

The Right to Hybrid Representation in Criminal Court

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I. INTRODUCTION

Days before his trial was set to begin, Darrell Brooks, who was facing 77 criminal charges, including six felony counts of first-degree intentional homicide, each punishable by life imprisonment without the possibility of parole, made the decision to represent himself.¹ Mr. Brooks was accused of driving his SUV through a crowd of people who were attending a Christmas parade in Waukesha, Wisconsin.² The case had garnered significant media attention.³ Two highly experienced members of the Wisconsin State Public Defender’s Office had been assigned to represent Mr. Brooks.⁴ They had

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¹ Jim Riccioli & Bruce Vielmetti, *Darrell Brooks Now Intends to Represent Himself in the Waukesha Christmas Parade Trial*, MILWAUKEE J. SENTINEL (Sept. 23, 2022), <https://www.jsonline.com/story/communities/waukesha/2022/09/23/brooks-intends-represent-himself-waukesha-christmas-parade-trial/8089989001/> [https://perma.cc/QR4L-3D5V].

² Mark Johnson, *The Blood. The CPR. The Dead.* *A Moment-to-Moment Account of the Waukesha Christmas Parade that Turned into Tragedy*, MILWAUKEE J. SENTINEL, <https://www.jsonline.com/story/news/2021/11/27/voices-parade-moment-moment-account-waukeshas-parade/8747087002/> [https://perma.cc/C7J3-LKAU] (Jan. 19, 2022); see *Our Coverage of the 2021 Waukesha Christmas Parade Tragedy*, MILWAUKEE J. SENTINEL, <https://www.jsonline.com/story/news/local/waukesha/2021/12/21/waukesha-christmas-parade-2021-updates-victims-suspect-community/8857732002/> [https://perma.cc/LZA3-SMDA] (Oct. 26, 2022).

³ See *Our Coverage of the 2021 Waukesha Christmas Parade Tragedy*, *supra* note 2.

⁴ Riccioli & Vielmetti, *supra* note 1.

engaged in significant pretrial litigation on Mr. Brooks' behalf, including filing motions for a change of venue, to suppress evidence and to dismiss the charges.⁵

At the start of the hearing to determine if Mr. Brooks was knowingly and voluntarily waiving his right to counsel, the judge told him that “there are these competing rights, the right to counsel and the right to self-representation”.⁶ Later on, Mr. Brooks stated that it was his understanding that if he decided to represent himself, he could have standby counsel appointed to assist him.⁷ In response to that statement, the judge informed him “that is not a correct statement of the law, sir, standby counsel is not for the benefit of the defendant, it is for the benefit of the court.”⁸ The judge also informed Mr. Brooks that “the case law makes clear, you cannot act as your own attorney and exercise your right of self-representation while simultaneously exercising the right to counsel.”⁹

The judge informed Mr. Brooks that if he elected to represent himself, that she would not be appointing standby counsel.¹⁰ Ultimately, the judge accepted Mr. Brooks waiver of counsel and permitted him to represent himself.

Later, during his trial, Mr. Brooks brought up the fact that he had been denied standby counsel and complained that “under the Sixth Amendment, I have the right to the assistance of counsel, it doesn't say anything about representing yourself without assistance of counsel. Having counsel represent you and having assistance of counsel is two totally different things.”¹¹

Mr. Brooks is not the first defendant to argue that he should be permitted to represent himself and receive the assistance of counsel, a type of representation referred to as “hybrid representation”.¹² Hybrid representation refers to a model of representation where the defendant represents themselves but also has the assistance of counsel, the defendant and lawyer function as co-counsel.¹³ Hybrid representation differs from the traditional model of representation where the lawyer controls almost all aspects of trial strategy with only a few decisions,

⁵ Todd Richmond, *Judge Denies Defense Motions to Dismiss Waukesha Parade Attack Case Over Jail Cell Search*, WISC. STATE J. (Aug. 26, 2022), https://madison.com/news/local/crime-and-courts/judge-denies-defense-motions-to-dismiss-waukesha-parade-attack-case-over-jail-cell-search/article_c1918c63-5de6-5d17-82bf-07c6d14ecbfa.html [<https://perma.cc/LZ62-A8NF>].

