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Note

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THE "FLESH AND BLOOD" DEFENSE

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*1362 Introduction

> THE COURT: Please be seated. Good morning. Counsel, do we want to move to the evidentiary matters first?
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> DEFENDANT MITCHELL: I object. I object. For the record, I am Willie Edward Mitchell, Third, in a special visitation, under threats, duress, and coercion, not general, not pro se. This Court lacks subject matter jurisdiction for a lack of verified complaint and lack of verified complaint sworn under oath. This Court by its own motion can dismiss the alleged charge and the alleged case against Willie Edward Mitchell, Third, live flesh and blood man.[1]

So began Willie Mitchell's articulation of his defense to racketeering and murder charges in federal court in Baltimore in 2005.[2] Judge Andre Davis, ruling on various pro se motions in the case, reflected that the nonsensical claims Mr. Mitchell and his codefendants raised "would even be humorous-were the stakes not so high."[3] After summarily rejecting the defendants'

arguments as "patently without merit,"[4] Judge Davis explored the origins of their "in-court tirades and irrational written objections based on 'jurisdiction.'"[5] Tracing these misguided arguments back through American ***1363** history revealed connections to a colorful cast of "religious zealots, gun nuts, tax protestors, and violent separatists ... who believe that America was irrevocably broken when the 14th Amendment provided equal rights to former slaves."[6] Judge Davis found it "truly ironic that four African-American defendants here apparently rely on an ideology derived from a famously discredited notion: the illegitimacy of the Fourteenth Amendment."[7]

This phenomenon, known colloquially in some jurisdictions as the "flesh and blood defense,"[8] is the embodiment in federal criminal cases of a movement sometimes referred to as the "sovereign citizen" or "anti-government" movement.[9] Commentators trace this movement back to the "Posse Comitatus," a loosely organized group of right-wing extremists most active in the 1970s and '80s.[10] Only pro se defendants advance this "defense" because no competent attorney would attempt to defend a criminal prosecution on such grounds.[11] Indeed, the flesh and blood defense is legally frivolous-"in a court's eyes, it is as if the proponent had advanced no argument at all."[12] The flesh and blood defense is made possible by the Supreme ***1364** Court's recognition of a fundamental right to self-representation in criminal trials in Faretta v. California.[13] The Court, even in first recognizing this right, however, acknowledged the danger inherent in self- representation-namely that pro se defendants may work "ultimately to [their] own detriment."[14] There is no doubt that defendants who invoke the flesh and blood defense are indeed working to their own detriment.[15]

Although the Faretta Court declared that "[p]ersonal liberties are not rooted in the law of averages,"[16] the flesh and blood defense has no average success rate-as a legally frivolous argument it "simply ignores the law as it currently exists"[17] and fails every time. Accordingly, this Note suggests that when defendants advance the flesh and blood defense, they should be denied their right to self-representation in order to forestall them from using Faretta to ensure their own conviction. Part I examines the evolution of the flesh and blood defense itself-from its use by midwestern white supremacist farmers in the 1970s to black Baltimore drug dealers in the 2000s-and its modern theory and practice. Part II discusses the right to self-representation: its history, requirements, exceptions, and alternatives. Finally, Part III argues that when confronted with the flesh and blood defense or similar nonsensical legal theories, courts should refuse to respect a defendant's waiver of counsel. This policy would serve the interests of the defendant and of society by allowing the adversarial system of justice to work as intended, even if the defendant is allowed, at an appropriate time, to make whatever bizarre claims he or she would like. A refusal to allow a flesh and blood defendant to fire his or her counsel can be grounded in the existing law of self-representation and ensures that ***1365** such defendants will not suffer from their decision to bring "the intellectual legacy of white supremacists"[18] into the courtroom.

I. The Flesh and Blood Defense

A. History

1. The Posse Comitatus

At the peak of its popularity among midwestern and Great Plains farmers in the 1970s and '80s, adherents to the Posse Comitatus movement held that the Founding Fathers intended to create a "Christian Republic" of individually sovereign citizens.[19] In a democracy, they believed, the poor could vote to create social welfare programs, whereas in a republic, "the individual [is] sovereign and the government ha[s] no power to enact laws that will loot and plunder the wealth produced by the sovereign individual."[20] The loosely organized group encouraged members to return identification cards and other government-issued documents in an effort to "reclaim their sovereignty."[21] In one of its more bizarre holdings, the Posse believed that Social Security numbers represented "secret government account[s]" through which the American populace was put up as collateral

against the national debt.[22] Further, they asserted that one's name on the Social Security card and secret government account, spelled in all capital letters, represented a fictional legal construct, not "them-natural, live, flesh and blood men."[23]

Members of the Posse and similar offshoot movements used the courts in an attempt to further their agenda. For example, one former Colorado dairy farmer sold indebted farmers a "kit" that ***1366** assisted them in filing pro se lawsuits demanding millions of dollars from their mortgage banks and the Federal Reserve.[24] Not surprisingly, courts uniformly dismissed these suits as frivolous.[25] Posse members also recorded baseless liens against property owned by government officials-liens that were costly to clear and that may have remained undiscovered until the victim of the scam attempted to sell the property.[26] This bothersome tactic was also dead on arrival in the courts.[27] These activities stemmed from frustration and desperation with a slumping agricultural economy, inspiring Posse members to resort to "extralegal procedures that challenged the legitimacy of established systems of justice."[28]

The Posse's activities were also defined by racial and religious supremacism, which fueled the Posse's views on law and government. For instance, "Christian Identity" was a "quasi-religious movement," or "theology," that preached the "Christian Republic" doctrine to Posse members, asserting that law in the United States was based in "Christian Common Law" rather than law created by legislatures.[29] Christian Identity "contended that the Constitution expressly forbids citizenship to Jews and people of color," and accordingly racial and religious minorities, as well as women, had "no legal standing in a Posse government."[30]

Its name meaning "[p]ower of the [c]ounty" in Latin, the Posse Comitatus looked to ancient English common law to support its convictions that there were no legitimate forms of government higher than the county, no legitimate law enforcement authorities higher than the sheriff, and no legitimate judicial authorities higher than ***1367** the Justice of the Peace.[31] The organization also derived inspiration from the Posse Comitatus Act of 1878, which constrained the federal government's ability to use the military on domestic soil to protect African-Americans, a move that ushered in the Jim Crow era.[32] Although the organization did respect a strict construction of the Constitution, believing it to be derived from God, Posse members did not believe any amendments passed after the Bill of Rights were legitimate because Jews and other minorities had ostensibly corrupted the government.[33]

The Posse found many sympathetic ears across the country. A 1976 FBI report estimated the movement had 12,000 to 50,000 members encompassing seventy-eight chapters in twenty-three states, as well as at least ten times as many casual supporters.[34] As the agricultural economy soured in the 1980s, the Posse was increasingly successful in peddling its theories in middle America.[35] Though many farmers were too skeptical or busy to listen, some, who were desperate for hope in tough economic times, found something tenable in the organization's doctrines.[36] New members joined the Posse believing it would help them avoid legal and financial responsibilities that they could not fulfill.[37] The message "was not one contingent upon a kind of backwater ignorance"; ***1368** rather, it was a frustrated reaction of people who felt they had "lost control of their lives."[38] These feelings of desperation and fear are what unite the Posse Comitatus with Willie Mitchell and the flesh and blood defendants.

2. From the Heartland to Baltimore

As the agricultural economic crisis of the 1980s corrected itself, and as Posse Comitatus leaders died or were locked up, the movement sputtered.[39] However, the beliefs advanced by the Posse remained deeply rooted in middle America, often under the banner of the "patriot movement," which included the bombers of the Murrah Federal Building in Oklahoma City in April 1995.[40] After the Oklahoma City bombing, federal law enforcement began paying closer attention to the supremacist and separatist groups that echoed the bombers' ideology, including the "Montana Freemen," who were "the direct ideological descendants of the Posse Comitatus."[41] After an eighty-one day standoff with the FBI at their compound between March and

May 1996, the FBI arrested the Freemen.[42] The prosecution that followed faced "an array of bizarre documents citing the Fed[eral Reserve Bank], the gold standard, the 14th Amendment, and the Uniform Commercial Code," not unlike those filed by Willie Mitchell a decade later.[43] Despite their conviction and imprisonment, those who sympathized with the Freemen continued to distribute these materials, in part through the publication "America's Bulletin," a newsletter circulated by prison inmates that espoused an antigovernment, white supremacist philosophy.[44]

***1369** Though the Freemen brought the ideas of the Posse Comitatus back to national prominence, the small-time legal activities of the Posse had never fully ceased.[45] Along similar lines, the phenomenon of "common law courts" spread during the 1990s, giving Posse adherents a forum they viewed as legitimate for the adjudication of claims against them.[46] These courts sprang from the Posse's assertion that common law was "a separate, parallel legal/judicial system, one independent from and not subordinate to statutory or written law."[47] Far from the legal conception of common law, the Posse's common law was "a hodgepodge of Biblical quotes and doctrines, misplaced quotes from cases, leftover concepts from early legal doctrines, self-serving readings of the Constitution and other sources of law, definitions from long out-of-date legal dictionaries, and Blackstone's conception of 'natural rights.'"[48] In some states the common law courts were largely dormant, whereas in other states, such as Texas and Florida, the faux courts were "a plague on the judicial system."[49] In appearances in actual courts, adherents to the movement unsuccessfully insisted on the strict use of their "common law."[50]

