of counsel. Believing habeas corpus was not an available remedy, the District Court below made no findings as to waiver by petitioner. In this state of the record we deem it necessary to remand the cause. If on remand-the District Court finds from all of the evidence that petitioner has sustained the burden of proof resting upon him and that he did not competently and intelligently waive his right to counsel, it will follow that the trial court did not have jurisdiction to proceed to judgment and conviction of petitioner, and he will therefore be entitled to have his petition granted. If petitioner fails to sustain this burden he is not entitled to the writ.

The cause is reversed and remanded to the District Court for action in harmony with this opinion.

REVERSED.

Mr. Justice REED concurs in the reversal.

Mr. Justice McREYNOLDS is of opinion that the judgment of the court below should be affirmed.

Mr. Justice BUTLER is of the opinion that the record shows that petitioner waived the right to have counsel, that the trial court had jurisdiction, and that the judgment of the Circuit Court of Appeals should be affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

Footnotes

[[Footnote 1](#)] Bridwell v. Aderhold, 13 F.Supp. 253.

[[Footnote 2](#)] The Sixth Amendment of the Constitution provides that: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.'

[[Footnote 3](#)] 5 Cir., 92 F.2d 748.

[[Footnote 4](#)] [303 U.S. 629](#), 58 S.Ct. 610, 82 L.Ed. --.

[[Footnote 5](#)] Opinion of the District Judge, Bridwell v. Aderhold, D.C., 13 F. Supp. 253, 254.

[[Footnote 6](#)] Bridwell v. Aderhold, 13 F.Supp. 253, 254.

[[Footnote 7](#)] Bridwell v. Aderhold, D.C., 13 F.Supp. at page 256; see Rules of Practice and Procedure (Criminal Appeals Rules), adopted May 7, 1934, II, III, 28 U.S.C.A. following section 723a.

[[Footnote 8](#)] Cf. Palko v. Connecticut, [302 U.S. 319, 325](#), 58 S.Ct. 149, 152.

[[Footnote 9](#)] Patton v. United States, [281 U.S. 276, 308](#), 50 S.Ct. 253, 261, 70 A.L.R. 263.

[[Footnote 10](#)] Powell v. Alabama, [287 U.S. 45, 68](#), 69 S., 53 S.Ct. 55, 63, 64, 84 A.L.R. 527.

[[Footnote 11](#)] Cf., Barron v. The Mayor, etc., of Baltimore, 7 Pet. 243, 247; Edwards v. Elliott, 21 Wall. 532, 557.

[[Footnote 12](#)] Aetna Insurance Co. v. Kennedy, [301 U.S. 389, 393](#), 57 S.Ct. 809, 811, 812; Hodges v. Easton, [106 U.S. 408, 412](#), 1 S.Ct. 307.

[[Footnote 13](#)] Ohio Bell Telephone Co. v. Public Utilities Commission, [301 U.S. 292, 307](#), 57 S.Ct. 724, 731.

[[Footnote 14](#)] Hack v. State, 141 Wis. 346, 351, 124 N.W. 492, 45 L.R.A.,N.S., 664.

[[Footnote 15](#)] Cf., Ex parte Watkins, 3 Pet. 193; Knewal v. Egan, [268 U.S. 442](#), 45 S.Ct. 522; Harlan v. McGourin, [218 U.S. 442](#), 31 S.Ct. 44, 21 Ann.Cas. 849.

[[Footnote 16](#)] Woolsey v. Best, [299 U.S. 1, 2](#), 57 S.Ct. 2.

[[Footnote 17](#)] Frank v. Mangum, [237 U.S. 309, 327](#), 35 S.Ct. 582, 587.

[[Footnote 18](#)] In re Mayfield, [141 U.S. 107, 116](#), 11 S.Ct. 939, 941; In re Cuddy, Petitioner, [131 U.S. 280](#), 9 S.Ct. 703.

[[Footnote 19](#)] 28 U.S.C., ch. 14, 451 et seq., 28 U.S.C.A. 451 et seq.

[[Footnote 20](#)] Frank v. Mangum, *supra*, pages 330, 331, 35 S.Ct. page 588, *cf.*, Moore v. Dempsey, [261 U.S. 86](#), 43 S.Ct. 265; Mooney v. Holohan, [294 U.S. 103](#), 55 S.Ct. 340, 98 A.L.R. 406; Ex parte Hans Nielson, Petitioner, [131 U.S. 176](#), 9 S.Ct. 672.

[[Footnote 21](#)] Cf. Mooney v. Holohan, *supra*, page 112, 55 S.Ct. page 342.

[[Footnote 22](#)] Cf. Frank v. Mangum, *supra*, page 327, 35 S.Ct. 582.

[[Footnote 23](#)] Ex parte Hans Neilsen, Petitioner, *supra*.

[[Footnote 24](#)] Cf. Moore v. Dempsey, [261 U.S. 86, 92](#), 43 S.Ct. 265, 267; Patton v. United States, [281 U.S. 276, 312](#), 313 S., 50 S.Ct. 253, 70 A.L.R. 263.

[[Footnote 25](#)] In re Cuddy, Petitioner, *supra*.

U.S. Supreme Court

FARETTA v. CALIFORNIA, 422 U.S. 806 (1975)
422 U.S. 806

FARETTA v. CALIFORNIA.
CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND

APPELLATE DISTRICT.

No. 73-5772.

Argued November 19, 1974.

Decided June 30, 1975.

The Sixth Amendment as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so; and in this case the state courts erred in forcing petitioner against his will to accept a state-appointed public defender and in denying his request to conduct his own defense. Pp. 812-836.

Vacated and remanded.

STEWART, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, WHITE, MARSHALL, and POWELL, JJ., joined. BURGER, C. J., filed a dissenting opinion, in which BLACKMUN and REHNQUIST, JJ., joined, post, p. 836. BLACKMUN, J., filed a dissenting opinion, in which BURGER, C. J., and REHNQUIST, J., joined, post, p. 846.

Jerome B. Falk, Jr., by appointment of the Court, [417 U.S. 906](#), argued the cause for petitioner. With him on the briefs was Roger S. Hanson.

Howard J. Schwab, Deputy Attorney General of California, argued the cause for respondent. With him on the brief were Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, and Russell Iungerich and Donald J. Oeser, Deputy Attorneys General. *

[[Footnote *](#)] John E. Thorne, pro se, filed a brief as amicus curiae. [422 U.S. 806, 807]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. This clear constitutional rule has emerged from a series of cases decided here over the last 50 years. [1](#) The question before us now is whether a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. Stated another way, the question is whether a State may constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense. It is not an easy question, but we have concluded that a State may not constitutionally do so.

I

Anthony Faretta was charged with grand theft in an information filed in the Superior Court of Los Angeles County, Cal. At the arraignment, the Superior Court Judge assigned to preside at the trial appointed the public defender to represent Faretta. Well before the date of trial, however, Faretta requested that he be permitted to represent himself. Questioning by the judge revealed that Faretta had once represented himself in a criminal prosecution, that he had a high school education, and that he did not want to be represented by the public defender because he believed that that office was "very loaded down with . . . a heavy case load." The judge [422 U.S. 806, 808] responded that he believed Faretta was "making a mistake" and emphasized that in further proceedings Faretta would receive no special favors. [2](#) Nevertheless, after establishing that Faretta wanted to represent himself and did not want a lawyer, the judge, in a "preliminary ruling," accepted Faretta's waiver of the assistance of counsel. The judge indicated, however, that he might reverse this ruling if it later appeared that Faretta was unable adequately to represent himself.

Several weeks thereafter, but still prior to trial, the judge sua sponte held a hearing to inquire into Faretta's ability to conduct his own defense, and questioned him specifically about both the hearsay rule and the state law governing the challenge of potential jurors. [3](#) After consideration [422 U.S. 806, 809] of Faretta's answers, and observation of his demeanor, the judge ruled that Faretta had not made an intelligent and knowing waiver of his right to the assistance [422 U.S. 806, 810] of counsel, and also ruled that Faretta had no constitutional right to conduct his own defense. [4](#) The judge, accordingly, reversed his earlier ruling permitting self-representation and again appointed the public defender to represent Faretta. Faretta's subsequent request for leave to act as cocounsel was rejected, as were his efforts to make certain motions on his own behalf. [5](#) Throughout [422 U.S. 806, 811] the subsequent trial, the judge required that Faretta's defense be conducted only through the appointed lawyer from the public defender's office. At the conclusion of the trial, the jury found Faretta guilty as charged, and the judge sentenced him to prison.

The California Court of Appeal, relying upon a then-recent California Supreme Court decision that had expressly decided the issue, [6](#) affirmed the trial judge's ruling that Faretta had no federal or state constitutional right [422 U.S. 806, 812] to represent himself. [7](#) Accordingly, the appellate court affirmed Faretta's conviction. A petition for rehearing was denied without opinion, and the California Supreme Court denied review. [8](#) We granted certiorari. [415 U.S. 975](#).

II

In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment [422 U.S. 806, 813] was proposed, provided that "in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of . . . counsel" The right is currently codified in 28 U.S.C. 1654.

With few exceptions, each of the several States also accords a defendant the right to represent himself in any criminal case. [9](#) The Constitutions of 36 States explicitly confer that right. [10](#) Moreover, many state courts have [\[422 U.S. 806, 814\]](#) expressed the view that the right is also supported by the Constitution of the United States. [11](#)

This Court has more than once indicated the same view. In *Adams v. United States ex rel. McCann*, [317 U.S. 269, 279](#), the Court recognized that the Sixth Amendment right to the assistance of counsel implicitly embodies a "correlative right to dispense with a lawyer's help." The defendant in that case, indicted for federal mail fraud violations, insisted on conducting his own defense without benefit of counsel. He also requested a bench trial and signed a waiver of his right to trial by jury. The prosecution consented to the waiver of a jury, and the waiver was accepted by the court. The defendant was convicted, but the Court of Appeals reversed the conviction on the ground that a person accused of a felony could not competently waive his right to trial by jury except upon the advice of a lawyer. This Court reversed and reinstated the conviction, holding that "an accused, in the exercise of a free and intelligent choice, and with the considered approval of the court, may waive trial by jury, and so likewise may he competently and intelligently waive his Constitutional right to assistance of counsel." *Id.*, at 275.

The *Adams* case does not, of course, necessarily resolve the issue before us. It held only that "the Constitution [\[422 U.S. 806, 815\]](#) does not force a lawyer upon a defendant." *Id.*, at 279. [12](#) Whether the Constitution forbids a State from forcing a lawyer upon a defendant is a different question. But the Court in *Adams* did recognize, albeit in dictum, an affirmative right of self-representation:

"The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused's position before the law. . . .

". . . What were contrived as protections for the accused should not be turned into fetters. . . . To deny an accused a choice of procedure in circumstances in which he, though a layman is as capable as any lawyer of making an intelligent choice, is to impair the worth of great Constitutional safeguards by treating them as empty verbalisms.

". . . When the administration of the criminal law . . . is hedged about as it is by the Constitutional safeguards for the protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards . . . is to imprison a man in his privileges and call it the Constitution." *Id.*, at 279-280 (emphasis added).

In other settings as well, the Court has indicated that [\[422 U.S. 806, 816\]](#) a defendant has a constitutionally protected right to represent himself in a criminal trial. For example, in *Snyder v. Massachusetts*, [291 U.S. 97](#), the Court held that the Confrontation Clause of the Sixth Amendment gives the accused a right to be present at all stages of the proceedings where fundamental fairness might be thwarted by his absence. This right to "presence" was based upon the premise that the "defense may be made easier if the accused is permitted to be present at the examination of jurors or the summing up of counsel, for it will be in his power, if present, to give advice or suggestion or even to supersede his lawyers altogether and conduct the trial himself." *Id.*, at 106 (emphasis added). And in *Price v. Johnston*, [334 U.S. 266](#), the Court, in holding that a convicted person had no absolute right to argue his own appeal, said this holding was in "sharp contrast" to his "recognized privilege of conducting his own defense at the trial." *Id.*, at 285.