⁶ Law & Crime Network, *WI v. Darrell Brooks—Waukesha Parade Defendant—Pretrial Hearing*, YOUTUBE, at 2:08, (Sept. 27, 2022), https://youtu.be/Jdl_jkTpp80?t=116.

⁷ Channel 3000, *Judge Rules on if Waukesha Parade Suspect Can Self-Represent*, YOUTUBE, at 30:38, (Sept. 28, 2022), https://www.youtube.com/watch?v=_EUUMVyJ4nM.

⁸ *Id.* at 30:53.

⁹ *Id.* at 37:54.

¹⁰ *Id.* at 34:30.

¹¹ TMJ4 News, *Darrel Brooks, Waukesha Parade Suspect, Rants for 40 Minutes Straight*, YOUTUBE, at 39:37 (Oct. 13, 2022), https://youtu.be/6uRAUedYX_Y?t=2377.

¹² See Joseph A. Colquitt, *Hybrid Representation: Standing the Two-Sided Coin on Its Edge*, 38 WAKE FOREST L. REV. 55, 77–79 (2003) (discussing the positions taken in federal courts when defendants assert a right to hybrid representation).

¹³ *Id.* at 56–57.

such as the decision to testify, reserved to the defendant. It also is distinguishable from the type of representation required by “standby counsel”; a lawyer who is appointed to assist a *pro se* defendant and serves more as a legal advisor than an actual representative.¹⁴

Even though the text of the Sixth Amendment and some Supreme Court decisions state that counsel is merely the assistant to the accused,¹⁵ courts have consistently ruled that a defendant’s right to the assistance of counsel and their right to present their own defense are mutually exclusive.¹⁶ While the Supreme Court has said that a defendant is not entitled to what the Court labeled the “special appearances [of] counsel,”¹⁷ it is not clear why a defendant is barred from presenting their own defense and having the assistance of counsel when we consider the plain meaning of the Sixth Amendment and other references to the right to counsel in state constitutions, historical precedent and other decisions of the Court that give a defendant the right to dictate the objective of the defense.¹⁸

II. THE RIGHT TO REPRESENT YOURSELF OR THE RIGHT TO THE ASSISTANCE OF COUNSEL

In *Faretta v. California* the Court ruled that a defendant has a constitutional right to present their own defense, but a trial court can appoint standby counsel to assist the defendant.¹⁹ The Court describes in detail the roots of the right to self-representation and concludes that the right to counsel has always been conceived of “as an ‘assistance’ for the accused, to be used at his option, in defending himself.”²⁰ The Court specifically points to the explicit endorsement of the right to self-representation contained in state constitutions adopted after the Declaration of Independence.²¹ However, in all thirty-six of the state constitutions the Court references, a defendant has the right to be heard by himself *and* his counsel.²² Such was the case when Aaron Burr was tried for treason in 1807 and defended himself with the aid of counsel, specifically, “former secretary of state Edmund Randolph, former attorney general Charles Lee and Luther Martin, a delegate to the Constitutional Convention.”²³

¹⁴ See Anne Bowen Poulin, *The Role of Standby Counsel in Criminal Cases: In the Twilight Zone of the Criminal Justice System*, 75 N.Y.U. L. REV. 676, 676, 683 (2000).

¹⁵ See Colquitt, *supra* note 12, at 57 n.8, 59.

¹⁶ *Id.* at 67–71.

¹⁷ *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984).

¹⁸ See *McCoy v. Louisiana*, 138 S. Ct. 1500, 1503–04 (2018) (holding that a defendant in a criminal case, and not the attorney, has a right to decide on the objective of the defense).

¹⁹ *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975).

²⁰ *Id.* at 832.

²¹ *Id.* at 828–30.

²² *Id.* at 813 n.10.

²³ Ronald G. Shafer, *A Former Vice President Was Tried for an Insurrection Plot*, WASH. POST (Sept. 26, 2022), <https://www.washingtonpost.com/history/2022/09/26/aaron-burr-treason-insurrection-trump/> [<https://perma.cc/2NUR-NTCH>].