In federal court in Baltimore, according to one journalist's investigation, the missing link-"patient zero in the epidemic"-was federal pretrial detainee Michael Burpee, whose time at the Maryland Correctional Adjustment Center (MCAC) overlapped with Willie Mitchell's.[51] When Burpee arrived at the MCAC in downtown ***1370** Baltimore, he arrived with "a pile of documents that were remarkably similar to those that had been filed by the Montana Freemen," presumably given to him by a fellow prisoner in Florida before extradition to Maryland to face federal drug charges.[52] Possibly because he was already serving a twenty-seven-year sentence, the United States Attorney's Office in Baltimore dropped its charges against Burpee, a choice that may have inadvertently legitimized his year-long extolment of flesh and blood claims in the eyes of his fellow Maryland pre-trial detainees.[53] What followed was a proliferation of flesh and blood claims that one Baltimore Federal Public Defender likened to "an infection that was invading our client population of pre-trial detainees."[54] Like the midwestern farmers before them, the Baltimore inmates "were susceptible to the notion that the federal government was engaged in a massive, historic plot to deprive them of life, liberty, and property"-a notion not unfamiliar to the African American community.[55] Adherents to the doctrines of the Posse Comitatus and flesh and blood defendants alike felt that they had lost control of their lives and were grasping for anything to give them hope of restoring their freedom and personal sovereignty.[56]

***1371 B. Characteristics of the Defense**

1. Theory

When Willie Mitchell and other flesh and blood defendants recite the refutations of federal authority likely to have been heard from members of the Posse Comitatus in the 1970s, they "inherit[] the intellectual legacy of white supremacists."[57] Like their predecessors, they believe that they are "sovereign citizens," not "federal citizens" or "corporate citizens" under the Fourteenth Amendment-resulting in the irony that Judge Davis described.[58] They claim that American citizenship granted by the Fourteenth Amendment is a ploy by corporations to "financially enslave the masses and destroy the republican union."[59] They theorize that this citizenship is grounded in a contract between each citizen and the federal government-a contract that may be canceled by renouncing citizenship.[60]

In the light of their absolute certainty of their God-given rights as sovereign citizens and their equal conviction that the government is engaged in a conspiracy to foil those rights, the contumacious behavior of flesh and blood defendants is more

easily explained.[61] Further, because these defendants believe in a common law fantasy, their frequent choice to appear pro se is understandable. Lawyers cannot advocate the legally frivolous flesh and blood defense,[62] an inability that their prospective clients construe as only another part of the conspiracy.[63] "Most important of all, they continuously challenge the court on questions of jurisdiction and claim that the court has no authority over them"[64]-sometimes even on grounds as ***1372** irrelevant as what kind of flag hangs in the courtroom[65] or whether their names appear in all capital letters in the indictment.[66]

2. Practice

The argument that flesh and blood defendants present centers on a lack of personal jurisdiction, as the defendant asserts he or she is not a "corporate citizen" but a "live flesh and blood man," a "sovereign citizen."[67] Thus, flesh and blood defendants avoid making any suggestion that the court's jurisdiction is proper, which may start with a protest as simple as refusing to identify themselves for the record.[68] Similarly, some defendants may refuse to acknowledge that they are the person named in the indictment, often because the indictment names the defendant in all capital letters, and flesh and blood theory instructs that the **all-capital name** represents the "corporate citizen" named on one's Social Security card.[69] These defendants may also refuse to sign documents or insist on appending their signatures with suffixes that symbolize their personal sovereignty.[70] Indeed, some defendants may refute that they are the person named in the indictment because of the special suffixes they add to their names.[71] Beyond mere refusal to identify themselves, flesh and blood defendants may refuse to enter a plea, to be cross-examined by the government, or to participate in the proceedings at all, wary of giving any indication that might imply the court has ***1373** power over them.[72] Other defendants, such as Willie Mitchell, are fond of filibustering the court, launching into soliloquies on common law jurisdiction that are legal gibberish.[73]

Outside of the courtroom, flesh and blood defendants may create more of a nuisance for the court than they do inside it. By filing "simply irrelevant or contextually inapposite" documents with the court, whether in their criminal cases or in parallel pro se civil actions, flesh and blood defendants occupy a disproportionate amount of judicial time and court resources.[74] Employing their far- from-legal conception of "common law," these defendants appeal to the Uniform Commercial Code, the Bible, self-serving readings of out-of-context precedent, and other far-flung references to support their motions for dismissal, disqualification of judges, and other relief.[75] It all amounts to little more than a "morass of useless drivel."[76]

Transcending legal attacks on jurisdiction, subscribers to flesh and blood theory may make the judge, or the court generally, the target of both legal attacks and direct threats. For instance, by filing a lawsuit against the judge hearing their criminal cases, defendants may claim that the judge has a conflict of interest and cannot continue hearing the criminal matter.[77] Other defendants may choose to skip lawsuits and attack the judge's impartiality through ***1374** traditional means such as motions for recusal or disqualification.[78] Others may focus simply on filing nuisance suits and property liens against judges and court personnel.[79] More worrisome than these harassment tactics, however, are the defendants who make threats of violence that may constitute crimes in and of themselves.[80]

Finally, and most critically, no lawyer would advance the legally frivolous flesh and blood defense, a reality that leads flesh and blood defendants to fire their attorneys and proceed pro se. Though flesh and blood defendants may make demands for counsel of their choice, they insist on attorneys who will adopt their philosophy, which is impossible,[81] or nonlawyers, which the court will not allow.[82] Further, although indigent criminal defendants enjoy a fundamental right to appointed counsel,[83] they are not entitled to counsel of their choice.[84]

One solution, of course, is for flesh and blood defendants to accept representation, allowing counsel to make appropriate legal arguments and reserving their jurisdictional theories as a sideshow.[85] Whether a conscious choice or one made for them by a

court refusing to respect their waivers of counsel, this option serves the interests of the defendants and of society by allowing the adversarial system of justice to work as intended, while preserving the defendant's right to make, at an appropriate time, whatever bizarre claims he or she would like. This Note argues that courts should follow this option when confronted with spectacles such as the flesh and blood defense.

*1375 II. The Right to Self-Representation

A. History

1. Legal Tradition

In the early British legal tradition, self-representation was the rule rather than the exception.[86] Even as the institution of legal counsel developed in civil and misdemeanor cases, felony cases remained a "long argument between the prisoner and the counsel for the Crown."[87] Far from a "right" of the accused, this traditional self-representation scheme allowed defendants little more than the ability to articulate a defense of their choosing.[88] Not until the passage of the Treason Act of 1695 were felony defendants accorded a right to counsel,[89] which jurists viewed as a right to choose between counsel and self-representation.[90] In colonial America, although courts broadly afforded criminal defendants the right to counsel, judges maintained the understanding that the privilege augmented the underlying right of defendants to represent themselves.[91] Accordingly, colonial charters and declarations of rights framed the entitlement to counsel as a "right to choose" whether to represent oneself or to proceed with an attorney, an interpretation grounded in the virtue of self-reliance as well as a healthy distrust of lawyers.[92]

After the ratification of the Constitution, Congress codified the right to self-representation in the Judiciary Act of 1789,[93] which was ***1376** signed into law one day before the formal proposal of the Sixth Amendment.[94] This provision for self-representation in the federal courts remains codified today in language substantially similar to the 1789 provision.[95] Most early state constitutions also provided a right to self-representation,[96] and most states continued to grant the right either by constitutional provision or judicial decision into the twentieth century.[97]

2. Faretta v. California

California, unlike most states, did not adopt a right to self-representation in its constitution or jurisprudence.[98] Accordingly, when Anthony Pasquall Faretta appeared before a Los Angeles Superior Court judge on a charge of grand theft in 1972, his attempt to waive his Sixth Amendment right to counsel was denied after extended quizzing from the judge on courtroom procedure.[99] Two years later, the United States Supreme Court reversed Mr. Faretta's conviction, holding that "the California courts deprived him of his constitutional right to conduct his own defense."[100] Elevating the right to self-representation to the level of a fundamental constitutional right, Faretta precipitated decades of confusion and contro- ***1377** versy in courts struggling to define the contours of this newfound individual liberty.[101]

The Faretta Court found the right to self-representation in two places: the structure of the Sixth Amendment and the legal tradition of self-representation.[102] The Court looked to the three Sixth Amendment rights that precede the right to counsel-the rights to notice, confrontation, and compulsory process[103]-to determine that the Sixth Amendment "grants to the accused personally the right to make his defense."[104] Further, the Court observed, the right to counsel is phrased as a right "to have the Assistance of Counsel."[105] The Court worried that compulsory counsel would not be an "assistant" but a "master."[106] The

Court also cited its own precedent holding that "the Sixth Amendment right to the assistance of counsel implicitly embodies a 'correlative right to dispense with a lawyer's help"' and that "the Constitution does not force a lawyer upon a defendant."[107]

Reviewing the entire legal landscape, the Court identified "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 ***1378** so."[108] Thus, the Court reasoned, the defense presented by counsel forced on a defendant who wishes to represent him- or herself "is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense."[109] This philosophy is what allowed Willie Mitchell to advance his frivolous arguments, and although it may have been "his defense," a flesh and blood defense is, ironically, no defense at all.

