

violation of his Fourteenth Amendment due process rights.²⁹¹ “Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his own counsel was unqualified. . . . A necessary corollary is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.”²⁹²

Though there is a presumption under the Sixth Amendment that a defendant may retain counsel of choice, the right to choose a particular attorney is not absolute. The prospect of compromised loyalty or competence may be sufficiently immediate and serious for a court to deny a defendant’s selection. In *Wheat v. United States*, the district court had denied a defendant’s proffered waiver of conflict of interest and refused to allow representation by an attorney who represented the defendant’s co-conspirators in an illegal drug enterprise.²⁹³ Upholding the district court’s discretion to disallow representation in instances of actual conflict of interests or serious potential for conflict, the Court mentioned other situations in which a defendant’s choice may not be honored. A defendant, for example, is not entitled to an advocate who is not a member of the bar, nor may a defendant insist on representation by an attorney who denies counsel for financial reasons or otherwise, nor may a defendant demand the services of a lawyer who may be compromised by past or ongoing relationships with the Government.²⁹⁴

Also, the right to retain counsel of choice does not bar operation of forfeiture provisions, even if the result is to deny to a defendant the wherewithal to employ counsel.²⁹⁵ In *Caplin & Drysdale v. United States*,²⁹⁶ the Court upheld a federal statute requiring forfeiture to the government of property and proceeds derived from drug-related crimes constituting a “continuing criminal enterprise,”²⁹⁷ even though a portion of the forfeited assets had been used to retain defense counsel.²⁹⁸ Although a defendant may spend his own money to employ counsel, the Court declared, “[a] defendant

²⁹¹ 348 U.S. 3 (1954).

²⁹² 348 U.S. at 9, 10. See also *House v. Mayo*, 324 U.S. 42 (1945); *Hawk v. Olson*, 326 U.S. 271 (1945); *Reynolds v. Cochran*, 365 U.S. 525 (1961).

²⁹³ 486 U.S. 153 (1988).

²⁹⁴ 486 U.S. at 159.

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²⁹⁶ 491 U.S. 617 (1989).

²⁹⁷ 21 U.S.C. § 853.

²⁹⁸ On the same day, the Court also rejected a due process challenge to the same statute, holding that it was permissible to restrain the use of the forfeited property pre-conviction as long as probable cause had been established that a qualifying crime had been committed. *United States v. Monsanto*, 491 U.S. 600, 615 (1989) (“Indeed, it would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent’s possession, based on a finding of probable