In *McKaskle v. Wiggins* the Court addressed the appropriate role of standby counsel.²⁴ In that case the defendant claimed that the active participation of standby counsel undermined his right to present his own defense.²⁵ The Court found that standby counsel's participation in the defendant's trial had not violated his right to represent himself, but the Court also ruled that a defendant is not entitled to what the court labeled "hybrid" representation, which is the active participation of standby counsel during a trial where the defendant is representing themselves.²⁶ As the Court stated "[a] defendant does not have a constitutional right to choreograph special appearances by counsel."²⁷

State courts have often adopted the Supreme Court's rationale that the right to represent yourself and the right to the assistance of counsel are mutually exclusive.²⁸ Courts in only one state, Kentucky, have consistently held that the right to counsel in their state constitution permits a limited waiver of counsel and guarantees to a defendant the right to hybrid representation.²⁹ In Wisconsin, where Mr. Brooks was prosecuted, the state constitution guarantees that in all criminal prosecutions "the accused shall enjoy the right to be heard by himself and counsel."³⁰

The role of defense counsel has expanded over the course of time. Up through the 17th century, defense counsel was not permitted in criminal cases.³¹ It was not until the 1730s that judge began permitting counsel for those accused of felonies, but the role defense played was limited.³² They could cross-examine the prosecutions witness but they could not make arguments and gave defendant instructions on how to best present a defense.³³ Thus, the role defense counsel played in criminal cases at the time just prior to our nation's founding would today be considered a form "hybrid" representation.

²⁴ *McKaskle v. Wiggins*, 465 U.S. 168, 170 (1984).

²⁵ *Id.* at 176 ("Wiggins claims . . . that the *pro se* defendant may insist on presenting his own case wholly free from interruption or other uninvited involvement by standby counsel.").

²⁶ *Id.* at 183.

²⁷ *Id.*

²⁸ Colquitt, *supra* note 12 at 85 ("[M]any, but not all, state courts have held consistently and persistently that their state constitutional provisions do not grant criminal defendants the right to hybrid representation.").

²⁹ *Major v. Kentucky*, 275 S.W.3d 706, 718 (Ky. 2009).

³⁰ WISC. CONST. art. 1, § 7.

³¹ See Jona Goldschmidt, *Judging the Effectiveness of Standby Counsel: Are They Phone Psychics? Theatrical Understudies? Or Both?*, 24 S. CAL. REV. L. & SOC. JUST. 133, 182 (2015) (discussing the evolution of the role of defense counsel in criminal cases).

³² *Id.* at 183.

³³ *Id.*

III. WHAT MOTIVATES COURTS TO FIND THE RIGHTS ARE MUTUALLY EXCLUSIVE?

What accounts for the steadfast refusal of courts to recognize that a defendant in a criminal case has the right to present their own defense and the right to have the assistance of counsel when presenting that defense?

Judges might fear that the defendant is electing to proceed without counsel merely to delay proceedings. In the case of Mr. Brooks, the judge warned him repeatedly that his trial would proceed as scheduled even if he decided to represent himself.³⁴ A trial judge might also be concerned that the decision to forgo representation by counsel signals that the defendant intends to engage in courtroom tactics that no lawyer would sanction or present a defense that assigned counsel is unwilling or ethically unable to present. In the case of Mr. Brooks, that fear turned out to be well founded as he made frivolous legal arguments throughout his trial and had to be repeatedly removed from the courtroom due to his disruptive behavior.³⁵ Finally, the judge might see the defendant's decision to represent themselves as a strategic one designed to create issues on appeal.³⁶ While a defendant has no right to claim they had ineffective assistance of counsel on appeal when they represent themselves, they can appeal on the grounds that their waiver of counsel was not knowing and voluntary or that they lacked the ability to adequately represent themselves.³⁷

These are all legitimate concerns, but it is hard to see how the denial of the assistance of counsel during the defendant's trial addresses any of them. If the defendant's desire to waive counsel is indeed a delay tactic, then the continued appointment of counsel, who is presumably prepared to go forward, undercuts a defendant's subsequent claim that they were forced to go to trial before they were adequately prepared since they retained access to counsel who was prepared. If the defendant's desire to waive counsel is part of an effort to disrupt the trial itself, it is hard to see how that threat is mitigated by having the defendant proceed without counsel. If anything, the continued presence of counsel may act as a stabilizing force that could limit disruptions in the courtroom. Lastly, if the waiver of counsel is being done in the hopes of creating an appellate issue regarding the waiver itself or the overall fairness of the proceedings, then the continued presence of counsel would undercut those claims as well.