B. Requirements

The rights to counsel and to self-representation are logically at odds with one another. Defendants must choose which Sixth Amendment right they want to exercise: the jealously guarded right to competent counsel[110] or the much-maligned right to self-representation.[111] Courts must necessarily interpret the assertion of one of these conflicting rights as a waiver of the other.[112] Judges must "traverse a thin line between improperly allowing the defendant to proceed pro se, thereby violating his right to counsel, and improperly having the defendant proceed with counsel, thereby violating his right to self-representation."[113]

***1379** To simplify the analysis, courts ascribe a "constitutional primacy" to the right to counsel.[114] This preference is justified by the benefits that representation brings to both individual defendants and society.[115] When defendants have legal representation, they are more likely to secure favorable outcomes, and trials are more likely to result in correct verdicts based on the truths discerned by the fact-finder.[116] By ensuring that the judicial process is "fair and legitimate," representation by counsel "sustain[s] public confidence in the system and in the rule of law," which is an "important public purpose."[117] On the other hand, Faretta makes clear that self-representation is an individual right, anchored in the "dignity and autonomy" of pro se defendants, not in sound public policy.[118]

The Faretta Court did not ignore the problems inherent in self-representation. Recognizing that "[i]t is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts,"[119] the Court articulated some limitation on the right but did not clearly define all of the right's boundaries. In cases interpreting Faretta, courts have elucidated the scope of the right to self-representation by imposing three common requirements on its invocation in order to safeguard against improper waivers of the right to counsel.[120] First, the defendant's request to represent him- or herself must be "clear and unequivocal";[121] second, the request must be "knowing, intelligent ***1380** and voluntary";[122] and third, the request must be "timely."[123] When evaluating defendants' requests to represent themselves against these standards, courts err on the side of nonwaiver of the right to counsel, both to protect its constitutional primacy and to avoid leaving defendants defenseless.[124]

1. Clear and Unequivocal

Two purposes motivate the requirement that defendants "clearly and unequivocally"[125] waive their right to counsel: first, to protect against inadvertent waivers gleaned from defendants' "occasional musings on the benefits of self-representation"; and second, to protect against defendants taking advantage of the mutual exclusivity of the rights to counsel and self-representation to create reversible error.[126] Because exercising the right to self-representation is a waiver of the constitutionally primary right to counsel, courts "must be reasonably certain that [a defendant] in fact wishes to represent himself."[127] This not only protects the defendant's rights, but it also protects the court from being accused on appeal of depriving the defendant of the right to

counsel if the court allows the defendant to proceed pro se. Forcing the defendant to give a clear and unequivocal waiver of counsel allows for the necessary certainty, and if a defendant equivocates, the court may soundly default to the constitutionally preferred right and appoint counsel.[128]

A clear and unequivocal waiver of counsel can be a difficult decision for flesh and blood defendants to make, as it was for Willie ***1381** Mitchell and his codefendants.[129] Flesh and blood defendants may in fact demand counsel-counsel that will advocate their flesh and blood defense.[130] Judges, however, may interpret such a request as a waiver of counsel because no such counsel exists. In Mitchell, Judge Davis determined that such a request was not a valid waiver because "while claiming they want counsel, [they] have in effect erected an absolute barrier to the appointment of counsel [and] I don't think the Supreme Court or the Fourth Circuit will permit a defendant to get away with that."[131] With the interests of Mitchell and his codefendants in mind, Judge Davis erred on the side of representation by counsel.[132] Apparently, the defendants appreciated the court's choice, because on appeal, none of the Mitchell defendants alleged a deprivation of the right to self- representation.[133]

2. Knowing, Intelligent, and Voluntary

The requirement that defendants "knowingly and intelligently"[134] waive their right to counsel comes with a requirement that judges make defendants aware of the "dangers and disadvantages of self-representation," in order to establish on the record that such defendants are making their choice "with eyes open."[135] This requirement ***1382** has given rise to the Faretta colloquies between district judges and pro se defendants recommended by the Federal Judicial Center.[136] Simply asking the questions in the colloquy fulfills the requirement. The defendant's answers are largely irrelevant because actual legal knowledge is not necessary; only notice of what the defendant may need to know to conduct the trial is needed.[137] The court may, however, evaluate whether the defendant's waiver of counsel is actually knowing, intelligent, and voluntary in light of "the background, experience, and conduct of the accused."[138]

Flesh and blood defendants may have trouble demonstrating a knowing and intelligent waiver. Given their contumacious behavior, it is unlikely that a flesh and blood defendant could fully complete the Faretta colloquy, as was the case in Mitchell.[139] Judge Davis observed: "I think clearly, that the Court will not be permitted by the defendants each to engage in a waiver of counsel colloquy. That, of course, has got to be the understatement of the day."[140] Judges can interpret flesh and blood defendants' nonsensical reactions to the Faretta colloquy as a knowing and intelligent waiver, or, as in Mitchell, as an absolute nonwaiver of counsel.

3. Timely

Finally, defendants must assert their right to represent themselves in a timely fashion in order to "minimize disruptions, to avoid inconvenience and delay, to maintain continuity, and to avoid confusing the jury."[141] Even fundamental rights are not intended to serve "as a ploy to frustrate the orderly procedures of a court in the ***1383** administration of justice."[142] When to draw the line after which a defendant's choice is final, however, is a debatable point.[143] Requests to represent oneself or for appointment of counsel are generally measured against whether "meaningful trial proceedings have commenced."[144] After that point, whether to grant a request to proceed with or without counsel is at the discretion of the court.[145]

C. Exceptions

Because of its disfavor as a strictly individual privilege, courts have not hesitated to carve out exceptions to the right to self-representation when they identify broader concerns that outweigh the rights of a particular defendant. For example, the Supreme

Court has excluded criminal appeals from the scope of Faretta, confining the right solely to self-representation at trial.[146] As another exception to the right to self-defense, the Supreme Court recently held that a heightened standard of mental competence could be imposed on waivers of the right to counsel,[147] overturning years of precedent that suggested the competence needed to proceed pro se ***1384** was the same as the competence needed to stand trial in the first place.[148]

In an area even more ambiguous than mental incompetency, courts have allowed the denial of the right to self-representation when defendants abuse the right in order to create disruptions and obstruct their criminal proceedings. This exception stems from Faretta itself, which provided that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct" and that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom."[149] Thus, courts tolerate the deprivation of the right to self-representation when defendants use the right as "a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process."[150] The Supreme Court premised this holding on its precedent involving another of the Sixth Amendment's implied rights-the right to be present for the entirety of one's criminal trial, which is itself a derivation of the right of the accused to confront the witnesses against him or her.[151] In that context, the Court held that the Confrontation Clause was not violated by removing a defendant for "flagrant disregard in the courtroom of elementary standards of proper conduct" because "[i]t is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country."[152] Faretta extended this reasoning to the deprivation of the right of self-representation, but it did not suggest that all defendants who lose the right to represent themselves also lose the right to be ***1385** present in the courtroom, implying an even higher standard of behavior for pro se defendants who wish to continue representing themselves.

This behavioral exception can have strict consequences for flesh and blood defendants. For example, after the Mitchell defendants were removed from the courtroom for their disruptive behavior on two occasions, Judge Davis warned:

> If the defendants continue on the course they have now chosen, of continued disruptive behavior in the courtroom (which will require their removal from the courtroom during pre-trial and trial proceedings) and of continued attacks on their lawyers and refusals to cooperate with counsel, the possibility [that they will be found guilty and sentenced to death] will grow increasingly more likely.[153]

Recognizing similarly grave circumstances, courts have developed supplementary alternatives to self-representation, including the appointment of "standby counsel."[154]

D. Alternatives

As the Supreme Court has held, in its experience, "a pro se defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney."[155] Accordingly, the Court has allowed even pro se defendants to receive some assistance from counsel, although defining the scope of such assistance has taken time. The primary means of involving attorneys in pro se cases is to appoint "standby counsel," an idea recognized in Faretta.[156] The Court later explained that standby counsel "relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming ***1386** routine obstacles that stand in the way of the defendant's achievement of his own clearly indicated goals."[157] This assistance is important because the defendant does not have a right to such help from the judge.[158]

The Court has held, however, that standby counsel can overstep their prescribed role, frustrating a defendant's right to self-representation, especially in the event of unsolicited help or participation in trial.[159] In such a case, whether a defendant's Faretta rights have been violated is a question "whether the defendant had a fair chance to present his case in his own way."[160] To

help answer this question, the Court has provided two standards against which a standby counsel arrangement can be evaluated: first, "the pro se defendant is entitled to preserve actual control over the case he chooses to present to the jury," and second, "participation by standby counsel without the defendant's consent should not be allowed to destroy the jury's perception that the defendant is representing himself."[161] This means that the defendant must at least be able to speak to the judge and jury, and the court must resolve disputes between the defendant and standby counsel in favor of the defendant "whenever the matter is one that would normally be left to the discretion of counsel."[162]