The United States Courts of Appeals have repeatedly held that the right of self-representation is protected by the Bill of Rights. In *United States v. Plattner*, 330 F.2d 271, the Court of Appeals for the Second Circuit emphasized that the Sixth Amendment grants the accused the rights of confrontation, of compulsory process for witnesses in his favor, and of assistance of counsel as minimum procedural requirements in federal criminal prosecutions. The right to the assistance of counsel, the court concluded, was intended to supplement the other rights of the defendant, and not to impair "the absolute and primary right to conduct one's own defense in propria persona." *Id.*, at 274. The court found support for its decision in the language of the 1789 federal statute; in the statutes and rules governing criminal procedure, see 28 U.S.C. 1654, and Fed. Rule Crim. Proc. 44; in the many state constitutions that expressly guarantee self-representation; [422 U.S. 806, 817] and in this Court's recognition of the right in *Adams and Price*. On these grounds, the Court of Appeals held that implicit in the Fifth Amendment's guarantee of due process of law, and implicit also in the Sixth Amendment's guarantee of a right to the assistance of counsel, is "the right of the accused personally to manage and conduct his own defense in a criminal case." 330 F.2d, at 274. See also *United States ex rel. Maldonado v. Denno*, 348 F.2d 12, 15 (CA2); *MacKenna v. Ellis*, 263 F.2d 35, 41 (CA5); *United States v. Sternman*, 415 F.2d 1165, 1169-1170 (CA6); *Lowe v. United States*, 418 F.2d 100, 103 (CA7); *United States v. Warner*, 428 F.2d 730, 733 (CA8); *Haslam v. United States*, 431 F.2d 362, 365 (CA9); compare *United States v. Dougherty*, 154 U.S. App. D.C. 76, 86, 473 F.2d 1113, 1123 (intimating right is constitutional but finding it unnecessary to reach issue) with *Brown v. United States*, 105 U.S. App. D.C. 77, 79-80, 264 F.2d 363, 365-366 (plurality opinion stating right is no more than statutory in nature).

This Court's past recognition of the right of self-representation, the federal-court authority holding the right to be of constitutional dimension, and the state constitutions pointing to the right's fundamental nature form a consensus not easily ignored. "[T]he mere fact that a path is a beaten one," Mr. Justice Jackson once observed, "is a persuasive reason for following it." 13 We confront here a nearly universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so. [422 U.S. 806, 818]

III

This consensus is soundly premised: The right of self-representation finds support in the structure of the Sixth Amendment, as well as in the English and colonial jurisprudence from which the Amendment emerged.

A

The Sixth Amendment includes a compact statement of the rights necessary to a full defense:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Because these rights are basic to our adversary system of criminal justice, they are part of the "due process of law" that is guaranteed by the Fourteenth Amendment to defendants in the

criminal courts of the States. [14](#) The rights to notice, confrontation, and compulsory process, when taken together, guarantee that a criminal charge may be answered in a manner now considered fundamental to the fair administration of American justice - through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. In short, the Amendment constitutionalizes the right in an adversary criminal trial to make a defense as we know it. See *California v. Green*, [399 U.S. 149, 176](#) (Harlan, J., concurring). [[422 U.S. 806, 819](#)]

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with the witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor." Although not stated in the Amendment in so many words, the right to self-representation - to make one's own defense personally - is thus necessarily implied by the structure of the Amendment. [15](#) The right to defend [[422 U.S. 806, 820](#)] is given directly to the accused; for it is he who suffers the consequences if the defense fails.

The counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistant, however expert, is still an assistant. 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. In such a case, counsel is not an assistant, but a master; [16](#) and the right to make a defense is stripped of the personal character upon which the Amendment insists. It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas. Cf. *Henry v. Mississippi*, [379 U.S. 443, 451](#); *Brookhart v. Janis*, [384 U.S. 1, 7](#) -8; *Fay v. Noia*, [372 U.S. 391, 439](#). This allocation can only be justified, however, by the defendant's consent, at the [[422 U.S. 806, 821](#)] outset, to accept counsel as his representative. An unwanted counsel "represents" the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense.

B

The Sixth Amendment, when naturally read, thus implies a right of self-representation. This reading is reinforced by the Amendment's roots in English legal history.

In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber. That curious institution, which flourished in the late 16th and early 17th centuries, was of mixed executive and judicial character, and characteristically departed from common-law traditions. For those reasons, and because it specialized in trying "political" offenses, the Star Chamber has for centuries symbolized disregard of basic individual rights. [17](#) The Star Chamber not merely allowed but required defendants to have counsel. The

defendant's answer to an indictment was not accepted unless it was signed by counsel. When counsel refused to sign the answer, for whatever reason, the defendant was [422 U.S. 806, 822] considered to have confessed. [18](#) Stephen commented on this procedure: "There is something specially repugnant to justice in using rules of practice in such a manner as [422 U.S. 806, 823] to debar a prisoner from defending himself, especially when the professed object of the rules so used is to provide for his defense." 1 J. Stephen, *A History of the Criminal Law of England* 341-342 (1883). The Star Chamber was swept away in 1641 by the revolutionary fervor of the Long Parliament. The notion of obligatory counsel disappeared with it.

By the common law of that time, it was not representation by counsel but self-representation that was the practice in prosecutions for serious crime. At one time, every litigant was required to "appear before the court in his own person and conduct his own cause in his own words." [19](#) While a right to counsel developed early in civil cases and in cases of misdemeanor, a prohibition against the assistance of counsel continued for centuries in prosecutions for felony or treason. [20](#) Thus, in the 16th and 17th centuries the accused felon or traitor stood alone, with neither counsel nor the benefit of other rights - to notice, confrontation, and compulsory process - that we now associate with a genuinely fair adversary proceeding. The trial was merely a "long argument between the prisoner and the [422 U.S. 806, 824] counsel for the Crown." [21](#) As harsh as this now seems, at least "the prisoner was allowed to make what statements he liked. . . . Obviously this public oral trial presented many more opportunities to a prisoner than the secret enquiry based on written depositions, which, on the continent, had taken the place of a trial. . . ." [22](#)

With the Treason Act of 1695, there began a long and important era of reform in English criminal procedure. The 1695 statute granted to the accused traitor the rights to a copy of the indictment, to have his witnesses testify under oath, and "to make . . . full Defense, by Counsel learned in the Law." [23](#) It also provided for court appointment of counsel, but only if the accused so desired. [24](#) [422 U.S. 806, 825] Thus, as new rights developed, the accused retained his established right "to make what statements he liked." [25](#) The right to counsel was viewed as guaranteeing a choice between representation by counsel and the traditional practice of self-representation. The ban on counsel in felony cases, which had been substantially eroded in the courts, [26](#) was finally eliminated by statute in 1836. [27](#) In more recent years, Parliament has provided for court appointment of counsel in serious criminal cases, but only at the accused's request. [28](#) At no point in this process of reform in England was counsel ever forced upon the [422 U.S. 806, 826] defendant. The common-law rule, succinctly stated in *R. v. Woodward*, 1944. K. B. 118, 119, 1944. 1 All E. R. 159, 160, has evidently always been that "no person charged with a criminal offence can have counsel forced upon him against his will." [29](#) See 3 Halsbury's *Laws of England* 1141, pp. 624-625 (4th ed. 1973); *R. v. Maybury*, 11 L. T. R. (n. s.) 566 (Q. B. 1865).

C

In the American Colonies the insistence upon a right of self-representation was, if anything, more fervent than in England.

The colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers. When the Colonies were first settled, "the lawyer was synonymous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions." [30](#) This prejudice gained strength in the Colonies where "distrust [422 U.S. 806, 827] of lawyers became an institution." [31](#) Several Colonies prohibited pleading for hire in the 17th century. [32](#) The prejudice persisted into the 18th century as "the lower classes came to identify lawyers with the upper class." [33](#) The years of Revolution and Confederation saw an upsurge of antilawyer sentiment, a "sudden revival, after the War of the Revolution, of the old dislike and distrust of lawyers as a class." [34](#) In the heat of these sentiments the Constitution was forged.

This is not to say that the Colonies were slow to recognize the value of counsel in criminal cases. Colonial judges soon departed from ancient English practice and allowed accused felons the aid of counsel for their defense. [35](#) At the same time, however, the basic right of [422 U.S. 806, 828] self-representation was never questioned. We have found no instance where a colonial court required a defendant in a criminal case to accept as his representative an unwanted lawyer. Indeed, even where counsel was permitted, the general practice continued to be self-representation. [36](#)

The right of self-representation was guaranteed in many colonial charters and declarations of rights. These early documents establish that the "right to counsel" meant to the colonists a right to choose between pleading through a lawyer and representing oneself. [37](#) After the [422 U.S. 806, 829] Declaration of Independence, the right of self-representation, along with other rights basic to the making of a defense, entered the new state constitutions in wholesale fashion. [38](#) The right to counsel was clearly thought to [422 U.S. 806, 830] supplement the primary right of the accused to defend himself, [39](#) utilizing his personal rights to notice, confrontation, and compulsory process. And when the Colonies or newly independent States provided by statute rather than by constitution for court appointment of counsel in criminal cases, they also meticulously preserved the right of the accused to defend himself personally. [40](#) [422 U.S. 806, 831]

The recognition of the right of self-representation was not limited to the state lawmakers. As we have noted, 35 of the Judiciary Act of 1789, signed one day before the Sixth Amendment was proposed, guaranteed in the federal courts the right of all parties to "plead and manage their own causes personally or by the assistance of . . . counsel." 1 Stat. 92. See 28 U.S.C. 1654. At the time James Madison drafted the Sixth Amendment, some state constitutions guaranteed an accused the right to be heard "by himself" and by counsel; others provided that an accused was to be "allowed" counsel. [41](#) The various state proposals for the Bill of Rights had similar variations in terminology. [42](#) [422 U.S. 806, 832] In each case, however, the counsel provision was embedded in a package of defense rights granted personally to the accused. There is no indication that the differences in phrasing about "counsel" reflected any differences of principle about self-representation. No State or Colony had ever forced counsel upon an accused; no spokesman had ever suggested that such a practice would be tolerable, much less advisable. If anyone had thought that the Sixth Amendment, as drafted, failed to protect the long-respected right of self-representation, there would undoubtedly have been some debate or comment on the issue. But there was none.

In sum, there is no evidence that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel. To the contrary, the colonists and the Framers, as well as their English ancestors, always conceived of the right to counsel as an "assistance" for the accused, to be used at his option, in defending himself. The Framers selected in the Sixth Amendment a form of words that necessarily implies the right of self-representation. That conclusion is supported by centuries of consistent history.

IV

There can be no blinking the fact that the right of an accused to conduct his own defense seems to cut against the grain of this Court's decisions holding that the Constitution requires that no accused can be convicted and imprisoned unless he has been accorded the right to the assistance of counsel. See *Powell v. Alabama*, [287 U.S. 45](#); *Johnson v. Zerbst*, [304 U.S. 458](#); *Gideon v. Wainwright*, [372 U.S. 335](#); *Argersinger v. Hamlin*, [407 U.S. 25](#). For it is surely true that the basic thesis of those decisions is that the help of a lawyer is essential to assure [\[422 U.S. 806, 833\]](#) the defendant a fair trial. [43](#) And a strong argument can surely be made that the whole thrust of those decisions must inevitably lead to the conclusion that a State may constitutionally impose a lawyer upon even an unwilling defendant.

But it is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want. The value of state-appointed counsel was not unappreciated by the Founders, [44](#) yet the notion of compulsory counsel was utterly foreign to them. And whatever else may be said of those who wrote the Bill of Rights, surely there can be no [\[422 U.S. 806, 834\]](#) doubt that they understood the inestimable worth of free choice. [45](#)

It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And 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." *Illinois v. Allen*, [397 U.S. 337, 350](#)-351 (BRENNAN, J., concurring). [46](#) [\[422 U.S. 806, 835\]](#)

V

When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must "knowingly and intelligently" forgo those relinquished benefits. *Johnson v. Zerbst*, [304 U.S., at 464](#)-465. Cf. *Von Moltke v. Gillies*, [332 U.S. 708, 723](#)-724

(plurality opinion of Black, J.). Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open." *Adams v. United States ex rel. McCann*, [317 U.S., at 279](#).

Here, weeks before trial, Faretta clearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel. The record affirmatively shows that Faretta was literate, competent, and understanding, and that he was voluntarily exercising his informed free will. The trial judge had warned Faretta that he thought it was a mistake not to accept [\[422 U.S. 806, 836\]](#) the assistance of counsel, and that Faretta would be required to follow all the "ground rules" of trial procedure. [47](#) We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on voir dire. [48](#) For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself.

In forcing Faretta, under these circumstances, to accept against his will a state-appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense. Accordingly, the judgment before us is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Footnotes

[[Footnote 1](#)] See, e. g., *Powell v. Alabama*, [287 U.S. 45](#); *Johnson v. Zerbst*, [304 U.S. 458](#); *Betts v. Brady*, [316 U.S. 455](#); *Gideon v. Wainwright*, [372 U.S. 335](#); *Argersinger v. Hamlin*, [407 U.S. 25](#).