The established rule that a defendant can either represent themselves or have the assistance of counsel seems to be designed to deter defendants from representing themselves by ruling out the possibility that they can continue to

³⁴ Channel 3000, *supra* note 7, at 47:21.

³⁵ Todd Richmond, *Parade Suspect's Court Antics Won't Help Appeal, Experts Say*, AP NEWS (Oct. 23, 2022), <https://apnews.com/article/travel-wisconsin-madison-7e81994b3030d22755efa847d953b24a> [<https://perma.cc/TXQ8-LV9L>].

³⁶ *See id.*

³⁷ *See* Faretta v. California, 422 U.S. 806, 815 (1975) (citing *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275 (1942)).

have the assistance of counsel for their defense. This clearly seems to be an effort on the part of the courts to make the idea of self-representation as unpalatable as possible. As one court stated: “A self-representing defendant should be flying solo—without the comforting knowledge that if turbulence shakes his confidence, a superbly qualified pilot is sitting in the front row of first class.”³⁸ But when a defendant is undeterred by the threat of losing access to counsel and elects to “fly solo”, there does not seem to be any underlying justification for prohibiting the defendant from having a co-pilot in order to avoid what is the courtroom equivalent of a plane crash.

Courts may also underestimate the degree of mistrust that criminal defendants have in the lawyers assigned to represent them and overlook the fraught nature of the attorney client relationship that often exists between assigned counsel and their client. The traditional model of representation presumes that the lawyer is the agent of the client.³⁹ Under this model, the client selects their own representative and can discharge that representative and choose another, thus exerting control over their agent. Under this model of representation, the power invested in the lawyer to make decisions about trial strategy is rooted in the idea that the client has voluntarily selected an agent to represent them. As the Supreme Court noted in *Faretta*, “[t]his allocation [of the power to make binding decisions of trial strategy] can only be justified . . . by the defendant’s consent, at the outset, to accept counsel as his representative.”⁴⁰ That is simply not the case in most criminal cases where most defendants are represented by counsel that they did not select and which are difficult to discharge.⁴¹ And while defendants who can retain counsel have a right to counsel of their own choosing,⁴² defendants who are too poor to hire counsel do not have that right and in the Supreme Court’s opinion are not even entitled to a “meaningful relationship” with their appointed counsel.⁴³

While this lack of a true agency relationship may make a defendant hesitant to consent to representation by assigned counsel, the defendant also has every right to question the ability of assigned counsel to adequately represent them considering the ample evidence that our assigned counsel systems are grossly underfunded. A series of recent reports sponsored by the American Bar Association documents the chronic underfunding of indigent defense systems across the country.⁴⁴ One of the things that tends to be overlooked in *Faretta*, is

³⁸ *Brookner v. Superior Ct. of Solano County*, 76 Cal. Rptr. 2d 68, 72 (Cal. Ct. App. 1998).

³⁹ See Robert E. Toone, *The Absence of Agency in Indigent Defense*, 52 AM. CRIM. L. REV. 25, 27 (2015).

⁴⁰ *Faretta*, 422 U.S. at 820–21.

⁴¹ See Toone, *supra* note 39, at 52.

⁴² *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006).

⁴³ *Morris v. Slappy*, 461 U.S. 1, 14 (1983) (rejecting the argument that the Sixth Amendment guarantees a “meaningful relationship” between the defendant and counsel).

⁴⁴ *ABA SCLAIID Reports, Articles, and Books Concerning Indigent Criminal Defense*, AM. BAR. ASS’N,

that the defendant didn't really want to represent himself. He was concerned that the public defender assigned to represent him had an excessive caseload and that he was simply better off representing himself.⁴⁵

Finally, courts undoubtedly have a sincere belief that defendants will be worse off if they represent themselves. As the Court said in *Gideon*, even “the intelligent and educated layman has small and sometimes no skill in the science of law” and he “lacks both the skill and knowledge adequately to prepare his defense.”⁴⁶ The dissenting opinion in *Faretta* lamented that “the Court by its opinion today now bestows a *constitutional* right on one to make a fool of himself.”⁴⁷

IV. ACKNOWLEDGING A RIGHT TO HYBRID REPRESENTATION

Courts have acknowledged that while defendants do not have a right to hybrid representation, there is nothing preventing trial courts from allowing it.⁴⁸ And since most state constitutions have language that supports a right to present your own defense and have the assistance of counsel,⁴⁹ there is no reason why state courts can't decide to extend the right to counsel beyond the confines of the Sixth Amendment as interpreted by the United States Supreme Court.