These limitations combine to make standby counsel impractical for flesh and blood defendants. First, if the defendant intends to present only a flesh and blood defense, counsel will have little role. At most, counsel could continue to try to dissuade the defendant from his or her chosen course. Second, if counsel did choose to participate and offered legitimate arguments in defiance of his or her client's wishes, such participation would likely exceed the bounds of standby counsel's role and create an impermissible ***1387** perception in the minds of the jury that the defendant was not actually representing him- or herself. This was the observation of counsel for one of Willie Mitchell's codefendants: "I don't think standby counsel could really function in the context of the case if the defendants persist in their [pro se, flesh and blood defense] motions."[163]

The Supreme Court referred to an attorney's participation beyond the allowable role of standby counsel as "hybrid representation," which the Court deemed permissible only when both the defendant and the court approve the arrangement.[164] Holding that "[a] defendant does not have a constitutional right to choreograph special appearances by counsel," the Court found that when an enhanced role for counsel is agreed upon, defendants may not complain that their right to self-representation has been curtailed, unless they speak up expressly to alter the previously approved arrangement with counsel.[165] Due to the difficulties of maintaining a clear boundary for the role of hybrid counsel, courts may find it easier to reject proposals for such representation-an alternative that is well within the court's discretion because pro se defendants will have already clearly and unequivocally waived their right to counsel.[166]

III. Excepting the Flesh and Blood Defense from the Right to Self-Representation

Pursuant to the federal statutory right to self-representation and the fundamental constitutional right to self-representation recognized in Faretta and the cases interpreting it, flesh and blood defendants may exercise their rights to fire their attorneys and present their wildly misinformed "defense" to the court pro se.[167] Like Willie Mitchell, these defendants have likely heard about the ***1388** defense in pre-trial detention from other inmates. And like Mr. Mitchell, the defense will not get them very far. Mr. Mitchell, however, ultimately stood trial with counsel, in spite of his protestations.[168] Like other flesh and blood defendants,[169] the Mitchell defendants did not unequivocally waive their right to counsel-in fact, they demanded counsel, as long as their would-be attorneys had not sworn any oaths to support the United States,[170] which the Mitchell defendants perceived as their adversary.

Mitchell demonstrated one of a few ways that courts can ensure flesh and blood defendants get a fair trial-a trial in which they are represented by counsel. After all, the flesh and blood defense will always lose-it is legally frivolous and indeed "not a legal argument at all."[171] Allowing a defendant to go forward pro se in order to advance the flesh and blood defense is endorsing that defendant's eventual conviction and strict sentencing, perhaps even subjecting the defendant to additional charges for obstructing earlier proceedings.[172] Accordingly, courts facing intractable flesh and blood defendants, like the Mitchell court, should except the flesh and blood defense from the right to self-representation.[173] Although this right ***1389** is grounded in "that respect for the individual which is the lifeblood of the law,"[174] a respect for the individual defendant must also compel courts to recognize when a defendant is committing "suicide by court"[175] and to prevent this self-destructive behavior. Although trial courts are instructed to preserve the right to self-representation "even if the court believes that the defendant will benefit from the advice

of counsel,"[176] there are legitimate exceptions to the right, which courts should carefully employ to forestall flesh and blood defendants from taking their chosen path.

Although adherents to flesh and blood theories are entitled to present their own defense, their entitlement is not limitless. First, flesh and blood defendants must meet the aforementioned requirements of self-representation.[177] Listed in reverse order, a defendant's request to proceed pro se must be timely.[178] If a defendant seeks to waive his or her right to counsel in order to present a flesh and blood defense after "meaningful trial proceedings have commenced,"[179] the trial court has discretion to deny the waiver as untimely,[180] effectively keeping the flesh and blood defense out of the trial.

Second, if the request is timely, it must still be knowing, intelligent, and voluntary.[181] In the federal courts, standard operating procedure dictates that this requirement be evaluated through the use of a Faretta colloquy.[182] Because flesh and blood defendants may ***1390** refuse to cooperate with the court, or take any other action that could be construed as recognizing the court's jurisdiction,[183] it is unlikely that such a defendant could complete the colloquy, as was the case in Mitchell.[184] When unable to ascertain the knowingness, intelligence, or voluntariness of the defendant's waiver of counsel, the trial court is within its power to deny the waiver and proceed with counsel, as opposed to interpreting a defendant's obstruction as a waiver.

Finally, making a clear and unequivocal waiver will likely be difficult for flesh and blood defendants who, like the Mitchell defendants, may object to counsel only on the grounds that their attorneys are sworn members of the Bar.[185] Requests for different counsel, which clients of court-appointed attorneys are not entitled to make,[186] are neither a clear nor an unequivocal waiver of the right to counsel; rather they are an assertion of that right. Confronted with such a defendant, trial courts may keep the flesh and blood defense out of the courtroom by writing off all of the defendants' protestations as frivolous. Short of a clear and unequivocal waiver of counsel, they have no legal significance.

It may be the case that a flesh and blood defendant is able to make a clear, unequivocal, knowing, intelligent, voluntary, and timely request to represent him- or herself. This event is unlikely because cooperating with the court is anathema to flesh and blood defendants. But a court that interprets a defendant's protestations as a demonstration of the requirements of proceeding pro se may find itself with a defendant who has effectively waived counsel. In such a case, exceptions to the right to self-representation remain that may allow the court to terminate the defendant's pro se status and reassign counsel.

The first, and simplest, means of ending self-representation is to establish that a defendant has engaged in "serious and obstructionist misconduct."[187] This exception is easy to assert in cases such as Mitchell and others in which contumacious defendants filibuster the ***1391** court or flood the docket with irrelevant pro se filings.[188] In such cases, defendants use the right as a tactic for delay, disruption, and manipulation.[189] Judges are free to impose counsel on such defendants in order to avoid, as the Supreme Court put it, "degrad[ing] our country and our judicial system [,] ... permit[ting] our courts to be bullied, insulted, and humiliated and their orderly progress thwarted and obstructed by defendants."[190] When flesh and blood defendants take a different tack, simply refusing to participate in the proceedings, the trial court may still interpret their actions-or inaction-as "obstructionist," especially when the only other choice is to allow the defendant to sit silently before the jury while the government puts on a one-sided show trial.[191]

As an alternative, a court may utilize the increased competency standard for self-representation to end a flesh and blood defense. If evidence can demonstrate that the defendant, although competent to stand trial, is not competent to represent him- or herself, counsel may be imposed on the defendant.[192] This approach, however, requires an evaluation of "mental capacities,"[193] so that a court cannot disqualify a defendant from self-representation when adherence to the flesh and blood defense is his or her only mental defect.

Overall, a court confronted with a flesh and blood defendant can employ multiple mechanisms to avoid the unfortunate result of a trial with a defenseless defendant. Courts that allow a flesh and blood defendant to stand trial and be sentenced without the assistance of counsel are operating within the bounds of the Constitution, especially in light of the defendant's Faretta right to self-representation. This outcome, however, is not what justice demands. With the requirements and exceptions to the Faretta right ***1392** come opportunities to protect flesh and blood defendants from their inevitable railroading at trial. Allowing flesh and blood defendants to stand on only their “[b]izarre and misguided contentions”[194] serves neither the individual defendants nor society. Although there is intrinsic value in respecting a defendant's right to self-representation, flesh and blood defendants hardly represent themselves; they effectively waive their right to present any defense at all. Compared to that inevitable outcome, greater value exists in abridging flesh and blood defendants' rights in order to save them from themselves. As Judge Davis wrote in Mitchell:

> Defendants are urged ... in the strongest possible terms, to desist from their disruptive behavior and resume cooperation with their counsel, who want desperately to save their lives....
>
> It would be especially tragic if, in the end, one or more of these young men were to receive a death sentence, in part, because he acted willfully to thwart the very efforts of his lawyers to obtain a not guilty verdict and/or to save his life even if he is convicted.... Surely, no matter what they may feel about this case, their own families and loved ones cannot possibly desire such a result.[195]

Conclusion

Since Faretta, courts have recognized a fundamental right to self-representation, guaranteed by the Sixth Amendment. Courts do not deprive criminal defendants of this right solely because such defendants are making an unwise choice, or no one would ever be allowed to represent him- or herself. However, courts do have some exceptions at their disposal, and denying a defendant's request to represent him- or herself is commonplace. Because the “flesh and blood” defense will always fail, public policy and the interests of ***1393** justice dictate that it should be kept out of the courts, and defendants should not be able to fire their attorneys to pursue it.

Refusing to allow flesh and blood defendants to proceed pro se will serve the interests of justice by reaching more consistent results between defendants charged with similar crimes, fulfilling defendants' right to counsel when they seek to waive it for the sole purpose of presenting a frivolous “defense,” and increasing judicial economy. Courts should find that the defense is per se obstructionist and disruptive in order to prevent it from being raised. Accordingly, courts should keep appointed counsel in the case, unless and until the defendant can articulate another reason he or she wants to represent him- or herself. Even then, courts should take advantage of the ability to force “standby counsel” on defendants.

On the “thin line” between the right to counsel and the right not to have counsel, courts should err on the side of providing counsel, especially when defendants want to proceed pro se solely to advance losing flesh and blood theories that no reasonable attorney would contemplate. Metaphorically, forcing a lawyer on a criminal defendant may “imprison a man in his privileges and call it the Constitution,”[196] but allowing a flesh and blood defendant to go to trial without counsel will certainly end in his literal imprisonment -surely not the result our system of justice demands.