[[Footnote 2](#)] The judge informed Faretta:

"You are going to follow the procedure. You are going to have to ask the questions right. If there is an objection to the form of the question and it is properly taken, it is going to be sustained. We are going to treat you like a gentleman. We are going to respect you. We are going to give you every chance, but you are going to play with the same ground rules that anybody plays. And you don't know those ground rules. You wouldn't know those ground rules any more than any other lawyer will know those ground rules until he gets out and tries a lot of cases. And you haven't done it."

[[Footnote 3](#)] The colloquy was as follows:

"THE COURT: In the Faretta matter, I brought you back down here to do some reconsideration as to whether or not you should continue to represent yourself.

"How have you been getting along on your research?"

"THE DEFENDANT: Not bad, your Honor.

"Last night I put in the mail a 995 motion and it should be with the Clerk within the next day or two.

"THE COURT: Have you been preparing yourself for the intricacies of the trial of the matter?

"THE DEFENDANT: Well, your Honor, I was hoping that the case could possibly be disposed of on the 995.

"Mrs. Ayers informed me yesterday that it was the Court's policy to hear the pretrial motions at the time of trial. If possible, your [422 U.S. 806, 809] Honor, I would like a date set as soon as the Court deems adequate after they receive the motion, sometime before trial.

"THE COURT: Let's see how you have been doing on your research.

"How many exceptions are there to the hearsay rule?

"THE DEFENDANT: Well, the hearsay rule would, I guess, be called the best evidence rule, your Honor. And there are several exceptions in case law, but in actual statutory law, I don't feel there is none.

"THE COURT: What are the challenges to the jury for cause?

"THE DEFENDANT: Well, there is twelve peremptory challenges.

"THE COURT: And how many for cause?

"THE DEFENDANT: Well, as many as the Court deems valid.

"THE COURT: And what are they? What are the grounds for challenging a juror for cause?

"THE DEFENDANT: Well, numerous grounds to challenge a witness - I mean, a juror, your Honor, one being the juror is perhaps suffered, was a victim of the same type of offense, might be prejudiced toward the defendant. Any substantial ground that might make the juror prejudice[d] toward the defendant.

"THE COURT: Anything else?

"THE DEFENDANT: Well, a relative perhaps of the victim.

"THE COURT: Have you taken a look at that code section to see what it is?

"THE DEFENDANT: Challenge a juror?

"THE COURT: Yes.

"THE DEFENDANT: Yes, your Honor. I have done -

"THE COURT: What is the code section?

"THE DEFENDANT: On voir diring a jury, your Honor?

"THE COURT: Yes.

"THE DEFENDANT: I am not aware of the section right offhand.

"THE COURT: What code is it in?

"THE DEFENDANT: Well, the research I have done on challenging would be in Witkins Jurisprudence.

"THE COURT: Have you looked at any of the codes to see where these various things are taken up? [422 U.S. 806, 810] "THE DEFENDANT: No, your Honor, I haven't.

"THE COURT: Have you looked in any of the California Codes with reference to trial procedure?

"THE DEFENDANT: Yes, your Honor.

"THE COURT: What codes?

"THE DEFENDANT: I have done extensive research in the Penal Code, your Honor, and the Civil Code.

"THE COURT: If you have done extensive research into it, then tell me about it.

"THE DEFENDANT: On empaneling a jury, your Honor?

"THE COURT: Yes.

"THE DEFENDANT: Well, the District Attorney and the defendant, defense counsel, has both the right to 12 peremptory challenges of a jury. These 12 challenges are undisputable. Any reason that the defense or prosecution should feel that a juror would be inadequate to try the case or to rule on a case, they may then discharge that juror.

"But if there is a valid challenge due to grounds of prejudice or some other grounds, that these aren't considered in the 12 peremptory challenges. There are numerous and the defendant, the defense and the prosecution both have the right to make any inquiry to the jury as to their feelings toward the case."

[[Footnote 4](#)] The judge concluded:

"[T]aking into consideration the recent case of People versus Sharp, where the defendant apparently does not have a constitutional right to represent himself, the Court finds that the ends of justice and requirements of due process require that the prior order permitting the defendant to represent himself in pro per should be and is hereby revoked. That privilege is terminated."

[[Footnote 5](#)] Faretta also urged without success that he was entitled to counsel of his choice, and three times moved for the appointment of a lawyer other than the public defender. These motions, too, were denied.

[[Footnote 6](#)] People v. Sharp, 7 Cal. 3d 448, 499 P.2d 489.

When Sharp was tried the California Constitution expressly provided that the accused in a criminal prosecution had the right "to appear and defend, in person and with counsel." Cal. Const., Art. 1, 13. In an earlier decision the California Supreme Court had held that this language meant that the accused had the right to appear by himself or with counsel. People v. Mattson, 51 Cal. 2d 777, 336 P.2d 937. This view was rejected in Sharp, the California Supreme Court there holding that the defendant in a criminal prosecution has no right under the State or the Federal Constitution to represent himself at trial. See generally Y. Kamisar, W. LaFave & J. Israel, Modern Criminal Procedure 57-60 (4th ed. 1974); Note, 10 Calif. Western L. Rev. 196 (1973); Note, 24 Hastings L. J. 431 (1973); Comment, 64 J. Crim. L. 240 (1973).

Although immaterial to the court's decision, shortly before Sharp was decided on appeal the California Constitution had been amended to delete the right of self-representation from Art. 1, 13, and to empower the legislature expressly "to require the defendant in a felony case to have the assistance of counsel." The new statutes on their face require counsel only in capital cases. See Cal. Penal Code 686 (2), 686.1, 859, 987 (1970 and Supp. 1975). In other than capital cases the accused retains by statutory terms a right "to appear and defend in person and with counsel." 686 (2). However, this language tracks the old language of Art. 1, 13, of the California Constitution; and in construing the constitutional language in Sharp to exclude any right of self-representation under former Art. 1, 13, of the State Constitution, the California Supreme Court also stated that 686 (2) does not provide any right of self-representation.

[[Footnote 7](#)] The Court of Appeal also held that the trial court had not "abused its discretion in concluding that Faretta had not made a knowing and intelligent waiver of his right to be represented by counsel," since "Faretta did not appear aware of the possible consequences of waiving the opportunity for skilled and experienced representation at trial."

[[Footnote 8](#)] The California courts' conclusion that Faretta had no constitutional right to represent himself was made in the context of the following not unusual rules of California criminal procedure: An indigent criminal defendant has no right to appointed counsel of his choice. See *Drumgo v. Superior Court*, 8 Cal. 3d 930, 506 P.2d 1007; *People v. Miller*, 7 Cal. 3d 562, 574, 498 P.2d 1089, 1097; *People v. Massie*, 66 Cal. 2d 899, 910, 428 P.2d 869, 876-877; *People v. Taylor*, 259 Cal. App. 2d 448, 450-451, 66 Cal. Rptr. 514, 515-517. The appointed counsel manages the lawsuit and has the final say in all but a few matters of trial strategy. See, e. g., *People v. Williams*, 2 Cal. 3d 894, 905, 471 P.2d 1008, 1015; *People v. Foster*, 67 Cal. 2d 604, 606-607, 432 P.2d 976, 977-978; *People v. Monk*, 56 Cal. 2d 288, 299, 363 P.2d 865, 870-871; see generally *Rhay v. Browder*, 342 F.2d 345, 349 (CA9). A California conviction will not be reversed on grounds of ineffective assistance of counsel except in the extreme case where the quality of representation was so poor as to render the trial a "farce or a sham." *People v. Ibarra*, 60 Cal. 2d 460, 386 P.2d 487; see *People v. Miller*, supra, at 573, 498 P.2d, at 1096-1097; *People v. Floyd*, 1 Cal. 3d 694, 709, 464 P.2d 64, 73; *People v. Hill*, 70 Cal. 2d 678, 689, 452 P.2d 329, 334; *People v. Reeves*, 64 Cal. 2d 766, 774, 415 P.2d 35, 39.

[[Footnote 9](#)] See, e. g., *Mackreth v. Wilson*, 31 Ala. App. 191, 15 So.2d 112; *Cappetta v. State*, 204 So.2d 913 (Fla. Dist. Ct. App.); *Lockard v. State*, 92 Idaho 813, 451 P.2d 1014; *People v. Nelson*, 47 Ill. 2d 570, 268 N. E. 2d 2; *Blanton v. State*, 229 Ind. 701, 98 N. E. 2d 186; *Westberry v. State*, 254 A. 2d 44 (Me.); *Allen v. Commonwealth*, 324 Mass. 558, 87 N. E. 2d 192; *People v. Haddad*, 306 Mich. 556, 11 N. W. 2d 240; *State v. McGhee*, 184 Neb. 352, 167 N. W. 2d 765; *Zasada v. State*, 19 N. J. Super. 589, 89 A. 2d 45; *People v. McLaughlin*, 291 N. Y. 480, 53 N. E. 2d 356; *State v. Pritchard*, 227 N.C. 168, 41 S. E. 2d 287; *State v. Hollman*, 232 S. C. 489, 102 S. E. 2d 873; *State v. Thomlinson*, 78 S. D. 235, 100 N. W. 2d 121; *State v. Penderville*, 2 Utah 2d 281, 272 P.2d 195; *State v. Woodall*, 5 Wash. App. 901, 491 P.2d 680. See generally Annot., 77 A. L. R. 2d 1233 (1961); 5 R. Anderson, *Wharton's Criminal Law and Procedure* 2016 (1957).

[[Footnote 10](#)] Some States grant the accused the right to be heard, or to defend, in person and by counsel: Ariz. Const., Art. 2, 24; Ark. Const., Art. 2, 10; Colo. Const., Art. 2, 16; Conn. Const., Art. 1, 8; Del. Const., Art. 1, 7; Idaho Const., Art. 1, 13; Ill. Const., Art. 1, 8; Ind. Const., Art. 1, 13; Ky. Const. Bill of Rights, 11; Mo. Const., Art. 1, 18 (a); Mont. Const., Art. 3, 16; Nev. Const., Art. 1, 8; N. H. Const., pt. 1, Art. 15; N. M. Const., Art. 2, 14; N. Y. Const., Art. 1, 6; N. D. Const., Art. 1, 13; Ohio Const., Art. 1, 10; Okla. Const., Art. 2, 20; Ore. Const., Art. 1, 11; Pa. Const., Art. 1, 9; S. D. Const., Art. 6, 7; Tenn. Const., Art. 1, 9; Utah Const., Art. 1, 12; Vt. Const., c. 1, Art. 10; Wis. Const., Art. 1, 7; see La. Const., Art. 1, 9.

Others grant the right to defend in person or by counsel: Kan. [422 U.S. 806, 814] Const. Bill of Rights, 10; Mass. Const., pt. 1, Art. 12; Neb. Const., Art. 1, 11; Wash. Const., Art. 1, 22.

Still others provide the accused the right to defend either by himself, by counsel, or both: Ala. Const., Art. 1, 6; Fla. Const., Art. 1, 16; Me. Const., Art. 1, 6; Miss. Const., Art. 3, 26; S. C. Const., Art. 1, 14; Tex. Const., Art. 1, 10.

[[Footnote 11](#)] See, e. g., *Lockard v. State*, supra; *People v. Nelson*, supra; *Blanton v. State*, supra; *Zasada v. State*, supra; *People v. McLaughlin*, supra; *State v. Mems*, 281 N.C. 658, 190 S. E. 2d 164; *State v. Verna*, 9 Ore. App. 620, 498 P.2d 793.

[[Footnote 12](#)] The holding of *Adams* was reaffirmed in a different context in *Carter v. Illinois*, [329 U.S. 173, 174](#) -175, where the Court again adverted to the right of self-representation:

"Neither the historic conception of Due Process nor the vitality it derives from progressive standards of justice denies a person the right to defend himself or to confess guilt. Under appropriate circumstances the Constitution requires that counsel be tendered; it does not require that under all circumstances counsel be forced upon a defendant." (Emphasis added.) See also *Moore v. Michigan*, [355 U.S. 155, 161](#).

[[Footnote 13](#)] *Jackson, Full Faith and Credit - The Lawyer's Clause of the Constitution*, 45 Col. L. Rev. 1, 26 (1945).

