The Reference Librarian and the *Pro Se* Patron

By ROBERT T. Begg*

For a number of reasons including money, distrust of lawyers, and innovations in the law, it appears that increasing numbers of litigants are choosing to represent themselves in court without the benefit of counsel. In most instances, the first place they turn in preparation for their day in court is the law library. Examined in this article are the problems and challenges presented by the *pro se* patron and some possible alternatives for coping with them. For librarians who have already encountered such patrons, this article may stir anguish or amusing memories of past encounters; while for the novice, it may provide a glimpse of an experience that will inevitably occur.

What would have been your response had Bobby Scale, during the Chicago Seven Conspiracy Trial,† walked into your law library, told you that he was representing himself in court, and asked for a bit of help in researching his case?‡ Would you have said:

1. That would be practicing law and I can’t help you.
2. He who represents himself has a fool for a client.
3. Have you tried legal aid?
4. We’re closed today.
5. Try the county law library.
6. There’s the card catalog.

For a variety of reasons, persons not trained in the law attempt to represent themselves in court without the benefit of legal counsel. Such litigants are said to be appearing in *pro pria persona* or *pro se*. Preparation of their cases often requires the use of a law library, which presents the law librarian with a number of delicate ethical, legal, and practical difficulties and considerations. This article will examine the role of the reference librarian in relation to the *pro se* patron, that is, the litigant who is doing his own legal research. Specific attention will focus on who he is; his rights under the law; why he desires to represent himself; problems he generates for the law library; and the various alternatives available for responding to these problems.

The Composite Picture

The initial problem for the reference librarian is recognizing the *pro se* patron. This is a difficult task since he comes in all shapes and sizes, sexes, ages, nationalities, and colors; but one thing is certain, every law library open to the public has experienced the *pro se* patron or eventually will.

The *pro se* patron may usually be identified by his verbal statements. If a patron has a parking ticket in his hand and says, “I’ll take this all the way to the Supreme Court,” watch out. Beware if a patron states, “All judges and lawyers are corrupt and out to get me,” or “I wish I had gone to law school when I was younger.” Questions such as, “How do I get a no-fault divorce?” provide an obvious clue.

After repeated exposure to these patrons, a reference librarian could be convinced that the United States is a police state and that the primary purpose of the legal profession and the judiciary is to harass poor innocent citizens. On the other hand, one might conclude that a fantastic amount of time and effort is expended in defending against spurious suits.§ Actually the

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‡ Bobby G. Scale, co-chairman of the Black Panther Party, did not elect to represent himself until the court refused to permit a 7-week delay in the start of the trial to enable Scale’s chosen attorney, Charles Garry, to recover from an operation. Scale refused to talk to William Kunstler who was representing the other defendants. Waltz, “Supreme Court Review (1970),” Foward (or Backward): “The Year after Warren,” 61 J. Crim. L. C. & P. S. 484, 488 (1970); Comment, “Self-Representation In Criminal Trials: The Dilemma of the *Pro Se* Defendant,” 59 Calif. L. Rev. 1479, 1500 (1971).

§ See for example, United States v. Stockheimer, 385 F. Supp. 976, 982 (W.D. Wis. 1974), where defendant who is currently involved in a criminal proceeding is also the plaintiff in four pending civil suits. In the first civil case the defendants are a bank, its officers and attorney, and a judge of a
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and innovation, choosing to visit instances, the law library, the pro se librarians or ask other librarians, to provide a

truth lies somewhere in between since, as will be seen, a large segment of pro se litigants have legitimate and reasonable purposes for proceeding to trial.

While there is no composite picture of the pro se litigant that can be drawn, it has been observed that he is frequently both "legally and generally ignorant."4

... [M]any scrupulous self-represented defendants are thoroughly ignorant, not only of law and its processes, but of things in general, and these can cause nearly as much difficulty as the unscrupulous, shrewd and rebellious litigant. The problem here is not the occasional humorous incident such as the apocryphal story of the self-represented defendant who, when asked if he cared to challenge the jury replied, "I think I can lick the little fellow on the end seat"; the problem goes deeper than that. Such a defendant must literally be led by the hand throughout the entire trial.5

The reference librarian finds that he must also lead such a defendant by the hand in legal research. The old maxim that, "He who represents his own case has a fool for a client," is applicable to laymen as well as to attorneys. One judge has compared self-representation in court to self-surgery in medicine,6 and it is questionable whether the pro se patron's attempts at legal research are any wiser.