***1394 Appendix**

The Federal Judicial Center suggests that federal judges ask a defendant the following questions if he or she expresses a desire to represent him- or herself:

1. Have you ever studied law?

2. Have you ever represented yourself in a criminal action?

3. Do you understand that you are charged with these crimes: [state the crimes with which the defendant is charged]?

4. Do you understand that if you are found guilty of the crime charged in Count I, the court must impose an assessment of $100 and could sentence you to as many as ___ years in prison, impose a term of supervised release that follows imprisonment, fine you as much as $____, and direct you to pay restitution?

[Ask the defendant a similar question for each crime charged in the indictment or information.]

5. Do you understand that if you are found guilty of more than one of these crimes, this court can order that the sentences be served consecutively, that is, one after another?

6. Do you understand that there are advisory Sentencing Guidelines that may have an effect on your sentence if you are found guilty?

7. Do you understand that if you represent yourself, you are on your own? I cannot tell you or even advise you how you should try your case.

8. Are you familiar with the Federal Rules of Evidence?

9. Do you understand that the rules of evidence govern what evidence may or may not be introduced at trial, that in representing yourself, you must abide by those very technical rules, and that they will not be relaxed for your benefit?

10. Are you familiar with the Federal Rules of Criminal Procedure?

11. Do you understand that those rules govern the way a criminal action is tried in federal court, that you are bound by those rules, and that they will not be relaxed for your benefit?

[Then say to the defendant something to this effect:]

12. I must advise you that in my opinion, a trained lawyer would defend you far better than you could defend yourself. I think it is unwise of you to try to represent yourself. You are ***1395** not familiar with the law. You are not familiar with court procedure. You are not familiar with the rules of evidence. I strongly urge you not to try to represent yourself.

13. Now, in light of the penalty that you might suffer if you are found guilty, and in light of all of the difficulties of representing yourself, do you still desire to represent yourself and to give up your right to be represented by a lawyer?

14. Is your decision entirely voluntary?

[If the answers to the two preceding questions are yes, say something to the following effect:]

15. I find that the defendant has knowingly and voluntarily waived the right to counsel. I will therefore permit the defendant to represent himself [or herself].[197]

Footnotes

a1 J.D. candidate 2012, William & Mary School of Law; A.B. 2007, The College of William & Mary. The author thanks his parents and grandparents; Judge Roger W. Titus and the courthouse family at Greenbelt, Maryland; and his friends and colleagues on the Law Review. The author also expresses gratitude to the College of William & Mary for his education “in good letters and manners.” Charter Granted by King William and Queen Mary, for the Founding of William and Mary College in Virginia, in Henry Hartwell, James Blair & Edward Chilton, The Present State of Virginia and the College 72 (1727).

1 Transcript of Motions Hearing on Nov. 16, 2005 at 2, United States v. Mitchell, 405 F. Supp. 2d 602 (D. Md. 2005) (No. 1:04-cr-00029-AMD), ECF No. 393 [hereinafter Mitchell Nov. 16, 2005 Transcript].

2 Id. This speech was followed by Mitchell's three codefendants' nearly identical speeches. Id. at 3, 5, 10-11. The defendants maintained their objections throughout the hearing: “A DEFENDANT: I'm not a defendant. I'm a live flesh and blood man,” id. at 12, “A DEFENDANT: I do not consent or understand any of this court's proceedings,” id. at 12.

3 Mitchell, 405 F. Supp. 2d at 604, aff'd Nos. 09-4215, 09-4357, 09-4359, 09-4361, 2011 WL 2356887 (4th Cir. June 15, 2011). The four Mitchell codefendants were variously charged with racketeering conspiracy, murder in aid of racketeering for five different murders, and assorted drug and weapons offenses, and for most of the first four years of the life of their federal case, they faced the death penalty. Gail Gibson, Four Men Named in Federal Charges: Murder, Racketeering Case Could Bring Death Penalty; Rahman Associate Among Victims, Balt. Sun, Jan. 23, 2004, at 1B; see also Kevin Carey, Too Weird for The Wire: How Black Baltimore Drug Dealers Are Using White Supremacist Legal Theories to Confound the Feds, Wash. Monthly, May/June/July 2008, at 24, 27, 31.

4 Mitchell, 405 F. Supp. 2d at 604.

5 Id. at 605.

6 Carey, supra note 3, at 25.

7 Mitchell, 504 F. Supp. 2d at 606. The Fourteenth Amendment provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. Const. amend. XIV, § 1.

8 See, e.g., Carey, supra note 3, at 25.

9 Id. at 28-29; see also The Anti-Government Movement Guidebook, at vii (Nat'l Ctr. for State Courts ed., 1999) [hereinafter NCSC Guidebook].

10 Carey, supra note 3, at28; see also Mark Pitcavage, Common Lawand Uncommon Courts: An Overview of the Common Law Court Movement,in NCSC Guidebook, supra note 9, at 1, 3; Francis X. Sullivan, Comment, The “Usurping Octopus of Jurisdictional/Authority”: The Legal Theories of the Sovereign Citizen Movement, 1999 Wis. L. Rev. 785, 786-87.

11 See, e.g., Transcript of Motions Hearing on Dec. 8, 2005 at 18, Mitchell, 405 F. Supp. 2d 602 (No. 1:04-cr-00029-AMD), ECF No. 711 [hereinafter Mitchell Dec. 8, 2005 Transcript] (“[Counsel for Mr. Mitchell:] I don't want to be associated with this train wreck that's about to occur in Mr. Mitchell's life because this is positively the wors[t] decision that this young man has ever made.”); Adam Harris Kurland, Court's in Session: A Law Professor Returns to the Majestic Chaos of a Criminal Jury Trial, 52 How. L.J. 357, 359 n.7 (2009) (describing, from the point of view of one of the Mitchell codefendants' attorneys, the “unusual tactics of the defendants and their protestations concerning federal jurisdiction”).

12 John B. Snyder, Barbarians at the Gate?: The Law of Frivolity as Illuminated by Pro Se Tax Protest Cases, 54 Wayne L. Rev. 1249, 1265-66 (2008). Courts employ standards meant to keep frivolous arguments out of court. See id. at 1254-60; cf. Fed. R. Civ. P. 11(b)-(c). Additionally, advancing a legally frivolous argument violates the ethics of the legal profession. See Model Rules of Prof'l Conduct R. 3.1 (2010).

13 422 U.S. 806, 836 (1975).

14 Id. at 834.

15 See Mitchell, 405 F. Supp. 2d at 604 (“Although unique by conventional legal standards, the defendants['] arguments are not new. Increasingly, they have been asserted in criminal cases pending in this district, and have been summarily rejected. Similar challenges have been advanced in other districts as well, but the results have been the same.”).

16 Faretta, 422 U.S. at 834.

17 Snyder, supra note 12, at 1266 (“A frivolous argument ... relies either on some alternative regime which has never been recognized by the courts or on precepts taken from outside the legal system.... Frivolous arguments are interlopers in the judicial system, foreign entities that have meandered into the system from other parts of society.”).

18 Carey, supra note 3, at 25.

19 James Corcoran, Bitter Harvest 26 (1990).

20 Id. (internal quotation marks omitted).

21 Id. at 27; see also David H. Bennett, The Party of Fear: From Nativist Movements to the New Right in American History 352 (1988); James Ridgeway, Blood in the Face: The Ku Klux Klan, Aryan Nations, Nazi Skin, and the Rise of a New White Culture 129 (1997); Carey, supra note 3, at 28.

22 Carey, supra note 3, at 28.

23 Id.

24 Corcoran, supra note 19, at 32-33 (internal quotation marks omitted); Sullivan, supra note 10, at 788.

25 Corcoran, supranote 19, at 33;see also Snyder,supra note 12, at1264-67 (defining legal frivolity).

26 Corcoran,supra note 19,at 33-34; Pitcavage,supra note 10, at13-14, 18-19, 24-25; Sullivan, supra note 10, at 788.

27 Corcoran, supra note 19, at 34.

28 Id.

29 Bennett, supra note 21, at 350; Corcoran, supra note 19, at 38-39.

30 Corcoran, supranote 19, at 27, 39;see also Bennett, supra note21, at 353-54. The key tenets of the Identity belief were that the United States is the promised land, white Christians are actually God's chosen people-the “true ‘Israelites' of the Old Testament”-and nonwhite races are subhuman, mistakes created before Adam and Eve. Corcoran, supranote 19, at 38-39;see also Bennett, supra note 21, at350; Ridgeway, supra note 21, at 53-54.

31 Bennett, supra note 21, at 352 (internal quotation marks omitted); Corcoran, supra note 19, at 27;Ridgeway, supra note 21,at 111-12; Pitcavage, supra note 10, at4-5.

32 Carey, supra note 3, at 27-28; see Posse Comitatus Act, ch. 263, sec. 15, 20 Stat. 145, 152 (1878) (codified at 18 U.S.C. § 1385 (2006)).

33 Corcoran, supra note 19, at 27-28. Theorganization was particularly opposed to the Sixteenth Amendment, the abandonment of the gold standard, the Federal Reserve system, the United Nations, and the desegregation of public schools, among other public policies. Id. at 28; Ridgeway, supra note 21, at 111-13.