One objection to permitting hybrid representation is that it has the potential to undermine the orderly conduct of the trial. But defendants who have the means are free to retain more than one lawyer. Harvey Weinstein had six lawyers representing him when he was tried and convicted of sexual assault in New York.⁵⁰ In serious or complex cases having co-counsel is common, even among indigent defense providers. Darrell Brooks had two public defenders assigned to his case before he discharged them and elected to proceed without counsel.⁵¹ Ironically, in her warnings to Mr. Brooks about the difficulties of representing himself, the judge pointed to the fact that he would be facing three District Attorneys who could “divide and conquer”.⁵² So the fear that hybrid

https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/publications/ [<https://perma.cc/GGC5-9TLS>] (reports on Oregon, New Mexico, Indiana, Colorado, Rhode Island, Louisiana and Missouri).

⁴⁵ *Faretta*, 422 U.S. at 807 (Anthony Faretta stated that he did not want to be represented by a public defender because he believed that office was “very loaded down with . . . a heavy caseload.”).

⁴⁶ *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963) (quoting *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)).

⁴⁷ *Faretta*, 422 U.S. at 852 (Blackmun, J. dissenting).

⁴⁸ See Colquitt, *supra* note 12, at 95.

⁴⁹ See *id.* at 59.

⁵⁰ Maureen O'Connor, *Who Would Defend Harvey Weinstein?*, VANITY FAIR (Jan. 5, 2020), <https://www.vanityfair.com/hollywood/2020/01/harvey-weinstein-rape-trial-lawyers> [<https://perma.cc/XK38-4KA2>].

⁵¹ Riccioli & Vielmetti, *supra* note 1.

⁵² Channel 3000, *supra* note 7, at 1:10:16.

representation will be unwieldy is seriously undermined by our current practices where multiple defense attorney represent a single defendant.

Another objection is that hybrid representation could be used for unscrupulous purposes by defendants, to delay and disrupt trial proceedings or to make arguments that defense counsel could not make because of ethical constraints. But as already discussed, a defendant already has a right to dispense with counsel and thereby gain the ability to engage in disruptive or disrespectful behavior during trial.⁵³

Another concern is that the role of hybrid counsel is undefined and ceding control of certain aspects of the trial makes it challenging for the assigned attorney to provide the level of representation required by legal ethics. But the idea that indigent criminal defendants must either represent themselves or cede control of their defense to an attorney stands in sharp contrast to the freedom attorneys and clients have in civil cases to dictate the terms of the representation.⁵⁴ Lawyers can limit the scope of representation and are increasingly encouraged to provide civil legal assistance to people who can't afford it by providing less than full representation by unbundling legal services.⁵⁵

One final objection to a right to hybrid representation comes from the language the Court uses in *McKaskle* to describe the inherent values associated with self-representation. In *McKaskle* the Court ruled that the defendant has the right to be seen as being in control of their own defense.⁵⁶ But that assumes that a defendant cares about being seen in control of their own defense. The Court said that “[t]he defendant’s appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused’s individual dignity and autonomy.”⁵⁷ But if a defendant wants to work with an attorney to present their own defense, it seems perverse to deny the defendant that right by claiming that the participation of counsel, which the defendant seeks, would somehow undermine their dignity and autonomy.

The reality is that assigned defense counsel are overworked⁵⁸ and may have a financial incentive to spend as little time working on an indigent defendant’s case as possible. Study after study demonstrates that indigent defense providers have excessive caseloads calling into question their ability to provide adequate

⁵³ See *Faretta v. California*, 422 U.S. 806, 835 n.46 (1975).