The Nature of the Right

The right to represent oneself in court has not always existed at common law.7 There was even some debate over whether this right is granted under the United States Constitution, in that the Constitution guarantees the right to the assistance of counsel, but it nowhere explicitly grants the right to defend without counsel.8 This debate has been mooted however by the recent decision of *Farretta v. California*9 in

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7 See Powell v. Alabama, 287 U.S. 45, 60 (1932). “Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. ... If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.”

8 "The Right to Appear Pro Se: The Constitution and the Court." *64 J. Crim. L. & Criminology* 260, 249 (1973). “Many judges remarked that they could not remember a victorious pro se defendant in a felony case and virtually all of the rest put the success rate at less than five per cent. “As far as the judges were concerned, pro se defendants rarely win cases; prosecutors lose them.”

9 See *Grano, The Right to Counsel: Collateral Issues Affecting Due Process*, 54 Minn. L. Rev. 175, 1191 (1969-70). "While the practice of proceeding pro se existed at common law, it is difficult to state that such a right existed."

10 See *Note, The Right of an Accused to Proceed Without Counsel,"* 49 Minn. L. Rev. 1133, 1136 (1964-65).

which the United States Supreme Court held that the 6th and 14th amendments of the Constitution guarantee the right to self-representation in State criminal trials when the defendant makes a voluntary and intelligent election to do so.

The right to defend in both civil and criminal Federal cases exists by statute. This statutory right originated with the Judiciary Act of 1789, and the current language may be found in the United States Code and the Federal Rules of Criminal Procedure. In addition to the Federal right, 96 State constitutions provide that a criminal defendant may defend in person or by counsel and in some instances by both.

The right is not absolute, however. In order to waive counsel in a criminal prosecution, the defendant must convince the court that he is competent to handle the case. If he is incompetent by reason of age, ignorance, or mental capacity, then he may not waive counsel in a criminal proceeding. The right to appear in propria persona will also be denied if there is a reasonable likelihood that the litigant will be disruptive of the trial. In Johnson v. Zerbst, the United States Supreme Court stated that:

...The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

The right to waive counsel may therefore be refused because due process requires that a waiver be rejected when the defendant is obviously incompetent.

Why Proceed Pro Se

Inevitably the question arises as to why anyone would desire to forego an attorney and represent himself in court. This question strikes at the heart of the problem of the pro se patron in that it frequently determines the method of response by the librarian. Different motivations on the part of the patrons will result in different responses by the librarian. While no listing of reasons for appearing pro se could be exhaustive, it is apparent that in criminal, and to an increasing extent in civil matters, the choice to represent oneself in court is usually made for one or more of the following reasons.

Money is probably the reason that motivates the largest number of people to proceed pro se. Some people are too well off for legal aid and yet too poor to hire an attorney. They would retain an attorney if they could, but the highest priority for their funds lies elsewhere. Their only viable alternative in many instances is self-representation, especially in civil matters. A second group motivated by money includes those people who are "too cheap" to retain an attorney. This frugal group can afford an attorney but would rather save the money. Perhaps this is indicative of the do-it-yourself attitude prevalent in our society.

Both the poor and the frugal, and others who might normally obtain counsel for a court appearance, have been tempted to represent themselves in court because of changes in the law that provide simplified procedures and eliminate the need for an attorney in certain instances. No-fault divorce is one example that is spreading across the nation. Another example is the small claims court in which minor disputes up to a set dollar amount may be resolved quickly, fairly, and inexpensively. A lawyer is not needed in small claims and the procedure...

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12 Act of Sept. 24, 1789, ch. 20, § 35, 1 Stat. 73, 92.
14 Fed. R. Crim. P. 44.
15 See Farella v. California, 43 U.S.L.W. 5004, 5006 (U.S. June 30, 1975); see also United States v. Plautner, 390 F.2d 271, 275 (9th Cir. 1968); 54 Minn. L. Rev. 1175, supra note 9, at 1180, which suggest that State constitutions provide this right.
16 See generally 49 Minn. L. Rev. 1133, supra note 9, at 1141-45.
19 304 U.S. 458 (1938).
20 304 U.S. 458 at 464.
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is simpler and more informal than in a regular court.