34 Corcoran, supra note 19, at 29-30; Ridgeway, supra note 21, at 115, 117. For examples of PosseComitatus propaganda, see Ridgeway, supra note 21, at 111-12, 114-19, 125, 130, 133-34.

35 Bennett, supranote 21, at354-55; Corcoran, supra note19, at 39-40 (“[T]he message they bore was filled with scapegoats, not solutions. It was anti-Semitic, racist, and hateful. It was a message that was as ludicrous as it was simple, and one sired by desperation.”).

36 Bennett, supra note 21, at 354; Corcoran, supra note 19, at 40 (“Sure themessage was crazy. Sure it didn't make sense. But was it any crazier, or did it make any less sense, than what was happening in the country? People on welfare ate well with the benefit of farmers' tax dollars while the farmers themselves groveled for food and were forced from their homes.”); see Carey, supra note 3, at 28; Pitcavage, supra note 10, at 8.

37 Pitcavage, supra note 10, at 5.

38 Corcoran, supra note 19, at 41 (internal quotation marks omitted); cf. Bennett, supra note 21, at 354; Ridgeway, supra note 21, at 126-27.

39 Pitcavage,supra note 10, at 4 (“As anorganized right-wing group, the Posse did not really survive. But the Posse had never been simply an organization-indeed, it was hardly ever well organized. The Posse Comitatus was much more durable as an ideology. Thousands, perhaps tens of thousands, of people who never formally belonged to any Posse group nevertheless subscribed to Posse ideology. The belief system survived even as the group faded.”); see id. at 19.

40 Id. at 2, 19 (internal quotation marks omitted); see Carey, supra note 3, at 29 (internal quotation marks omitted).

41 Carey, supra note 3, at 29 (internal quotation marks omitted).

42 Id.; Pitcavage, supra note 10, at 26.

43 Carey, supra note 3, at 29.

44 Id.

45 Pitcavage, supra note 10, at 2 (discussing “strange filings” in courts, “confrontational motorists pulled over for homemade license plates,” and “bogus liens” filed against attorneys' property by their pro se opponents).

46 Id. (internal quotation marks omitted).

47 Id. at 9. Courts were not the only parallel institutions the Posse invented. In utilizing “common law banks,” for example, “the term ‘common law’ was attached to the word ‘bank’ as a (futile) attempt to avoid the law.” Id. (internal quotation marks omitted).

48 NCSC Guidebook, supra note 9, at 60.

49 Pitcavage, supra note 10, at 2. For instance, after a rash of civil and criminal defendants attempted to “remove” their cases to a common law court, the Court of Appeals of Texas declared “the Common Law Court for the Republic of Texas, if it ever existed, has ceased to exist,” as of the date of Texas's statehood. Kimmell v. Burnet Cnty. Appraisal Dist., 835 S.W.2d 108, 109 (Tex. App. 1992); see also, e.g., Pitcavage, supra note 10, at 23-24; Valerie Richardson, ‘Courts of Common Law'Punish with Phony Paper; ‘Patriot’ Movement Has Fooled Many, Wash. Times, Aug. 12, 1996, at A1.

50 NCSC Guidebook, supra note 9, at 39-41.

51 Carey, supra note 3, at 29.

52 Id. Coincidentally, “[n]owhere more than in Florida” was the Posse Comitatus so resurgent in the 1990s, where “[t]ax protesters, white supremacists, common law court advocates and others combined to give new energy to Posse ideology.” Pitcavage, supra note 10, at 20. For an example of Mr. Burpee's flesh and blood pleadings see, inter alia, Notice and Demand to Dismiss for Lack of Any Criminal Jurisdiction Whatsoever at 11, United States v. Burpee, No. 8:03-cr-00215-SCB-EAJ (M.D. Fla. Dec. 20, 2005), ECF No. 232 (“Until and unless the United States (federal government) can prove ownership over said geographical land mass, particularly that parcel of land which is the private real property of the Defendant, the USDC have no criminal jurisdiction whatsoever within any of the 50 Union states.” (emphasis omitted)).

53 Carey, supra note 3, at 29-30.

54 Id. (internal quotation marks omitted).

55 Id. at 30.

56 Corcoran, supra note 19, at 41.

57 Carey, supra note 3, at 25.

58 United States v. Mitchell, 405 F. Supp. 2d 602, 605-06 (D. Md. 2005); see NCSC Guidebook,supra note9, at 35;Carey, supranote 3, at29; Pitcavage,supra note 10, at 11.

59 Pitcavage, supra note 10, at 11 (internal quotation marks omitted).

60 Id. at 11-12 (“Simply stated, Americans can refuse to participate. Americans can revoke their social security numbers, their license plates, their income tax. They can declare themselves once more to be ‘sovereign citizens.’”); see also supra text accompanying notes 19-23.

61 Pitcavage, supra note 10, at 11.

62 See supra notes 11-15 and accompanying text.

63 Pitcavage, supranote 10, at 12 (“In court, sovereign citizens refuse to accept the aid of lawyers ... and instead defend themselves, usually unsuccessfully.”).

64 Id.

65 NCSC Guidebook, supra note 9, at 32-34; see also, e.g., Richard McDonald, Have You Been Hornswoggled? Which Flag Is Which?,in NCSC Guidebook, supra note 9, at98.

66 United States v. Mitchell, 405 F. Supp. 2d 602, 606 (D. Md. 2005).

67 See supra text accompanying note 58.

68 NCSC Guidebook, supra note 9, at 47.

69 See id.; supra text accompanying note 23.

70 NCSC Guidebook, supra note 9, at 63.

71 Id. at 47; see, e.g., Motion to Dismiss Case for Mistaken Identity & Jurisdictional Issues over a Sovereign at 1, 4, United States v. Mosley, No. 4:07-cr-00204-SOW (W.D. Mo. Nov. 6, 2007), ECF No. 27 (arguing lack of jurisdiction over the defendant indicted as “MONARD D. MOSLEY” but who signed this motion as “Monard-Dwayne:Mosley-EL Secured Party, Sui Juris, one of the sovereign people, a private man on the land, non combatant, an American by Birth, a child of the Living GOD(YHWH), Grantor, secired [sic] party/creditor and principle of which ‘Rights' existed long antecedent to the organization of the State and Trustee”) [hereinafter Mosley Motion to Dismiss].

72 NCSC Guidebook, supra note 9, at 50; see, e.g., United States v. Mosley, 607 F.3d 555, 557 (8th Cir. 2010) (explaining that, after identifying himself, the defendant refused to answer the judge's questions, stating, “I am a live and living, flesh and blood breathing man, who is a secured party who is sovereign,” and “I am not a corporation”).

73 NCSC Guidebook, supra note 9, at 50; see, e.g., Mitchell Dec. 8, 2005 Transcript, supra note 11, at 36 (“[Counsel:] They don'twant to participate in any way with the proceedings to give the proceedings any imprimatur or any sort of legitimacy.”); Mitchell Nov. 16, 2005 Transcript, supra note 1, at 2-6, 10-12.

74 NCSC Guidebook, supra note 9, at 60-62.

75 See supra text accompanying note 48.

76 See supra text accompanying note 48; see, e.g., UnitedStates v. Gonzalez, Nos. 05-4984, 05-4988, 2007 WL 805992, at *3-4 (4th Cir. Mar. 14, 2007) (“Defendants' motions were, on their face, completely frivolous.... [F]or the district court to have conducted a formal hearing [on the motions] would have been pointless.”); Mosley Motion to Dismiss, supra note 71, at 1-4; see also Affidavit of Mistaken Identity, Mosley, 607 F.3d 555 (No. 4:07-cr-00204-SOW), ECF No. 28. Regarding Mr. Mosley's filings, the Eighth Circuit quoted from the record that “the magistrate judge was ‘hard pressed to decipher and discern”’ their meaning. Mosley, 607 F.3d at 557.

77 NCSC Guidebook, supra note 9, at 57-58, 69.

78 Id. at 57-58.

79 Id. at 69.

80 Id. at 54, 72; see, e.g., United States v. Myers, 503 F.3d 676, 680 (8th Cir. 2007) (holding that a defendant known to the clerk's office “because of his voluminous pro se filings” was sentenced to sixty months for mailing threats to the judge and his public defender in a previous matter (emphasis omitted)).

81 See supra notes 11-15 and accompanying text.

82 NCSC Guidebook, supra note 9, at 52-53; see also United States v. Gonzalez-Lopez, 548 U.S. 140, 151-52 (2006).

83 See infra Part II.

84 See Gonzalez-Lopez, 548 U.S. at 151-52 (“[T]he right to counsel of choice does not extend to defendants who require counsel to be appointed for them.” (citations omitted)).

85 See, e.g., United States v. Mitchell, 405 F. Supp. 2d 602, 606 & n.6 (D. Md. 2005) (indicating that the Mitchell defendants simply refused to cooperate with their counsel, not that they were firing their counsel).

86 See Faretta v. California, 422 U.S. 806, 821-32 (1975).

87 Id. at 823-24 (quoting 1 James Fitzjames Stephen, A History of the Criminal Law of England 325-26 (London, MacMillan & Co. 1883)).