[[Footnote 14](#)] *Gideon v. Wainwright*, [372 U.S. 335](#), and *Argersinger v. Hamlin*, [407 U.S. 25](#) (right to counsel); *Pointer v. Texas*, [380 U.S. 400](#) (right of confrontation); *Washington v. Texas*, [388 U.S. 14](#) (right to compulsory process). See also *In re Oliver*, [333 U.S. 257, 273](#).

[[Footnote 15](#)] This Court has often recognized the constitutional stature of rights that, though not literally expressed in the document, are essential to due process of law in a fair adversary process. It is now accepted, for example, that an accused has a right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings, *Snyder v. Massachusetts*, [291 U.S. 97](#); to testify on his own behalf, see *Harris v. New York*, [401 U.S. 222, 225](#); *Brooks v. Tennessee*, [406 U.S. 605, 612](#); cf. *Ferguson v. Georgia*, [365 U.S. 570](#); and to be convicted only if his guilt is proved beyond a reasonable doubt, *In re Winship*, [397 U.S. 358](#); *Mullaney v. Wilbur*, [421 U.S. 684](#).

The inference of rights is not, of course, a mechanical exercise. In *Singer v. United States*, [380 U.S. 24](#), the Court held that an accused has no right to a bench trial, despite his capacity to waive his right to a jury trial. In so holding, the Court stated that "[t]he ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right." *Id.*, at 34-35. But that statement was made only after the Court had concluded that the Constitution does not affirmatively protect any right to be tried by a judge. Recognizing that an implied right must arise independently from the design and history of the constitutional text, the Court searched for, but could not find, any "indication that the colonists considered the ability to waive a jury trial to be of equal importance to the right to demand one." *Id.*, at 26. Instead, the Court could locate only "isolated instances" of a right to trial by judge, and concluded that these were "clear departures from the common law." *Ibid.*

We follow the approach of Singer here. Our concern is with an [422 U.S. 806, 820] independent right of self-representation. We do not suggest that this right arises mechanically from a defendant's power to waive the right to the assistance of counsel. See *supra*, at 814-815. On the contrary, the right must be independently found in the structure and history of the constitutional text.

[[Footnote 16](#)] Such a result would sever the concept of counsel from its historic roots. The first lawyers were personal friends of the litigant, brought into court by him so that he might "take `counsel' with them" before pleading. 1 F. Pollock & F. Maitland, *The History of English Law* 211 (2d ed. 1909). Similarly, the first "attorneys" were personal agents, often lacking any professional training, who were appointed by those litigants who had secured royal permission to carry on their affairs through a representative, rather than personally. *Id.*, at 212-213.

[[Footnote 17](#)] "The court of star chamber was an efficient, somewhat arbitrary arm of royal power. It was at the height of its career in the days of the Tudor and Stuart kings. Star chamber stood for swiftness and power; it was not a competitor of the common law so much as a limitation on it - a reminder that high state policy could not safely be entrusted to a system so chancy as English law. . . ." L. Friedman, *A History of American Law* 23 (1973). See generally 5 W. Holdsworth, *A History of English Law* 155-214 (1927).

[[Footnote 18](#)] "The proceedings before the Star Chamber began by a Bill `engrossed in parchment and filed with the clerk of the court.' It must, like the other pleadings, be signed by counsel However, counsel were obliged to be careful what they signed. If they put their hands to merely frivolous pleas, or otherwise misbehaved themselves in the conduct of their cases, they were liable to rebuke, suspension, a fine, or imprisonment." Holdsworth, *supra*, n. 17, at 178-179. Counsel, therefore, had to be cautious that any pleadings they signed would not unduly offend the Crown. See 1 J. Stephen, *A History of the Criminal Law of England* 340-341 (1883).

This presented not merely a hypothetical risk for the accused. Stephen gives the following account of a criminal libel trial in the Star Chamber:

"In 1632 William Prynne was informed against for his book called *Histrio Mastix*. Prynne's answer was, amongst other things, that his book had been licensed, and one of the counsel, Mr. Holbourn, apologised, not without good cause, for his style. . . . His trial was, like the other Star Chamber proceedings, perfectly decent and quiet, but the sentence can be described only as monstrous. He was sentenced to be disbarred and deprived of his university degrees; to stand twice in the pillory, and to have one ear cut off each time; to be fined $\text{œ}5,000$; and to be perpetually imprisoned, without books, pen, ink, or paper. . . . "Five years after this, in 1637, Prynne, Bastwick, and Burton, were tried for libel, and were all sentenced to the same punishment as Prynne had received in 1632, Prynne being branded on the cheeks instead of losing his ears. "The procedure in this case appears to me to have been as harsh as the sentence was severe, though I do not think it has been so much noticed. . . . Star Chamber defendants were not only allowed counsel, but were required to get their answers signed by counsel. The effect of this rule, and probably its object was, that no defence could be put before

the Court which counsel would not take the responsibility of signing - a responsibility which, at that time, was extremely serious. If counsel would not sign the defendant's answer he was taken to have confessed the information. Prynne's answer was of such a character that one of the counsel assigned to him [422 U.S. 806, 823] refused to sign it at all, and the other did not sign it till after the proper time. Bastwick could get no one to sign his answer. Burton's answer was signed by counsel, but was set aside as impertinent. Upon the whole, the case was taken to be admitted by all the three, and judgment was passed on them accordingly. . . ." Stephen, *supra*, at 340-341.

That Prynne's defense was foreclosed by the refusal of assigned counsel to endorse his answer is all the more shocking when it is realized that Prynne was himself a lawyer. I. Brant, *The Bill of Rights 106* (1965). On the operation of the Star Chamber generally, see Barnes, *Star Chamber Mythology*, 5 *Am. J. Legal Hist.* 1-11 (1961), and Barnes, *Due Process and Slow Process in the Late Elizabethan-Early Stuart Star Chamber*, 6 *Am. J. Legal Hist.* 221-249, 315-346 (1962).

[[Footnote 19](#)] Pollock & Maitland, *supra*, n. 16, at 211.

[[Footnote 20](#)] *Ibid.* See also Stephen, *supra*, n. 18, at 341.

[[Footnote 21](#)] *Id.*, at 326.

The trial would begin with accusations by counsel for the Crown. The prisoner usually asked, and was granted, the privilege of answering separately each matter alleged against him:

"[T]he trial became a series of excited altercations between the prisoner and the different counsel opposed to him. Every statement of counsel operated as a question to the prisoner, . . . the prisoner either admitting or denying or explaining what was alleged against him. The result was that . . . the examination of the prisoner . . . was the very essence of the trial, and his answers regulated the production of the evidence. . . . As the argument proceeded the counsel [for the Crown] would frequently allege matters which the prisoner denied and called upon them to prove. The proof was usually given by reading depositions, confessions of accomplices, letters, and the like When the matter had been fully inquired into . . . the presiding judge `repeated' or summed up to the jury the matters alleged against the prisoner, and the answers given by him; and the jury gave their verdict." *Id.*, at 325-326.

[[Footnote 22](#)] Holdsworth, *supra*, n. 17, at 195-196.

[[Footnote 23](#)] 7 Will. 3, c. 3, 1. The right to call witnesses under oath was extended to felony cases by statute in 1701. 1 Anne, Stat. 2, c. 9, 3.

[[Footnote 24](#)] The statute provided, in pertinent part, that the accused "shall be received and admitted to make his and their full Defence, by Counsel learned in the Law, and to make any Proof that he or they can [422 U.S. 806, 825] produce by lawful Witness or Witnesses, who shall then be upon Oath, for his and their just Defence in that Behalf; and in case any Person or Persons so accused or indicted shall desire Counsel, the Court before whom such Person or Persons shall be tried, or some Judge of that Court, shall and is hereby authorized and required

immediately, upon his or their Request, to assign to such Person and Persons such and so many Counsel, not exceeding Two, as the Person or Persons shall desire, to whom such Counsel shall have free Access at all seasonable Hours; any Law or Usage to the contrary notwithstanding."

[[Footnote 25](#)] Holdsworth, *supra*, n. 17, at 195.

[[Footnote 26](#)] In Mary Blandy's 1752 murder trial, for example, the court declared that counsel for the defendant could not only speak on points of law raised by the defense, but could also examine defense witnesses and cross-examine those of the Crown. 18 How. St. Tr. 1117. Later in that century judges often allowed counsel for the accused "to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact . . . [or] law." 4 W. Blackstone, *Commentaries* *355-356.

[[Footnote 27](#)] 6 & 7 Will. 4, c. 114, 1. The statute provided in pertinent part that the accused "shall be admitted, after the Close of the Case for the Prosecution, to make full Answer and Defence thereto by Counsel learned in the Law, or by Attorney in Courts where Attornies practise as Counsel."

[[Footnote 28](#)] See, e. g., Poor Prisoners' Defence Act, 1903, 3 Edw. 7, c. 38, 1: Poor Prisoners' Defense Act, 1930, 20 & 21 Geo. 5, c. 32; Legal Aid and Advice Act, 1949, 12 & 13 Geo. 6, c. 51.

[[Footnote 29](#)] Counsel had been appointed for the defendant Woodward but withdrew shortly before trial. When the trial court appointed a substitute counsel, the defendant objected: "I would rather not have legal aid. I would rather conduct the case myself." The trial court insisted, however, that the defendant proceed to trial with counsel, and a conviction resulted. On appeal, the Crown did not even attempt to deny a basic right of self-representation, but argued only that the right had been waived when the accused accepted the first counsel. The Court of Appeal rejected this argument: "The prisoner right at the beginning [of the trial] said that he wished to defend himself . . . and he was refused what we think was his right to make his own case to the jury instead of having it made for him by counsel." This, the court held, was an "injustice to the prisoner," and "although there was a good deal of evidence against the prisoner," the court quashed the conviction.

[[Footnote 30](#)] C. Warren, *A History of the American Bar* 7 (1911).

[[Footnote 31](#)] D. Boorstin, *The Americans; The Colonial Experience* 197 (1958).

[[Footnote 32](#)] For example, the Massachusetts Body of Liberties (1641) in Art. 26 provided:

"Every man that findeth himselfe unfit to plead his owne cause in any Court shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee or reward for his paines. . . ."

Pleading for hire was also prohibited in 17th century Virginia, Connecticut, and the Carolinas, Friedman, *supra*, n. 17, at 81.

[[Footnote 33](#)] *Id.*, at 82.

[[Footnote 34](#)] Warren, *supra*, n. 30, at 212.

[[Footnote 35](#)] For example, Zephaniah Swift, in one of the first American colonial treatises on law, made clear that a right to counsel was recognized in Connecticut. He wrote:

"We have never admitted that cruel and illiberal principle of the common law of England, that when a man is on trial for his life, he shall be refused counsel, and denied those means of defence, which are allowed, when the most trifling pittance of property is in question. The flimsy pretence, that the court are to be counsel for the prisoner will only heighten our indignation at the practice: for it is apparent to the least consideration, that a court can never furnish a [422 U.S. 806, 828] person accused of a crime with the advice, and assistance necessary to make his defence. . . .

"Our ancestors, when they first enacted their laws respecting crimes, influenced by the illiberal principles which they had imbibed in their native country, denied counsel to prisoners to plead for them to any thing but points of law. It is manifest that there is as much necessity for counsel to investigate matters of fact, as points of law, if truth is to be discovered." 2 Z. Swift, *A System of the Laws of the State of Connecticut* 398-399 (1796).

Similarly, colonial Virginia at first based its court proceedings on English judicial customs, but "[b]y the middle of the eighteenth century the defendant was permitted advice of counsel if he could afford such services." H. Rankin, *Criminal Trial Proceedings in the General Court of Colonial Virginia* 67, 89 (1965).

[[Footnote 36](#)] See, e. g., *id.*, at 89-90.

[[Footnote 37](#)] See, e. g., the Massachusetts Body of Liberties, Art. 26 (1641), *supra*, n. 32.

Similarly, the Concessions and Agreements of West New Jersey, in 1677, provided, for all cases, civil and criminal, "that no person or persons shall be compelled to fee any attorney or councillor to plead his cause, but that all persons have free liberty to plead his own cause, if he please."