Another reason given frequently for defending pro se is a lack of trust in attorneys. This is the "dubbing Thomas" who feels that the attorney is unqualified or dissatisfied in his case. This view is also reflected as a general distrust of the legal system as a whole by minority groups who view our legal system as white-dominated and biased.28

A small group of litigants who wish to represent themselves can be classified as mentally disturbed.29 These people have been in contact with the legal system on numerous occasions and have developed a persecution complex because they can no longer find anyone to handle their spurious complaints. In response, they proceed pro se. There appears to be a tendency for these people to be involved in multiple litigations, one or more of which often involves a malpractice action against a previously retained counsel. A subspecies of the mentally disturbed classification is the politically motivated "crusader." He has a political cause that attorneys in the past have failed to pursue to the glorious end, so the crusader valiantly fights onward alone for the sake of the cause.27

Still another recognized reason for appearing in propria persona can be labeled the "Perry Mason Syndrome." The litigant, after viewing dramatic courtroom procedure on television for years, actually believes that he can do just as well or better than those attorneys.28 He imagines himself as a superpleader29 and an advocate of great skill, daring, and cunning, and if Perry Mason can do it, so can he. Exposure

24 See United States v. Stodheimer, supra note 3; Allen, supra note 22.

25 See 59 Calif. L. Rev. 1478, supra note 2, at 1490-1502.

26 In Davis v. State, 356 P.2d 519 (Okla. Crim. App. 1962), defendant believed that Jesus Christ would defend him and on occasion that he himself was Jesus Christ. See also Allen, supra note 22, at 170.

27 See 59 Calif. L. Rev. 1479, supra note 2, at 1502-04. "Events of the 1960's, especially interpreted by some blacks, students, and antiv war militants, led to an increasing number of trials with political backgrounds, overtones, or consequences," at 1594. Obviously not all "crusaders" can or should be included in a classification with the mentally disturbed.

28 See, supra note 5, at 55; supra note 4, at 592.

29 See, supra note 5, at 255.
And finally, a defendant may refuse counsel because of a blind faith in his own innocence and the infallibility of the criminal justice system in America, or because he is obviously guilty and desires to avoid delay in starting to serve his sentence or before obtaining his release on probation.

Problems Presented by the Pro Se Patron

The pro se patron presents problems for the librarian that, while not unique, do tend to be of a greater degree of severity and complexity than the problems of most other patrons. While librarians may respond differently to these problems, any response is limited by ethical, legal, and practical considerations.

From a practical standpoint, the drain on the library's resources in terms of staff time, library materials, and in some libraries, seating, can be great. If he can, the pro se patron will monopolize the reference staff's time and attempt to get the librarians to perform his legal research since he is usually lost in the law library and has not the vaguest notion of where or how to begin. Because of this lack of knowledge he must be literally led by the hand, which is a time-consuming process, usually involving a short course in legal bibliography. Even more exasperating is the fact that he cannot comprehend the material even when he finds it, which leads to a request for a librarian to interpret it.

When informed that the librarian cannot provide him with an interpretation or give him more of his time, the pro se patron responds in several ways. One approach is to try the other members of the library staff to see if one of them is more cooperative. If this fails, he will approach anyone else who might be available from student to faculty to janitor. A second approach is to badger you with the time, "I'm a taxpayer and you have a duty to provide this service." The third approach is to try to get you involved in their problem, or interested or sympathetic to their cause so that you will help them. Some even try to stir your patriotism. A fourth approach is an attempt at sweet talk. These patrons are quick to learn to use the librarian's first name and tell him how clever he is to be able to do legal research.

Material resources of the library are also utilized by the pro se patron. In most libraries, he would be considered a secondary patron; and, therefore, his use of materials would be at the expense of the library's primary patrons. Not only books but also seating and desk space are appropriated. The librarian must also be conscious of the possibility of loss by theft by such patrons. Furthermore, pro se patrons are among the most prolific photocopiers in existence, and have a tendency to tie up the photocopier for long periods of time.

A further problem that arises is the pro se patron's demand for special privileges. Some of these people have assumed the role of an attorney for so long that they actually begin to believe it themselves, and hence, expect special privileges or courtesies that might be accorded to members of the bar. As you might expect, failure to yield to such demands can result in the library or its governing body being threatened with or actually taken to court by the patron.

These practical difficulties are interrelated with legal and ethical considerations. At the threshold level, the reference librarian has the responsibility to make the resources and services of the library known to its potential users; he must "seek above all else to be an effective instrument for the dissemination of legal information." Furthermore, impartial service should be rendered to all those who are entitled to use the library, "nor should use of the li-

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37 See supra note 5, at 228; supra note 9, at 1245-46.
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The library is also utilized. In most libraries, a secondary patron; the materials would be at the library's primary patrons. The reading and desk space library must also be insured against loss by theft by the pro se patrons and photocopying in existence to tie up the photostat time.