88 Id. (quoting 5 William Searle Holdsworth, A History of English Law 195-96 (1927)).

89 Id. at 824-26.

90 Id. at 825. During this period, however, counsel was never “forced upon the defendant.” Id. at 825-26.

91 Id. at 829-30; see also id. at 830 n.39 (“The Founders believed that self-representation was a basic right of a free people.”).

92 Id. at 826-30; see also Martinez v. Court of Appeal of Cal., 528 U.S. 152, 156-57 (2000).

93 See Judiciary Act of 1789, ch. 20, sec. 35, 1 Stat. 73, 92 ("[I]n all the courts of the United States, the parties may plead and manage their own causes personally or by 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 causes therein."); see also Faretta, 422 U.S. at 812 ("In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation.").

94 Faretta, 422 U.S. at 831; see also id. at 812-13.

95 See 28 U.S.C. § 1654 (2006) ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.").

96 Faretta, 422 U.S. at 829 n.38; see, e.g., Ga. Const. of 1777, art. LVIII (providing that the prohibition on the unauthorized practice of law is "not intended to exclude any person from that inherent privilege of every freeman, the liberty to plead his own cause").

97 Faretta, 422 U.S. at 813-14 & nn.9-11; see, e.g., Mass. Const. pt. 1, art. XII ("[E]very subject shall have a right ... to be fully heard in his defence by himself, or his council, at his election."); State ex rel. Meekins v. Superintendent, Md. House of Corr., 99 A.2d 724, 725 (Md. 1953) ("A person charged with an offense may plead his own cause, without counsel if he prefers.").

98 Faretta, 422 U.S. at 811-12 & nn.6, 8.

99 Respondent's Brief at 8-11, Faretta, 422 U.S. 806 (No. 73-5772), 1974 WL 186114.

100 Faretta, 422 U.S. at 836 (emphasis added).

101 John F. Decker, The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After Faretta, 6 Seton Hall Const. L.J. 483, 488-89, 492 (1996). Among practitioners, the Faretta decision "does not have a particularly wide fan base." Erica J. Hashimoto, Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant, 85 N.C. L. Rev. 423, 434 n.46 (2007).

102 Faretta, 422 U.S. at 818. Regarding the legal tradition discussed supra Part II.A.1, the Court concluded that "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." Id. at 832.

103 U.S. Const. amend. VI ("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; [and] to have compulsory process for obtaining witnesses in his favor.").

104 Faretta, 422 U.S. at 819 (emphasis added).

105 See id. at 818, 820-21 (quoting U.S. Const. amend. VI).

106 Id. at 820 ("To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment .... [T]he right to make a defense is stripped of the personal character upon which the Amendment insists.").

107 Id. at 814-15 (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942)); see also id. ("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." (quoting Adams, 371 U.S. at 279-80)).

108 Id. at 817.

109 Id. at 821.

110 See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense."); see also, e.g., Gideon v. Wainwright, 372 U.S. 335, 342-45 (1963) (incorporating the right to counsel to the states through the Fourteenth Amendment, holding that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him"); Johnson v. Zerbst, 304 U.S. 458, 467-68 (1938) (elevating the right to counsel to a jurisdictional bar for federal criminal jurisdiction, holding that if a defendant "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" (emphasis added)).

111 See, e.g., Decker, supra note 101, at 489-90 (attacking Faretta as "undermin[ing] the integrity and efficiency of the criminal justice system" and as "wrongly decided").

112 United States v. Singleton, 107 F.3d 1091, 1096 (4th Cir. 1997) ("[T]he right to self-representation and the right to representation by counsel, while independent, are essentially inverse aspects of the Sixth Amendment .... [T]he right to counsel and the right to self-representation are mutually exclusive." (citing Faretta, 422 U.S. at 835; Tuitt v. Fair, 822 F.2d 166, 174-77 (1st Cir. 1987))); see also id. at 1101 ("The Faretta Court clearly contemplated that the right to self-representation cannot be exercised without first eliciting a valid waiver of the right to counsel from the defendant.").

113 Id. at 1096 (quoting Fields v. Murray, 49 F.3d 1024 (4th Cir. 1995) (en banc)) (alterations, emphasis, and internal quotation marks omitted); accord Cross v. United States, 893 F.2d 1287, 1290 (11th Cir. 1990) ("Because self-representation necessarily entails the waiver of the sixth amendment right to counsel, a trial court can commit reversible constitutional error by either improperly granting a request to proceed pro se-and thereby depriving the individual of his right to counsel-or by denying a proper assertion of the right to represent oneself, and thereby violating Faretta.").

114 Singleton, 107 F.3d at 1102.

115 Id. at 1101-02.

116 Id. at 1102. But see Hashimoto, supra note 101, at 446-54 (providing empirical evidence that pro se defendants generally are not as disadvantaged in court as is commonly believed); see also id. at 441-46 (discussing limitations on this data).

117 Singleton, 107 F.3d at 1102.

118 Id. (quoting McKaskle v. Wiggins, 465 U.S. 168, 176-77 (1984)).

119 Faretta v. California, 422 U.S. 806, 832-34 (1975). But see Hashimoto, supra note 101, at 446-54.

120 United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir. 2000).

121 Id. (citing Faretta, 422 U.S. at 835); United States v. Lorick, 753 F.2d 1295, 1298 (4th Cir. 1985).

122 Godinez v. Moran, 509 U.S. 389, 400-01 (1993); Singleton, 107 F.3d at 1095-96.

123 United States v. Lawrence, 605 F.2d 1321, 1325 n.2 (4th Cir. 1979).

124 Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Frazier-El, 204 F.3d at 558-59; Singleton, 107 F.3d at 1102.

125 Faretta, 422 U.S. at 835; see also Decker, supra note 101, at 504-10.

126 Frazier-El, 204 F.3d at 558-59; see also United States v. Gonzalez, Nos. 05-4984, 05-4988, 2007 WL 805992, at *3 (4th Cir. Mar. 14, 2007); Cross v. United States, 893 F.2d 1287, 1290 (11th Cir. 1990); Adams v. Carroll, 875 F.2d 1441, 1444 (9th Cir. 1989); Tuitt v. Fair, 822 F.2d 166, 174-77 (1st Cir. 1987).

127 Adams, 875 F.2d at 1444; cf. Johnson, 304 U.S. at 464-65. But see Cross, 893 F.2d at 1290 ("A trial court's evaluation of an individual's desire to represent himself is fraught with the possibility of error.").

128 Adams, 875 F.2d at 1444.

129 See, e.g., Mitchell Dec. 8, 2005 Transcript, supra note 11, at 4 ("[Defendant Harris:] As a matter of fact, I want counsel. Yet every attorney I have spoken with has a conflict of interest because they have sworn an oath to support my adversary, the United States of America and the United States District Court."); see also id. at 7 (Defendant Gardner).

130 See supra text accompanying note 84.

131 Mitchell Dec. 8, 2005 Transcript, supra note 11, at 27.

132 Memorandum Opinion and Order of March 2, 2006 at 26-27, United States v. Mitchell, 405 F. Supp. 2d 602 (D. Md. 2005) (No. 1:04-cr-00029-AMD), ECF No. 224 [hereinafter Mitchell March 2, 2006 Order], available at http://www.mdd.uscourts.gov/Opinions/Opinions/gardner03022006.pdf.

133 See Consolidated Final Brief of Appellants at 2-4, United States v. Mitchell, No. 09-4215 (L) (4th Cir. Jan. 5, 2011), 2011 WL 38814 [hereinafter Mitchell Appellants Brief] (listing issues on appeal).

134 Faretta v. California, 422 U.S. 806, 835 (1975) (citing Johnson v. Zerbst, 304 U.S. 458, 464-65 (1938)).

135 Id. at 835 (quoting Adams v. United States ex rel McCann, 317 U.S. 269, 279 (1942)); see, e.g., United States v. Farhad, 190 F.3d 1097, 1099 (9th Cir. 1999) ("A waiver of counsel will be considered knowing and intelligent only if the defendant is made aware of (1) the nature of the charges against him; (2) the possible penalties; and (3) the dangers and disadvantages of self-representation."); Cross v. United States, 893 F.2d 1287, 1290-91 (11th Cir. 1990) ("[O]nce the right to self-representation has been invoked initially, the trial court must conduct a hearing or engage the defendant in a colloquy to ensure that the defendant's decision is made knowingly, voluntarily, and intelligently [and] to reduce the likelihood of constitutional error by eliciting from the defendant and explicitly establishing for the record his awareness of his constitutional rights, his decision to waive the right to counsel, his awareness of the risks of proceeding pro se, and his unambiguous decision to proceed without counsel."); see also Decker,supra note 101, at 500-04, 510-17.

136 See Fed. Judicial Ctr., Benchbook for U.S. District Court Judges 6-7 (5th ed. 2007). The model Faretta colloquy appears in the Appendix.

137 See id.

138 Johnson, 304 U.S. at 464.

139 Mitchell Dec. 8, 2005 Transcript, supra note 11, at 11-12.

140 Id.

141 United States v. Singleton, 107 F.3d 1091, 1102 (4th Cir. 1997) (quoting United States v. Dunlap, 577 F.2d 867, 868 (4th Cir. 1978)); see also Decker, supra note 101, at 544-50.