⁵⁴ See MODEL RULES OF PRO. CONDUCT 1.2(c) (AM. BAR ASS’N 2020) (“A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives their informed consent.”).

⁵⁵ See Latonia Haney Keith, *Poverty, The Great Equalizer: Improving the Delivery System for Civil Legal Aid*, 66 CATH. U. L. REV. 55, 88–89 (2016) (discussing the growth unbundled legal services).

⁵⁶ *McKaskle v. Wiggins*, 465 U.S. 168, 186 (1984).

⁵⁷ *Id.* at 178.

⁵⁸ BRYAN FURST, BRENNAN CTR. FOR JUST., A FAIR FIGHT 3 (2019), <https://www.brennancenter.org/our-work/research-reports/fair-fight> [<https://perma.cc/9N69-5AUU>].

representation⁵⁹, let alone the zealous representation called for in criminal cases. With that in mind, the question confronting indigent defendants is whether they should undertake the difficult task of representing themselves or allow a lawyer, who may have limited time to devote to their case, to represent them. In fact, this is exactly the predicament that Anthony Farretta faced. He told the trial judge that he did not want to be represented by the public defender because he believed that the office was “very loaded down with... a heavy case load.”⁶⁰ Hybrid representation could lessen attorney workloads and permit the person with the most incentive to work on the case, the defendant, do a portion of the work.

Hybrid representation also gives defendants greater autonomy over their defense and the opportunity to actively participate in the proceedings. Critics have pointed out criminal procedure tends to silence defendants at almost every stage of the proceedings.⁶¹ While this is seen as a strategic advantage for defendants, it comes with the disadvantage of decreasing the legitimacy of the process from the defendant’s perspective since their voice is never heard. Increasingly, advocates have been calling for greater participation from defendants, their families and the communities who are impacted by incarceration.⁶² These calls for a model of “participatory defense” align with the concepts of hybrid representation.

V. CONCLUSION

What if a defendant simply wanted to make their own closing argument? A closing argument coming from the accused could be more persuasive than one coming from counsel. As the Supreme Court said in *McKaskle*, “[f]rom the jury’s perspective, the message conveyed by the defense may depend as much on the messenger as on the message itself.”⁶³ What if the defendant and counsel worked on drafting the closing argument together, so that the defendant had the assistance of counsel but then was able to present their defense directly to the jury?

What if a defendant wanted counsel to handle jury selection, make an opening statement, make objections during the prosecution’s case, and cross-examine the prosecution’s witnesses but wanted to call and question witness in their own defense? This approach would assign to the lawyer the responsibility of challenging the evidence offered by the prosecution while reserving to the accused the right to literally present their own defense.

⁵⁹ *See id.*

⁶⁰ *Farretta v. California*, 422 U.S. 806, 807 (1975).

⁶¹ *See, e.g.,* Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449, 1450–53 (2005).

⁶² *See, e.g.,* Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1282 (2015).

⁶³ *McKaskle v. Wiggins*, 465 U.S. 168, 179 (1984).

What if a defendant elected to cross-examine the prosecution's witnesses but relied on their attorney to represent them at other stages of the proceeding? A defendant would be directly exercising their right to confront and cross-examine witnesses guaranteed by the Sixth Amendment. What if the defense was claiming that the prosecution's witnesses were lying because they are biased against the defendant? The witnesses might be more likely to say things that reveal their animosity toward the defendant if they were being cross-examined by the defendant instead of counsel.

The Sixth Amendment guarantees the right to represent yourself and the right to have the assistance of counsel. Courts have viewed these two rights as mutually exclusive: either a defendant allows an attorney to be their agent, or they act on their own behalf. Courts have not been open to the idea of hybrid representation where a defendant represents themselves during portions of the trial but relies on the assistance of counsel at other times. There is no textual, historical, or practical reason to deny defendants the right to hybrid representation. In fact, the opposite is true. The text of the Sixth Amendment refers to the assistance of counsel, there is a historical precedent for hybrid representation, and co-counsel regularly represent defendants in criminal cases. When we also consider the unique position of indigent criminal defendants, who lack agency over their assigned counsel and have legitimate concerns about the ability of assigned counsel to provide an adequate defense, it makes sense to recognize a right to present a defense *and* the right to have the assistance of counsel while doing it.