What arises is the pro se patron's actual privileges. Some of the role of an attorney actually begin to some extent, expect special treatment that might be accorded as you might expect, the demands can result in the body being threatened and driven to court by the

acceptances are interrelated considerations. At the reference librarian has the resources and services to potential users, but he does not have to be an effective representation of legal information, impartial service to those who are entitled and use the library

Lane County Court, 22 (9th Cir. 1972), though he is carrying on his work in the state courts, is complaint alleging that bar, bench, and brought as a litigant in 19 hours. In this law, he has access to the


Supra note 43, at 416.

Supra note 44, at Part III, no. 2.

Id.

Supra note 39, at 538 [Comment by J. Lamar Woodard].

Supra note 45, at 415.

plished by adopting a general exclusionary policy toward all unaffiliated adults. While this technique has been adopted by some nonpublic law libraries, it is generally not a viable alternative for a public institution, nor does it comport well with the ethical responsibilities mentioned previously.

A less drastic form of control is registration of patrons, which is, in effect, incorporate a user's fee. The registration process provides the patron's name and address, and also a record of the amount of use he is making of the library's facilities. A large user's fee would reduce the advantage of pro se litigation for those persons only interested in saving money.

In most libraries the pro se patron is treated like any other patron, but a few simple precautions can save the reference staff a good deal of time if a problem should arise. First, he aware of the service limits beyond which you cannot proceed. This includes the ethical limitations discussed previously, as well as time limits. While there is a responsibility to aid the pro se patron, one must not allow him to monopolize your time. The reference staff must also make the patron aware of the limitations imposed upon its service. Inform him that he can be provided access into the books but not a librarian's interpretation of the book's contents.

A second precaution is to identify problem pro se patrons who frequently make use of the library to all members of the staff. This will eliminate their approaching one staff member after another, which is one of their favorite tactics. A warning can also be given to faculty members or other library users who are sometimes cornered by these patrons and asked for free advice.

The reference interview often provides an insight into alternative methods of serving the pro se patron. Sometimes these people are not aware that they can obtain free legal advice if they can qualify for legal aid. If it is a student attempting to proceed pro se, he may not be aware of free legal counsel that is provided by some universities or student governments as a special service. The reference interview also provides an opportunity, or perhaps a responsibility, to inform these patrons of what they are actually getting themselves involved in. The

Supra note 22, see chart at 165.

Supra note 22, at 167.
interview allows the librarian to suggest a rational starting point and method of search, which can save the patron hours of wasted effort. Even with aid from the reference librarian, many pro se patrons discover that a painstaking effort often produces only negligible results and they decide that legal research is too difficult. One cure for the “Perry Mason Syndrome” is a few hours of time wasted in a futile search for a simple point of law. It does not take long to discover that there is no glamour in legal research, which leads some pro se patrons to talk themselves into obtaining the services of an attorney or simply dropping the whole matter.

An excellent aid for pro se litigants in small claims court or in no-fault divorce proceedings is the informational pamphlet. A pamphlet describing the nature of the proceedings and the proper procedures to follow can be of immense value to the patron and a great time saver to the librarian. Such pamphlets may be obtained through commercial sources or government agencies, or the reference department can produce its own version. These pamphlets are also an excellent source of information for other library users.

One technique, which is certainly not recommended, but is used with great frequency in actual practice, is “the old run around.” Here the librarian refers the patron to the court clerk, who in turn refers him to legal aid, and then he is referred to the district attorney’s office, and next to the law school library and so on. One problem with this approach is that there is a tendency for the patron to return to the same library where he started the cycle, but in an even more confused, frustrated, and belligerent state of mind.

Conclusion

Most problems involving the pro se patron are not radically different from those presented by many other users of the law library. The primary difference seems to be one of degree because the pro se patron has more at stake in his pending litigation, whether it be money, personal freedom, or a principle for which he is fighting, than the normal library patron. This added motivation can cause the pro se patron to attempt to push or cajole the librarian beyond permissible bounds in order to meet his own needs. Sometimes the librarian will find this to be time consuming or exasperating, and in some instances, even enjoyable; but the pro se litigant must have the privilege of using the law library effectively, including adequate reference service, or his right to defend himself in court will be virtually worthless.

While it is not likely that Bobby Seale or any other notorious defendant will ever become a pro se patron in your library, it is possible that you will deal frequently with people going to court to fight a traffic ticket, to settle a minor civil matter in small claims court, or to obtain a no-fault divorce. In other words, these are common everyday people with problems, but keep in mind this last piece of advice: Once you identify a pro se patron, be nice to him; if not, you may have an opportunity to see first hand how effective in court he can be.

53 See for example a one-page pamphlet entitled Going to Court on Small Claims, published by the Ohio State Bar Foundation (1974).