142 United States v. Lawrence, 605 F.2d 1321, 1325 (4th Cir. 1979).

143 See id. at 1324-25 & n.2.

144 Id. at 1325 (internal quotation marks omitted).

145 See id.

146 See Martinez v. Court of Appeal of Cal., 528 U.S. 152, 163 (2000). Faretta is silent on appeals, but the Supreme Court in Martinez went further, reanalyzing each point of Faretta's reasoning to determine that self-representation is unavailable on appeal. Id. at 159-63. Specifically, starting with the premise that there is no constitutional or historical right of appeal at all, the Court noted three things: (1) the Sixth Amendment does not provide a right to appellate counsel, foreclosing the possibility of a correlative right to a pro se appeal; (2) the legal history and tradition discussed in Faretta did not support a right to a pro se appeal; and (3) the principles of autonomy and respect for the individual embraced in Faretta are only applicable in the context of a defendant presumed innocent at trial. Id. The autonomy interest is specifically diminished because appellants, already found guilty at trial, have had their rights subjugated to the state's interest in “fair and efficient administration of justice.” Id. at 163.

147 See Indiana v. Edwards, 554 U.S. 164, 177-78 (2008). In making this determination, the Court looked to its own precedent on competency, which requires only that defendants be able to consult with counsel, and to state court precedent on self-representation, which requires that defendants have counsel when afflicted with a “mental derangement that would deprive the defendant of a fair trial if allowed to conduct his own defense.” Id. at 175 (internal quotation marks and alterations omitted).

148 See, e.g., Godinez v. Moran, 509 U.S. 389, 396-98 (1993); United States v. Frazier-El, 204 F.3d 553, 559-60 (4th Cir. 2000) (construing Godinez as a binding pronouncement that “the standard of competence for waiving counsel is identical to the standard of competence for standing trial”).

149 Faretta v. California, 422 U.S. 806, 834 n.46 (1975) (citing Illinois v. Allen, 397 U.S. 337, 343 (1970)); see also, e.g., United States v. Mosley, 607 F.3d 555, 558-59 (8th Cir. 2010); United States v. Myers, 503 F.3d 676, 681 (8th Cir. 2007); Decker, supra note 101, at 555-60.

150 Frazier-El, 204 F.3d at 560 (citations omitted).

151 See Faretta, 422 U.S. at 834 n.46 (citing Allen, 397 U.S. at 344 (holding that courts may physically restrain contumacious defendants, hold them in contempt, or remove them from the courtroom)).

152 Allen, 397 U.S. at 343; see, e.g., Mitchell Dec. 8,2005 Transcript, supra note 11, at 9; see also Allen, 397 U.S. at 346-47 (“[O]ur courts, palladiums of liberty as they are, cannot be treated disrespectfully with impunity.... [Courts] cannot and must not be infected with the sort of scurrilous, abusive language and conduct paraded before the [trial court] in this case.”).

153 United States v. Mitchell, 405 F. Supp. 2d 602, 606-07 n.6 (D. Md. 2005).

154 See Farretta, 422 U.S. at 834 n.46.

155 Martinez v. Court of Appeal of Cal., 528 U.S. 152, 161 (2000) (quoting Decker, supra note 101, at 598). But see Hashimoto, supra note 101, at 446-54.

156 Faretta, 422 U.S. at 834 n.46 (“[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.”).

157 McKaskle v. Wiggins, 465 U.S. 168, 184 (1984).

158 Id. at 183-84 (“A defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. Nor does the Constitution require judges to take over chores for a pro se defendant that would normally be attended to by trained counsel as a matter of course.”).

159 See id. at 177.

160 Id.

161 Id. at 178-79 (emphasis omitted) (“[T]he message conveyed by the defense may depend as much on the messenger as on the message itself.... [T]he right to appear pro se can lose much of its importance if only the lawyers in the courtroom know that the right is being exercised.” (emphasis omitted)).

162 Id. at 179.

163 Mitchell Dec. 8, 2005 Transcript, supra note 11, at 26.

164 McKaskle, 465 U.S. at 183 (“Faretta does not require a trial judge to permit ‘hybrid’ representation of the type [respondent] was actually allowed. But if a defendant is given the opportunity and elects to have counsel appear before the court or jury, his complaints concerning counsel's subsequent unsolicited participation lose much of their force.”); see United States v. Singleton, 107 F.3d 1091, 1100-01 & n.7 (4th Cir. 1997).

165 McKaskle, 465 U.S. at 183.

166 See Singleton, 107 F.3d at 1101 (“[T]he Constitution does not require a continuum of representational rights.”).

167 See supra Parts II.A.1-2.

168 See United States v. Mitchell, Nos. 09-4215, 09-4357, 09-4359, 09-4361, 2011 WL 2356887, at *1-2 (4th Cir. June 15, 2011) (referring to Mitchell's counsel).

169 See supra Part I.B.2.

170 Mitchell March 2, 2006 Order, supra note 132, at 26.

171 Snyder, supra note 12, at 1266.

172 See, e.g., Mitchell, 2011 WL 2356887, at *3 (“[D]uring pretrial hearings, the four defendants repeatedly engaged in disruptive behavior through coordinated and identical demonstrations. The defendants gave identical speeches rejecting the jurisdiction of the district court over them as live ‘flesh and blood’ men and denouncing the Government, the district court, and their attorneys.... In its fourth superseding indictment, the Government alleged that the racketeering conspiracy continued through the trial ... through disruption of court proceedings. In order to prove this charge, the Government introduced the above evidence of the defendants' coordinated behavior.... [E]ven assuming the district court abused its discretion in admitting this evidence, any error was harmless.” (citation, alteration, and internal quotation marks omitted)); see also Carey, supra note 3, at 30 (noting that the identical activity of the defendants in court added evidence to the conspiracy charge and caused the introduction of new charges).

173 The court's last word on counsel for the Mitchell defendants cited Fourth Circuit precedent regarding motions to withdraw as counsel, which, pursuant to their clients' instructions, the Mitchell defendants' counsel had filed. See, e.g., Mitchell March 2, 2006 Order, supra note 132, at 25-27. Regarding one of the Mitchell defendants, the court held:

> [I]t is clear that Gardner's “problems” with his attorneys have nothing to do with their preparation or their performance in this case. Rather, Gardner has told the court that he wants to discharge them because they took an oath when they were admitted to the Bar to uphold the Constitution, and because they would not sign a certain “contract” he sent them. These assertions by Gardner are frivolous in the extreme. I will not allow these antics to sabotage these proceedings or to denigrate from the dignity the court intends to ensure they embrace. Even though counsel are reasonably concerned with the need to comply with the Maryland Rules of Professional Conduct, and even though they certainly have a difficult task in working with their obstreperous client, I find that it is in the best interest of justice (and Gardner) that they continue their representation of Gardner. The Motion for Leave to Withdraw shall be denied.

Id. at 26-27.

174 Faretta v. California, 422 U.S. 806, 834 (1975) (internal quotation marks omitted).

175 Mitchell Dec. 8, 2005 Transcript, supra note 11, at 68.

176 United States v. Singleton, 107 F.3d 1091, 1096 (4th Cir. 1997).

177 See supra Part II.B.

178 See supra Part II.B.3.

179 United States v. Lawrence, 605 F.2d 1321, 1325 (4th Cir. 1979) (internal quotation marks omitted).

180 See supra text accompanying note 145.

181 See supra Part II.B.2.

182 See supra text accompanying note 136.

183 See supra Part I.B.2.

184 See supra text accompanying note 140.

185 See supra Part II.B.1; supra note 129 and accompanying text.

186 See supra note 84 and accompanying text.

187 Faretta v. California, 422 U.S. 806, 834 n.46 (1975); see supra Part II.C.

188 See supra Part I.B.2.

189 United States v. Frazier-El, 204 F.3d 553, 560 (4th Cir. 2000).

190 Illinois v. Allen, 397 U.S. 337, 346 (1970).

191 Cf. Frazier-El, 204 F.3d at 560 ("The right [to self-representation] does not exist, however, to be used ... for distortion of the system, or for manipulation of the trial process. A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel." (citations omitted)). The Frazier-El dissent, however, attacked this dictum as creating a "'fourth' requirement" of "'sincerity,' or 'legitimacy.'" See id. at 566-69 (Murnaghan, J., dissenting).

192 See Indiana v. Edwards, 554 U.S. 164, 177-78 (2008).

193 Id.

194 United States v. Mitchell, 405 F. Supp. 2d 602, 606 (D. Md. 2005).

195 Id. at 606 & n.6. The government eventually withdrew its notices of intent to seek the death penalty in Mitchell, ostensibly because so much time had elapsed in pre-trial proceedings that the evidence at trial might no longer have amounted to a death penalty case. See Carey, supra note 3, at 31. Whether this is a "success" for the flesh and blood defense is a question that can be answered by only pre-trial detainees who will hear the story as part of the flesh and blood lore. See id. Three of the four Mitchell defendants were sentenced to life in prison, and one was sentenced to four hundred months. See Mitchell Appellants Brief, supra note 133, at 7-8.

196 Faretta v. California, 422 U.S. 806, 815 (1975) (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279-80 (1942)).

197 Fed. Judicial Ctr., supra note 136, at 6-7 (margin notes omitted).

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