The Pennsylvania Frame of Government of 1682, perhaps "the most influential of the Colonial documents protecting individual rights," 1 B. Schwartz, *The Bill of Rights: A Documentary History* 130 (1971) (hereinafter Schwartz), provided:

"That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manner, and there [422 U.S. 806, 829] personally plead their own cause themselves; or, if unable, by their friends"

That provision was no doubt inspired by William Penn's belief that an accused should go free if he could personally persuade a jury that it would be unjust to convict him. In England, 12 years earlier, Penn, after preaching a sermon in the street, had been indicted and tried for disturbing the peace. Penn conceded that he was "unacquainted with the formality of the law," but requested that he be given a fair hearing and the "liberty of making my defence." The request was granted, Penn represented himself, and although the judges jailed him for contempt, the jury acquitted

him of the charge. "The People's Ancient and Just Liberties Asserted, in the Trial of William Penn and William Mead, 1670," reproduced in 1 Schwartz 144, 147. See *The Trial of William Penn*, 6 How. St. Tr. 951 (1670), cited in *Illinois v. Allen*, [397 U.S. 337, 353](#) (opinion of DOUGLAS, J.).

[[Footnote 38](#)] Article IX of the Pennsylvania Declaration of Rights in 1776 guaranteed "[t]hat in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council" The Vermont Declaration of Rights (Art. X) in 1777 protected the right of self-representation with virtually identical language. The Georgia Constitution (Art. LVIII) in 1777 declared that its provisions barring the unauthorized practice of law were "not intended to exclude any person from that inherent privilege of every freeman, the liberty to plead his own cause." In 1780 the Massachusetts Declaration of Rights, Art. XII, provided that the accused had a right to be heard "by himself, or his counsel at his election." The New Hampshire Bill of Rights (Art. XV) in 1783 affirmed the right of the accused "to be fully heard in his defence by himself, and counsel." In 1792 the Delaware Constitution (Art. I, 7) preserved the right in language modeled after Art. IX of the Pennsylvania Declaration of Rights. Similarly, in 1798 Georgia included in its Constitution (Art. III, 8) a provision that protected the right of the accused to defend "by himself or counsel, or both." Other state constitutions did not express in literal terms a right of self-representation, but those documents granted all defense rights to the accused personally and phrased [\[422 U.S. 806, 830\]](#) the right of counsel in such fashion as to imply the existence of the antecedent liberty. See Del. Declaration of Rights, 14 (1776) (right "to be allowed counsel"); Md. Declaration of Rights, Art. XIX (1776) (right "to be allowed counsel"); N. J. Const., Art. XVI (1776) (criminals to have "same privileges of . . . counsel, as their prosecutors"); N. Y. Const., Art. XXXIV (1777) ("shall be allowed counsel").

[[Footnote 39](#)] The Founders believed that self-representation was a basic right of a free people. Underlying this belief was not only the antilawyer sentiment of the populace, but also the "natural law" thinking that characterized the Revolution's spokesmen. See P. Kauper, *The Higher Law and the Rights of Man in a Revolutionary Society*, a lecture in the American Enterprise Institute for Public Policy Research series on the American Revolution, Nov. 7, 1973, extracted in 18 U. of Mich. Law School Law Quadrangle Notes, No. 2, p. 9 (1974). For example, Thomas Paine, arguing in support of the 1776 Pennsylvania Declaration of Rights, said:

"Either party . . . has a natural right to plead his own cause; this right is consistent with safety, therefore it is retained; but the parties may not be able, . . . therefore the civil right of pleading by proxy, that is, by a council, is an appendage to the natural right [of self-representation]" Thomas Paine on a Bill of Rights, 1777, reprinted in 1 Schwartz 316.

[[Footnote 40](#)] Statutes providing for appointment of counsel on request of the accused were enacted by Delaware in 1719, 1 *Laws of the State of Delaware, 1700-1797*, p. 66 (Adams 1797); by Pennsylvania in 1718, 3 *Stats. at Large of Pennsylvania* 199 (Busch 1896); and by South Carolina in 1731, *Laws of the Province of South Carolina* 518-519 (Trott 1736). Appointment was also the practice in Connecticut in the latter part of the 18th century; appointment apparently was sometimes made even when the accused failed to request counsel, if he appeared in need of a lawyer, but there is no indication appointment [\[422 U.S. 806, 831\]](#) was ever made over the

objection of the accused. See Swift, *supra*, n. 35, at 392. Free-choice appointment remained the rule as the new Republic emerged. See the 1791 statute of New Hampshire, *Laws of New Hampshire* 247 (Melcher 1792), and the 1795 statute of New Jersey, 2, *Acts of the Nineteenth General Assembly of the State of New Jersey* 1012.

[[Footnote 41](#)] See counsel provisions in n. 38, *supra*.

[[Footnote 42](#)] In ratifying the Constitution, three States urged that a right-to-counsel provision be added by way of amendment. Virginia and North Carolina proposed virtually identical packages of a defendant's rights, each including the provision that an accused be "allowed" counsel. 2 Schwartz 841, 967. The package proposed by New York provided that the accused "ought to . . . have . . . the assistance of Council for his defense." *Id.*, at 913. The idea of proposing amendments upon ratification had begun with the Pennsylvania dissenters from ratification, whose proposed package of a defendant's rights provided for the accused's "right . . . to be heard by himself and his counsel." *Id.*, at 664-665. It can be seen that Madison's precise formulation - "the right . . . to have the Assistance of Counsel for his defence" - varied in phrasing from each of the proposals. "The available debates on the various proposals throw no light on the significance or the interpretation which Congress attributed to the right to counsel." W. Beaney, *The Right to Counsel in American Courts* 23 (1955).

[[Footnote 43](#)] As stated by Mr. Justice Sutherland in *Powell v. Alabama*, [287 U.S. 45](#) :

"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 for 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. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense." *Id.*, at 69.

[[Footnote 44](#)] See n. 38, *supra*, for colonial appointment statutes that predate the Sixth Amendment. Federal law provided for appointment of counsel in capital cases at the request of the accused as early as 1790, 1 Stat. 118.

[[Footnote 45](#)] See, e. g., U.S. Const., Amdt. 1. Freedom of choice is not a stranger to the constitutional design of procedural protections for a defendant in a criminal proceeding. For example, "[e]very criminal defendant is privileged to testify in his own defense, or to refuse to do so." *Harris v. New York*, [401 U.S. 222, 225](#) . See *Brooks v. Tennessee*, [406 U.S. 605, 612](#) ; *Ferguson v. Georgia*, [365 U.S. 570](#) . Cf. *Brown v. United States*, [356 U.S. 148](#) .

[[Footnote 46](#)] We are told that many criminal defendants representing themselves may use the courtroom for deliberate disruption of their trials. But the right of self-representation has been recognized from our beginnings by federal law and by most of the States, and no such result has thereby occurred. Moreover, the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct. See *Illinois v. Allen*, [422 U.S. 806, 835] [397 U.S. 337](#). Of course, 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. See *United States v. Dougherty*, 154 U.S. App. D.C. 76, 87-89, 473 F.2d 1113, 1124-1126.

The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law. Thus, whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of "effective assistance of counsel."

[[Footnote 47](#)] See n. 2, *supra*.

[[Footnote 48](#)] See n. 3, *supra*.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting.

This case, like *Herring v. New York*, *post*, p. 853, announced today, is another example of the judicial tendency to constitutionalize what is thought "good." That effort fails on its own terms here, because 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. [1](#) Moreover, there is no constitutional basis for [422 U.S. 806, 837] the Court's holding, and it can only add to the problems of an already malfunctioning criminal justice system. I therefore dissent.

I

The most striking feature of the Court's opinion is that it devotes so little discussion to the matter which it concedes is the core of the decision, that is, discerning an independent basis in the Constitution for the supposed right to represent oneself in a criminal trial. [2](#) See *ante*, at 818-821, and n. 15. Its ultimate assertion that such a right is tucked between the lines of the Sixth Amendment is contradicted by the Amendment's language and its consistent judicial interpretation.

As the Court seems to recognize, *ante*, at 820, the conclusion that the rights guaranteed by the Sixth Amendment are "personal" to an accused reflects nothing more than the obvious fact that it is he who is on trial and therefore has need of a defense. [3](#) But neither that nearly [422 U.S. 806, 838] trivial proposition nor the language of the Amendment, which speaks in uniformly mandatory terms, leads to the further conclusion that the right to counsel is merely

supplementary and may be dispensed with at the whim of the accused. Rather, this Court's decisions have consistently included the right to counsel as an integral part of the bundle making up the larger "right to a defense as we know it." For example, in *In re Oliver*, [333 U.S. 257](#) (1948), the Court reversed a summary contempt conviction at the hands of a "one-man grand jury," and had this to say:

"We . . . hold that failure to afford the petitioner a reasonable opportunity to defend himself against the charge of false and evasive swearing was a denial of due process of law. A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." *Id.*, at 273.

See also *Argersinger v. Hamlin*, [407 U.S. 25, 27](#)-33 (1972); *Gideon v. Wainwright*, [372 U.S. 335, 344](#) (1963).

The reason for this hardly requires explanation. The fact of the matter is that in all but an extraordinarily small number of cases an accused will lose whatever defense he may have if he undertakes to conduct the trial himself. The Court's opinion in *Powell v. Alabama*, [287 U.S. 45](#) (1932), puts the point eloquently:

"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 for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may [\[422 U.S. 806, 839\]](#) 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. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect." *Id.*, at 69.

Obviously, these considerations do not vary depending upon whether the accused actively desires to be represented by counsel or wishes to proceed pro se. Nor is it accurate to suggest, as the Court seems to later in its opinion, that the quality of his representation at trial is a matter with which only the accused is legitimately concerned. See *ante*, at 834. Although we have adopted an adversary system of criminal justice, see *Gideon v. Wainwright*, *supra*, the prosecution is more than an ordinary litigant, and the trial judge is not simply an automaton who insures that technical rules are adhered to. Both are charged with the duty of insuring that justice, in the broadest sense of that term, is achieved in every criminal trial. See *Brady v. Maryland*, [373 U.S. 83, 87](#), and n. 2 (1963); *Berger v. United States*, [295 U.S. 78, 88](#) (1935). That 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. The damage thus inflicted is not mitigated by the lame explanation that the defendant simply availed himself of the "freedom" "to go to jail under his own banner . . ." *United States ex rel. [422 U.S. 806, 840]* *Maldonado v. Denno*, 348 F.2d 12, 15 (CA2 1965). The system of criminal justice should not be available as an instrument of self-destruction.

In short, both the "spirit and the logic" of the Sixth Amendment are that every person accused of crime shall receive the fullest possible defense; in the vast majority of cases this command can be honored only by means of the expressly guaranteed right to counsel, and the trial judge is in the best position to determine whether the accused is capable of conducting his defense. True freedom of choice and society's interest in seeing that justice is achieved can be vindicated only if the trial court retains discretion to reject any attempted waiver of counsel and insist that the accused be tried according to the Constitution. This discretion is as critical an element of basic fairness as a trial judge's discretion to decline to accept a plea of guilty. See *Santobello v. New York*, [404 U.S. 257, 262](#) (1971).

II

The Court's attempt to support its result by collecting dicta from prior decisions is no more persuasive than its analysis of the Sixth Amendment. Considered in context, the cases upon which the Court relies to "beat its path" either lead it nowhere or point in precisely the opposite direction.

In *Adams v. United States ex rel. McCann*, [317 U.S. 269](#) (1942), and *Carter v. Illinois*, [329 U.S. 173](#) (1946), the defendants had competently waived counsel but later sought to renounce actions taken by them while proceeding pro se. In both cases this Court upheld the convictions, holding that neither an uncounseled waiver of jury trial nor an uncounseled guilty plea is inherently defective under the Constitution. The language which the Court so carefully excises from those opinions relates, not to an affirmative right of self-representation, but to [\[422 U.S. 806, 841\]](#) the consequences of waiver. ⁴ In *Adams*, for example, Mr. Justice Frankfurter was careful to point out that his reference to a defendant's "correlative right to dispense with a lawyer's help" meant only that "[h]e may waive his Constitutional right to assistance of counsel . . .," [317 U.S., at 279](#). See *United States v. Warner*, 428 F.2d 730, 733 (CA8 1970). But, as the Court recognizes, the power to waive a constitutional right does not carry with it the right to insist upon its opposite. *Singer v. United States*, [380 U.S. 24, 34](#) -35 (1965).

Similarly, in *Carter* the Court's opinion observed that the Constitution "does not require that under all circumstances counsel be forced upon a defendant," citing *Adams*. [329 U.S., at 174](#) -175 (emphasis added). I, for one, find this statement impossible to square with the Court's present holding that an accused is absolutely entitled to dispense with a lawyer's help under all conditions. Thus, although *Adams* and *Carter* support the Court's conclusion that a defendant who represents himself may not thereafter disaffirm his deliberate trial decisions, see ante, at 834-835, n. 46, they provide it no comfort regarding the primary issue in this case. ⁵ [\[422 U.S. 806, 842\]](#)

Far more nearly in point is *Price v. Johnston*, [334 U.S. 266](#) (1948), where this Court held that, although the courts of appeals possess the power to command that a prisoner be produced to argue his own appeal, the exercise of that power is a matter of sound judicial discretion. An examination of the whole of the Court's reasoning on this point is instructive:

"The discretionary nature of the power in question grows out of the fact that a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court. The absence of that right is in sharp contrast to his constitutional

prerogative of being present in person at each significant stage of a felony prosecution, and to his recognized privilege of conducting his own defense at the trial. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. Among those so limited is the otherwise unqualified right given by 272 of the Judicial Code, 28 U.S.C. 394 [now 1654], to parties in all the courts of the United States to "plead and manage their own causes personally." *Id.*, at 285-286 (citations omitted).

It barely requires emphasis that this passage contrasts the "constitutional prerogative" to be present at trial with the "recognized privilege" of self-representation, and strongly implies that the latter arises only from the federal statute. It is difficult to imagine a position less consistent with *Price v. Johnston* than that taken by the Court today. [422 U.S. 806, 843]

The Court of Appeals cases relied upon by the Court are likewise dubious authority for its views. Only one of those cases, *United States v. Plattner*, 330 F.2d 271 (CA2 1964), even attempted a reasoned analysis of the issue, and the decision in that case was largely based upon the misreading of *Adams* and *Price* which the Court perpetuates in its opinion today. See 330 F.2d, at 275. In every other case cited ante, at 817, the Courts of Appeals assumed that the right of self-representation was constitutionally based but found that the right had not been violated and affirmed the conviction under review. It is highly questionable whether such holdings would even establish the law of the Circuits from which they came.

In short, what the Court represents as a well-traveled road is in reality a constitutional trail which it is blazing for the first time today, one that has not even been hinted at in our previous decisions. Far from an interpretation of the Sixth Amendment, it is a perversion of the provision to which we gave full meaning in *Gideon v. Wainwright* and *Argersinger v. Hamlin*.

III

Like MR. JUSTICE BLACKMUN, I hesitate to participate in the Court's attempt to use history to take it where legal analysis cannot. Piecing together shreds of English legal history and early state constitutional and statutory provisions, without a full elaboration of the context in which they occurred or any evidence that they were relied upon by the drafters of our Federal Constitution, creates more questions than it answers and hardly provides the firm foundation upon which the creation of new constitutional rights should rest. We are well reminded that this Court once employed an exhaustive analysis of English and colonial practices regarding the [422 U.S. 806, 844] right to counsel to justify the conclusion that it was fundamental to a fair trial and, less than 10 years later, used essentially the same material to conclude that it was not. Compare *Powell v. Alabama*, [287 U.S., at 60-65](#), with *Betts v. Brady*, [316 U.S. 455, 465-471](#) (1942).

As if to illustrate this point, the single historical fact cited by the Court which would appear truly relevant to ascertaining the meaning of the Sixth Amendment proves too much. As the Court points out, ante, at 831, 35 of the Judiciary Act of 1789 provided a statutory right to self-representation in federal criminal trials. The text of the Sixth Amendment, which expressly provides only for a right to counsel, was proposed the day after the Judiciary Act was signed. It can hardly be suggested that the Members of the Congress of 1789, then few in number, were unfamiliar with the Amendment's carefully structured language, which had been under

discussion since the 1787 Constitutional Convention. And it would be most remarkable to suggest, had the right to conduct one's own defense been considered so critical as to require constitutional protection, that it would have been left to implication. Rather, under traditional canons of construction, inclusion of the right in the Judiciary Act and its omission from the constitutional amendment drafted at the same time by many of the same men, supports the conclusion that the omission was intentional.

There is no way to reconcile the idea that the Sixth Amendment impliedly guaranteed the right of an accused to conduct his own defense with the contemporaneous action of the Congress in passing a statute explicitly giving that right. If the Sixth Amendment created a right to self-representation it was unnecessary for Congress to enact any statute on the subject at all. [422 U.S. 806, 845] In this case, therefore, history ought to lead judges to conclude that the Constitution leaves to the judgment of legislatures, and the flexible process of statutory amendment, the question whether criminal defendants should be permitted to conduct their trials pro se. See *Betts v. Brady*, supra. And the fact that we have not hinted at a contrary view for 185 years is surely entitled to some weight in the scales. 6 Cf. *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922).

IV

Society has the right to expect that, when courts find new rights implied in the Constitution, their potential effect upon the resources of our criminal justice system will be considered. However, such considerations are conspicuously absent from the Court's opinion in this case.

It hardly needs repeating that courts at all levels are already handicapped by the unsupplied demand for competent advocates, with the result that it often takes far longer to complete a given case than experienced counsel would require. If we were to assume that there will be widespread exercise of the newly discovered constitutional right to self-representation, it would almost certainly follow that there will be added congestion in the courts and that the quality of justice will suffer. Moreover, the Court blandly assumes that once an accused has elected to defend himself he will be bound by his choice and not be heard to complain of it later. Ante, at 834-835, n. 46. This assumption ignores the role of appellate review, for the reported cases are replete with instances of a convicted defendant being relieved of a [422 U.S. 806, 846] deliberate decision even when made with the advice of counsel. See *Silber v. United States*, 370 U.S. 717 (1962). It is totally unrealistic, therefore, to suggest that an accused will always be held to the consequences of a decision to conduct his own defense. Unless, as may be the case, most persons accused of crime have more wit than to insist upon the dubious benefit that the Court confers today, we can expect that many expensive and good-faith prosecutions will be nullified on appeal for reasons that trial courts are now deprived of the power to prevent. 7

[Footnote 1] Absent a statute giving a right to self-representation, I believe that trial courts should have discretion under the Constitution to insist upon representation by counsel if the interests of justice so require. However, I would note that the record does not support the Court's characterization of this case as one in which that occurred. Although he requested, and initially was granted, permission to proceed [422 U.S. 806, 837] pro se, petitioner has expressed no dissatisfaction with the lawyer who represented him and has not alleged that his defense was impaired or that his lawyer refused to honor his suggestions regarding how the trial should be

conducted. In other words, to use the Court's phrase, petitioner has never contended that "his defense" was not fully presented. Instances of overbearing or ineffective counsel can be dealt with without contriving broad constitutional rules of dubious validity.

[[Footnote 2](#)] The Court deliberately, and in my view properly, declines to characterize this case as one in which the defendant was denied a fair trial. See *Herring v. New York*, post, at 871 (REHNQUIST, J., dissenting).

[[Footnote 3](#)] The Court's attempt to derive support for its position from the fact that the Sixth Amendment speaks in terms of the "Assistance of Counsel" requires little comment. It is most curious to suggest that an accused who exercises his right to "assistance" has thereby impliedly consented to subject himself to a "master." Ante, at 820. And counsel's responsibility to his client and role in the litigation do not vary depending upon whether the accused would have preferred to represent himself.

[[Footnote 4](#)] Indeed, the portion of the Court's quotation which warns against turning constitutional protections into "fetters" refers to the right to trial by jury, not the right to counsel. See *Adams v. United States ex rel. McCann*, [317 U.S. 269, 279](#) (1942). This Court has, of course, squarely held that there is no constitutional right to dispense with a jury. *Singer v. United States*, [380 U.S. 24](#) (1965).

[[Footnote 5](#)] No more relevant is *Snyder v. Massachusetts*, [291 U.S. 97](#) (1934). The reference in that case to an accused's "power . . . to supersede his lawyers" simply helped explain why his defense might "be made easier" if he were "permitted to be present at the examination of jurors or the summing up of counsel" *Id.*, at 106. Mr. Justice Cardozo's opinion for the Court made plain that this right was rooted in considerations of fundamental fairness, and was to be distinguished from those conferred by the Confrontation [\[422 U.S. 806, 841\]](#) Clause. See *id.*, at 107. The Court's present reliance on the *Snyder* dicta is therefore misplaced. See n. 2, supra.

[[Footnote 6](#)] The fact that Congress has retained a statutory right to self-representation suggests that it has also assumed that the Sixth Amendment does not guarantee such a right. See 28 U.S.C. 1654.

[[Footnote 7](#)] Some of the damage we can anticipate from a defendant's ill advised insistence on conducting his own defense may be mitigated by appointing a qualified lawyer to sit in the case as the traditional "friend of the court." The Court does not foreclose this option. See ante, at 834-835, n. 46.

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

Today the Court holds that the Sixth Amendment guarantees to every defendant in a state criminal trial the right to proceed without counsel whenever he elects to do so. I find no textual support for this conclusion in the language of the Sixth Amendment. I find the historical evidence relied upon by the Court to be unpersuasive, especially in light of the recent history of criminal procedure. Finally, I fear that the right to self-representation constitutionalized today

frequently will cause procedural confusion without advancing any significant strategic interest of the defendant. I therefore dissent.

I

The starting point, of course, is the language of the Sixth Amendment:

"In all criminal prosecutions, the accused shall enjoy [422 U.S. 806, 847] the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

It is self-evident that the Amendment makes no direct reference to self-representation. Indeed, the Court concedes that the right to self-representation is "not stated in the Amendment in so many words." Ante, at 819.

It could be argued that the right to assistance of counsel necessarily carries with it the right to waive assistance of counsel. The Court recognizes, however, ante, at 819-820, n. 15, that it has squarely rejected any mechanical interpretation of the Bill of Rights. Mr. Chief Justice Warren, speaking for a unanimous Court in *Singer v. United States*, [380 U.S. 24, 34-35](#) (1965), stated: "The ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right."

Where then in the Sixth Amendment does one find this right to self-representation? According to the Court, it is "necessarily implied by the structure of the Amendment." Ante, at 819. The Court's chain of inferences is delicate and deserves scrutiny. The Court starts with the proposition that the Sixth Amendment is "a compact statement of the rights necessary to a full defense." Ante, at 818. From this proposition the Court concludes that the Sixth Amendment "constitutionalizes the right in an adversary criminal trial to make a defense as we know it." Ibid. Up to this point, at least as a general proposition, the Court's reasoning is unexceptionable. [422 U.S. 806, 848] The Court, however, then concludes that because the specific rights in the Sixth Amendment are personal to the accused, the accused must have a right to exercise those rights personally. Stated somewhat more succinctly, the Court reasons that because the accused has a personal right to "a defense as we know it," he necessarily has a right to make that defense personally. I disagree. Although I believe the specific guarantees of the Sixth Amendment are personal to the accused, I do not agree that the Sixth Amendment guarantees any particular procedural method of asserting those rights. If an accused has enjoyed a speedy trial by an impartial jury in which he was informed of the nature of the accusation, confronted with the witnesses against him, afforded the power of compulsory process, and represented effectively by competent counsel, I do not see that the Sixth Amendment requires more.

The Court suggests that thrusting counsel upon the accused against his considered wish violates the logic of the Sixth Amendment because counsel is to be an assistant, not a master. The Court seeks to support its conclusion by historical analogy to the notorious procedures of the Star Chamber. The potential for exaggerated analogy, however, is markedly diminished when one

recalls that petitioner is seeking an absolute right to self-representation. This is not a case where defense counsel, against the wishes of the defendant or with inadequate consultation, has adopted a trial strategy that significantly affects one of the accused's constitutional rights. For such overbearing conduct by counsel, there is a remedy. *Brookhart v. Janis*, [384 U.S. 1](#) (1966); *Fay v. Noia*, [372 U.S. 391, 439](#) (1963). Nor is this a case where distrust, animosity, or other personal differences between the accused and his would-be counsel have rendered effective representation unlikely or impossible. [422 U.S. 806, 849] See *Brown v. Craven*, 424 F.2d 1166, 1169-1170 (CA9 1970). See also *Anders v. California*, [386 U.S. 738](#) (1967). Nor is this even a case where a defendant has been forced, against his wishes to expend his personal resources to pay for counsel for his defense. See generally *Fuller v. Oregon*, [417 U.S. 40](#) (1974); *James v. Strange*, [407 U.S. 128](#) (1972). Instead, the Court holds that any defendant in any criminal proceeding may insist on representing himself regardless of how complex the trial is likely to be and regardless of how frivolous the defendant's motivations may be. I cannot agree that there is anything in the Due Process Clause or the Sixth Amendment that requires the States to subordinate the solemn business of conducting a criminal prosecution to the whimsical - albeit voluntary - caprice of every accused who wishes to use his trial as a vehicle for personal or political self-gratification.

The Court seems to suggest that so long as the accused is willing to pay the consequences of his folly, there is no reason for not allowing a defendant the right to self-representation. Ante, at 834. See also *United States ex rel. Maldonado v. Denno*, 348 F.2d 12, 15 (CA2 1965) ("[E]ven in cases where the accused is harming himself by insisting on conducting his own defense, respect for individual autonomy requires that he be allowed to go to jail under his own banner if he so desires . . ."). That view ignores the established principle that the interest of the State in a criminal prosecution "is not that it shall win a case, but that justice shall be done." *Berger v. United States*, [295 U.S. 78, 88](#) (1935). See also *Singer v. United States*, [380 U.S., at 37](#). For my part, I do not believe that any amount of pro se pleading can cure the injury to society of an unjust result, but I do believe that a just result should prove to be an effective balm for almost any frustrated pro se defendant. [422 U.S. 806, 850]

II

The Court argues that its conclusion is supported by the historical evidence on self-representation. It is true that self-representation was common, if not required, in 18th century English and American prosecutions. The Court points with special emphasis to the guarantees of self-representation in colonial charters, early state constitutions, and 35 of the first Judiciary Act as evidence contemporaneous with the Bill of Rights of widespread recognition of a right to self-representation.

I do not participate in the Court's reliance on the historical evidence. To begin with, the historical evidence seems to me to be inconclusive in revealing the original understanding of the language of the Sixth Amendment. At the time the Amendment was first proposed, both the right to self-representation and the right to assistance of counsel in federal prosecutions were guaranteed by statute. The Sixth Amendment expressly constitutionalized the right to assistance of counsel but remained conspicuously silent on any right of self-representation. The Court believes that this silence of the Sixth Amendment as to the latter right is evidence of the Framers' belief that the right was so obvious and fundamental that it did not need to be included "in so many words" in

order to be protected by the Amendment. I believe it is at least equally plausible to conclude that the Amendment's silence as to the right of self-representation indicates that the Framers simply did not have the subject in mind when they drafted the language.

The paucity of historical support for the Court's position becomes far more profound when one examines it against the background of two developments in the more recent history of criminal procedure. First, until the middle of the 19th century, the defendant in a criminal proceeding in this country was almost always disqualified [422 U.S. 806, 851] from testifying as a witness because of his "interest" in the outcome. See generally *Ferguson v. Georgia*, [365 U.S. 570](#) (1961). Thus, the ability to defend "in person" was frequently the defendant's only chance to present his side of the case to the judge or jury. See, e. g., *Wilson v. State*, 50 Tenn. 232 (1871). Such Draconian rules of evidence, of course, are now a relic of the past because virtually every State has passed a statute abrogating the common-law rule of disqualification. See *Ferguson v. Georgia*, [365 U.S., at 575](#)-577, 596. With the abolition of the common-law disqualification, the right to appear "in person" as well as by counsel lost most, if not all, of its original importance. See Grano, *The Right to Counsel: Collateral Issues Affecting Due Process*, 54 Minn. L. Rev. 1175, 1192-1194 (1970).

The second historical development is this Court's elaboration of the right to counsel. The road the Court has traveled from *Powell v. Alabama*, [287 U.S. 45](#) (1932), to *Argersinger v. Hamlin*, [407 U.S. 25](#) (1972), need not be recounted here. For our purposes, it is sufficient to recall that from start to finish the development of the right to counsel has been based on the premise that representation by counsel is essential to ensure a fair trial. The Court concedes this and acknowledges that "a strong argument can surely be made that the whole thrust of those decisions must inevitably lead to the conclusion that a State may constitutionally impose a lawyer upon even an unwilling defendant." *Ante*, at 833. Nevertheless, the Court concludes that self-representation must be allowed despite the obvious dangers of unjust convictions in order to protect the individual defendant's right of free choice. As I have already indicated. I cannot agree to such a drastic curtailment of the interest of the State in seeing that justice is done in a real and objective sense. [422 U.S. 806, 852]

III

In conclusion, I note briefly the procedural problems that, I suspect, today's decision will visit upon trial courts in the future. Although the Court indicates that a pro se defendant necessarily waives any claim he might otherwise make of ineffective assistance of counsel, *ante*, at 834-835, n. 46, the opinion leaves open a host of other procedural questions. Must every defendant be advised of his right to proceed pro se? If so, when must that notice be given? Since the right to assistance of counsel and the right to self-representation are mutually exclusive, how is the waiver of each right to be measured? If a defendant has elected to exercise his right to proceed pro se, does he still have a constitutional right to assistance of standby counsel? How soon in the criminal proceeding must a defendant decide between proceeding by counsel or pro se? Must he be allowed to switch in midtrial? May a violation of the right to self-representation ever be harmless error? Must the trial court treat the pro se defendant differently than it would professional counsel? I assume that many of these questions will be answered with finality in due course. Many of them, however, such as the standards of waiver and the treatment of the pro se

defendant, will haunt the trial of every defendant who elects to exercise his right to self-representation. The procedural problems spawned by an absolute right to self-representation will far outweigh whatever tactical advantage the defendant may feel he has gained by electing to represent himself.

If there is 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. [422 U.S. 806, 853]

Thomas Hauert Case

Hauert was indicted on five counts Sec. 7203 WILLFUL FAILURE etc. Hauert wanted to know the OFFENSE statute he was accused of violating and would be pleading guilty to. He wanted to know the particular statute that made him the person required to pay the income tax. His attorney (addressing the judge) "The prosecution has been trying to get my client to plea bargain. My client is interested but has a few demands of the prosecution in order to understand the charges and determine the potential guilt. He has a serious question that nobody will address. Will the court entertain that question?"

Judge: "Certainly."

Hauert: "Your honor, Section 7203 of the I.R. Code is a DISCIPLINARY STATUTE. It defines the penalty for someone who has broken the law. I need to know the underlying offense statute that is used to determine if I am the "any person" required to file. The term "any person" is ambiguous.

Judge: "I don't know what he is asking for.(Looking at Prosecutor) Do you know what he's asking for?"

Prosecutor: "No, your honor, I don't know what he's asking for either."

Judge: "I am not knowledgeable of every law and can't be."
(Hey, isn't he presumed to know the law?)

Hauert: Could you please bring me the I.R. Code book with 7203 in it so I can show you what I am talking about. (note: the clerk brought in the I.R.Code book.)

Judge: (Reading Sec. 7203) " Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return..."

Judge: "Sounds clear to me."

Note: (In the words of Hauert) "I looked at the prosecuting attorney and criminal investigator looking business-like and smiling confidently and I thought, these suckers have gotten to the judge."

Hauert: "May I see the book? (Reading) any person required by this Title...What I am asking is, what statute establishes the FACT that I am one of these "persons" required, by this title, to pay the tax? Where, exactly, in the Title is the offense defined, where am I made the subject of the tax?"

Note: (In the words of Hauert: "I then handed the judge back the book. Looking perplexed, the judge read those words over and over again for what felt like an eternity.")

Judge: "So what you're asking for, Mr. Hauert, is the Statute, referred to in Section 7203, that makes a person liable for the tax and subject to the penalties imposed by Section 7203?"

Hauert: "Yes, that's what I have been asking the prosecutor for. I have also been asking the IRS the same question for several years and no one will give me the Statute of law that I am accused of breaking."

Note: In one sentence that would destroy the government's entire case,

Judge: "No problem, Mr. Prosecutor, I'm sure that you can provide a copy of that statute."

Prosecutor: (Stammering and stuttering) "Um, ohh.. I'm...uh.. not familiar with.. uh.. that part of the code." (With that, the Prosecutor lost his business like composure and the case was concluded. The prosecutor was ordered to find someone who knew which statute defined the offense.)

Hauert's attorney then requested a Bill of Particulars, defining the specific offense statute that created the liability for Hauert to pay the income tax and file a 1040

Tax Return. A Bill of Particulars is a written statement of the SPECIFIC CHARGES against the defendant. This switched the burden of proof back to the government to provide such a statute. After an extended period of time, the prosecution still could not supply the court with the offense statute or regulation that made Tom Hauert (or any American Citizen) the person made liable to pay the S.1 graduated Income Tax (because no such statute exists). Hauert, therefore, filed for and was granted a dismissal!

To view Dan Meador's Article entitled "Proper Federal Indictment Procedure", type the title into Google and you will be able to pull it up in pdf format.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff)
)
v.)
)
EDDIE RAY KAHN)
Defendant)
)
-----)
Eddie Ray Kahn, Petitioner)
Third Party Detainee)
)
Petitioner by special appearance)

Case No. 5:06-cr-22

**MANDATORY JUDICIAL
NOTICE (per Fed Rules of
Evidence 201 (d))**

**LETTER TO JUDGE WM.
TERRELL HODGES #2**

DECLARATION OF PETITIONER

Comes now the living, breathing man, illegally incarcerated Third Party, known as Eddie Ray Kahn (Petitioner), not EDDIE RAY KAHN, Defendant, who is unschooled in law, making this special visitation and Notices the court to take Judicial Notice of the principals stated in Haines v. Kerner, 404 U.S. 519, wherein the court directed that those who are unschooled in law making Complaints/Pleadings shall have the court look to the substance of the complaint rather than the form.

LETTER TO JUDGE WM. TERRELL HODGES #2

April 26, 2007

From: Eddie Ray Kahn
c/o Lake County Sheriff's Office Detention Center
551 W. Main Street
Tavares, Florida 32778

To: Honorable William Terrell Hodges
United States District Court Judge
Middle District of Florida
Ocala Division
Golden-Collum Memorial Federal Building
& U.S. Courthouse
207 N.W. Second Street
Ocala, Florida 34475

Re: Your Official Status

Dear William Terrell Hodges:

1. You have been given since 2-5-07 to respond to the questions that Petitioner sent you in **Letter to Wm. Terrell Hodges** (Docket #94) regarding the Territorial Jurisdiction of the U.S. District Court in Ocala, Florida and whether you are an Article I, III or IV officer. There has been no response. The Courts have ruled on the issue of non response when there should have been one. "Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading..." U.S. v. Tweel 550 F2nd 297, 299, 300 (1977).

Petitioner believes that you have both a legal and moral duty to answer the questions concerning your and the Court's official status, as it appears that you are not an Article III judge and this Court is not an Article III Court. If that is the case, the Plaintiff and the Court would be guilty of Fraud being perpetrated on the Defendants and Petitioner in the instant case.

2. The U.S. Supreme Court has stated in Balzac v. People of Porto Rico, 258 U.S 298, 312 (1922) that:

"The United States District Court is not a true United States court established under article 3 of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty, granted under article 4, 3, of that instrument, of making all needful rules and regulations respecting the

territory belonging to the United States. The resemblance of its jurisdiction to that of true United States courts, in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court". (Emphasis added)

the U.S. District Courts are Art. 4,3 courts, not Art. III courts. Your Oath of Office also confirms that you are a "territorial officer"; a civil servant who works for the Executive branch of the federal government, not the Judicial branch. **Do you disagree with that statement?** (Ex. A) The Constitution of the United States of America, Art. III, in pertinent part, states:

"section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

"section 2. The judicial Power shall extend to all (Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;" (Emphasis added)

In other words, the Art. III Court and Judge have "**judicial power**" to decide all cases in Law and Equity. On the other hand, Art. IV Courts and Judges have very limited authority. According to Balzac, they are only authorized to adjudicate matter concerning the following from Art. 4 sec. 3, in pertinent part:

"The Congress shall have Power to dispose of and make all needed Rules and Regulations respecting the Territory or other Property belonging to the United States;" (Emphasis added)

Obviously, if there are Rules and Regulations respecting the Territory, a court would be necessary to enforce those Rules and Regulations. **Isn't that the purpose of the U.S.**

District Court in Ocala, Florida, Judge Hodges?

3. Judge Hodges, you signed your Oath of Office on 12-28-1971. **You were obviously made very aware of your authority and limitations, were you not? Is**

there any reasonable excuse for deliberately exceeding your (and this Court's) authority by you posing as an Article III judge in the instant case?

Petitioner believes, based on the actions and Rulings of yourself and Magistrate Gary Jones, that you used a "mere territorial court" to deprive Petitioner of his God given Rights to Liberty and the Pursuit of Happiness. If so, that is a blatant violation of your Oath of Office.

Petitioner asks that you right your wrong by releasing Petitioner from jail immediately and dismissing Case No. 5:06-cr-22 for lack of territorial jurisdiction or, in the alternative, answer the questions listed below.

Petitioner believes failure to dismiss this case and release Petitioner from jail will prove extreme malice on the part of all individuals that have been involved in the Kidnapping, False Arrest and False Imprisonment of Petitioner. That would include yourself, Magistrate Gary Jones, Asst. U.S. Attorneys M. Scotland Morris, James R. Klindt, Jeffrey A. McLellan, John Sciortino, Robert E. O'Neill, FBI agents David Wattley and Patrick Johnson and IRS-CID agents P. Cameron Lalli and Gary Graf plus the supervisors that authorized their actions in this case and other unknown persons.

As if that were not enough, the Asst. U.S. Attorneys involved in this travesty of justice brought a case to this court that was fatally flawed from the beginning even if this court had territorial jurisdiction.

As there is no Complaint or Information sworn to under Oath by the Plaintiff, the Record is devoid a description of the *actus reus*, the wrongful deed that comprises the physical components of the offenses alleged against Defendants. **Black's Law Dictionary, 8th Ed., page 39**. As there is no Complaint or Information made under Oath,

the Record is devoid of a description of the *mens rea*, the state of mind Defendants had when committing any alleged offenses *Black's Law Dictionary, 8th Ed., page 1006.*

It is black letter law that both *actus reus* and *mens rea* are two essential elements of every crime that must be proven by the prosecution. *Model Penal Code sec. 1. 13 (9)*. Without a criminal Complaint or Information made under Oath pursuant to the *Fourth Amendment of the Constitution of the U.S.A.*, as well as *Fed. R. of Crim. P. Rule 3*, the Defendants have not been legally or lawfully charged and are denied Due Process of Law. Also, without a criminal Complaint or Information made under Oath pursuant to the *Fourth Amendment* and *Fed. R. Crim. P. Rule 3*, the subject matter jurisdiction of this court was not established. **Therefore, the jurisdiction of this court was never invoked by the Plaintiff to commence a criminal prosecution. Right, Judge Hodges? Since this is an undisputed fact, Judge Hodges, by what authority are you keeping Petitioner incarcerated?**

Petitioner also believes that, absent a Complaint or Information made under Oath, the Assistant U.S. Attorneys defrauded the Grand Jury into giving them an Indictment. Also, Petitioner believes they defrauded the U.S. Magistrate that signed the Arrest Warrant, as they had no Complaint or Information sworn under Oath and no Affidavits of Probable Cause required by the Fourth Amendment of the Constitution of the United States of America.

A letter written by Assistant U.S. Attorney Morris to Petitioner's Standby Counsel confirms the fact that there is **NO** Complaint or Affidavits of Probable Cause on the Court Record. *Fed. R. Crim. P. Rule 41* states, in pertinent part:

"A warrant...shall issue ONLY on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the

grounds for issuing the warrant.” (Emphasis added)

This rule in many respects is duplicative of the Fourth Amendment’s prohibition that:

“...no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

As can be seen from Morris’ letter to Michael Nielsen it is clear that the Fourth Amendment and Rule 41 have been violated by the Asst. U.S. Attorneys involved in this case, and that is a fatal error as it is a violation of their Oaths of Office and makes the Indictment and Arrest Warrant invalid. (Ex. B)

Petitioner believes that, for want of Subject Matter and Territorial jurisdiction, you should exercise your ministerial duty and authority to dismiss this action against the Defendants pursuant to your Constitutional duty to Petitioner under the ***Fifth***

Amendment:

“, nor shall be deprived of life, liberty, or property, without due process of law” as well as ***Fed. R. Crim. P. Rule 12 (b) (2).***

If you do not dismiss this case for the reasons listed above, please be advised of the self executing sections 3 and 4 of the Fourteenth Amendment of the Constitution of the U.S.A. which applies to all public servants. Any public servant that violates his/her Oath of Office to Uphold and defend the Constitution acts in insurrection and sedition against it and vacates his/her office upon commission of the crimes and/or Treason. Rankin v. Howard 633 F.2d 844:

“When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost.”

Therefore you forfeit all benefits of that office, including salary and pension. All the Public Officers listed herein have violated their Oaths of Office and Falsely Arrested and Imprisoned Petitioner.

Petitioner believes that it would be in the best interest of all concerned for you to dismiss the instant case **without prejudice**. That way, if the Assistant U.S. Attorneys feel they have a valid case against the Defendants, they can attempt to cure the fatal flaws in the original case and refile it in an Article III Court. The proper Court, according to the U.S. Supreme Court is the **District Court of the United States**. The U.S. Supreme Court identified the proper court very well: Mookini v. U.S. 303 U.S. 201

“The term “District Courts of the United States”, as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Court of the United States does not make it a “District Court of the United States”.” (Emphasis added)

If there is a question you can not or will not answer, please state with specificity why you can't or won't answer it. The questions are as follows:

- 1. Please provide me with the document identifying the Article of the Constitution of the United States of America under which the U.S. District Court in Ocala, Florida was established.**
- 2. Please provide me with the document describing the territory that comprises the Court's judicial district.**
- 3. Please provide me with a copy of the Jury Service and Selection Plan pursuant to Test v. U.S. 486 F 2nd 922.**

4. Was your office created under Article III of the Constitution of the U.S.A.? If not, what Article?
5. Are you a Territorial Officer? Describe your duties and limitations.
6. Is this Court authorized to hear controversies that originate outside the Federal territory in the Middle District of Florida without both parties consent?
7. Are 18 USC 371 and 287 National “laws” or just “*needful rules and regulations respecting the territory belonging to the Untied States*”?
8. Isn’t it true that the Grand and Petit Jurors for case No. 5:06-cr-22 have to be selected from the Federal territory in the counties comprising the Middle District?
9. Are you an Article I, Article III or an Article IV Officer?
10. Will you give me a copy of your Oath of Office (your Form 61 and your Judge’s Oath of Office) or do I need to subpoena them?
11. What Court Docket # identifies the probable cause statement sworn to under Penalty of Perjury under Oath or Affirmation that invoked this Court’s jurisdiction?

You have ten days to release Petitioner from the date of filing of this letter, or in the alternative, answer the questions contained therein. Failure to do one or the other will force Petitioner to seek the legal remedies available to him, both criminal and civil to remedy his False Arrest and continued False Imprisonment.

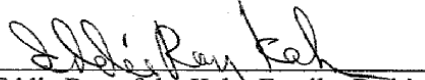
Petitioner further demands, as a matter of Right, that this Petition and any future Motions, Petitions, or Pleading of any type made by the Petitioner be ruled on by an Article III Judge only and, if any further court proceedings are necessary, they will be

held in an Article III Court, presided over by an Article III Judge, not a Territorial Court and Judge as is currently being done as petitioner does not consent or accept as binding on him of said Territorial Court any Rulings, Decisions, Judgments or Opinions as Petitioner has no nexus with the Plaintiff or the Court that has been proven by the Plaintiff on the Record even though it was challenged by Petitioner with an unrebutted affidavit.

Date: 4-25-07

All Rights Reserved

Respectfully Submitted,



Eddie Ray of the Kahn Family, Petitioner
c/o Lake County Sheriff's Office Detention Center
551 W. Main Street
Tavares, Florida 32778

cc: President George Bush
U.S. Attorney General Alberto Gonzales
Administrative Office of the United States Courts

OATH OF OFFICE FOR UNITED STATES JUDGES

(Title 28, Sec. 453 and Title 5, Sec. 3331, United States Code)

I, WM. TERRELL HODGES, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as United States District Judge, according to the best of my abilities and understanding, agreeable to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

Wm Terrell Hodges

Subscribed and sworn to (or affirmed) before me this 28th day
of December, 1971.

FOIA EXEMPTION (b)(6)

Wesley R. Shus

Actual abode [REDACTED]

Official station * Tampa, Florida

Date of birth April 28, 1934

Date of entry on duty December 28, 1971

Note—The Act of May 1, 1876 (Title 48, sec. 1466, United States Code), provides that the oaths of *Territorial Officers* shall be administered in the Territory in which the office is held.

* Title 28, sec. 456 United States Code, as amended.

Ex A

Main Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
813/274-6000
813/274-6358 (Fax)



300 North Hogan Street, Suite 700
Jacksonville, Florida 32201
904/301-6300
904/301-6310 (Fax)

2110 First Street, Suite 3-137
Fort Myers, Florida 33901
941/461-2200
941/461-2219 (fax)

U.S. Department of Justice
United States Attorney
Middle District of Florida

80 North Hughey Avenue, Room 201
Orlando, Florida 32801
407/648-7500
407/648-7643 (Fax)

Reply to: **Jacksonville, FL**

COPY

December 11, 2006

Michael W. Nielsen, Esq.
Dowdy & Nielsen, P.A.
720 West State Road 434
Winter Springs, FL 32708

Re: U.S. v. Eddie Ray Kahn (Case No. 5:06-cr-22(S1)-Oc-10GRJ)

Dear Mr. Nielsen:

This letter is in response to your letter, dated November 21, 2006, in which you requested that we provide you with certain documents.

1. With regard to your request for a copy of the complaint and affidavit supporting the complaint, please be advised that there is no complaint in this case. Your client and his co-defendants have been charged by indictment. A copy of the indictment was previously provided to your client in court. An additional copy is enclosed for your convenience.

2. With regard to your request for a copy of the arrest warrant and affidavit supporting the warrant, I have enclosed a copy of the arrest warrant, the motion for the warrant, and the order granting the motion. There is no affidavit for the warrant.

3. With regard to your request for copies of letters from the U.S. Attorney General and U.S. Secretary of the Treasury authorizing the indictment in this case, please be advised that there are no such letters because no such authorization is required. Furthermore, any documents authorizing prosecution would not be subject to discovery.

4. With regard to your request for a copy of the documents that authorize the FBI to issue an arrest warrant in a tax case that does not involve a federal employee, please be advised that there are no such documents because the FBI did not issue an arrest warrant in this case. (The FBI does not issue arrest warrants in any case; the District Court issues arrest warrants.)

Exhibit B pg 1 of 2

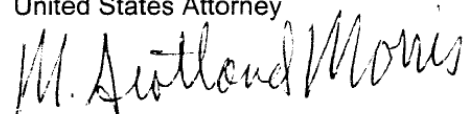
Michael W. Nielsen, Esq.
December 11, 2006
Page 2

Please feel free to contact me if you have any questions regarding this matter or any other discovery matters.

Sincerely,

PAUL I. PEREZ
United States Attorney

By:

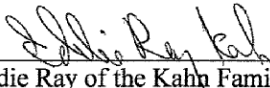

M. SCOTLAND MORRIS
Assistant United States Attorney

cc: Eddie Ray Kahn
Marion County Jail
700 NW 30th Avenue
Ocala, FL 34475

Exhibit B pg 2 of 2

CERTIFICATE OF SERVICE

Petitioner certifies that on this 26 day of April, 2007 the foregoing document(s) were sent to M. Scotland Morris, U.S. Attorney's Office, 300 North Hogan Street, Suite 700, Jacksonville, Florida 32202, via U.S. First Class Mail.



Eddie Ray of the Kahn Family, Petitioner

The next page is the “I’m Watching You Letter” to Judge Hodges. It can be printed off and sent directly to him. The more pressure these judges are under to be honest and serve according to the law, the better chance this country has to survive as a free country. Just remember you could be next!

Judge Wm. Terrell Hodges
Golden-Collum Memorial
Federal Building & U.S.Courthouse
207 N. W. Second Street
Ocala, Florida 34475

Date: _____

Dear Wm. Terrell Hodges,

I have read the letter written to you via a Mandatory Judicial Notice – Letter to Judge Wm. Terrell Hodges #2 from Eddie Ray Kahn, who you have incarcerated without bond in the Marion County and Lake County, Florida jails since November 1, 2006.

Since it is obvious that, the U. S. District Court in Ocala, Florida is a “Territorial Court” and not an Article III court with “Judicial Power”, I demand that you release Eddie Ray Kahn from jail immediately.

The U.S. Supreme Court was very clear in Balzac v. People of Porto Rico and Mookini v. U.S. as to the duties and limitations of your “mere territorial court”. It is very obvious that you have exceeded your authority in this case.

I will be forwarding a copy of this letter along with Letter #2 to my Congressman and Senators demanding that they start impeachment action to rectify this deplorable situation by releasing Eddie Ray Kahn immediately.

Regards,