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Unwell: Indiana v. Edwards and the Fate of Mentally Ill Pro Se Defendants

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ESSAY

"UNWELL": *INDIANA V. EDWARDS* AND THE FATE OF MENTALLY ILL PRO SE DEFENDANTS

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"I'm not crazy, I'm just a little unwell."***
"We are all just prisoners here of our own device."****

INTRODUCTION

Karen Sims, an immigration lawyer, was charged with first-degree murder in connection with the death of her husband, Henry Sims.[1] Mrs. Sims had a long history of mental illness.[2] She had previously been committed to a psychiatric hospital for two years after she had attempted to kill her daughter.[3] Why had she done so? According to Mrs. Sims, she attempted to kill her daughter so that her daughter would immediately "go to heaven" and not "suffer" during the coming "holy war."[4]

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*** MATCHBOX TWENTY, *Unwell*, *on* MORE THAN YOU THINK YOU ARE Atlantic 2002).
**** THE EAGLES, *Hotel California*, *on* HOTEL CALIFORNIA (Asylum 1977).
1 People v. Sims, No. E042064, 2008 WL 4907209, at *1 (Cal. Ct. App. Nov. 17, 2008).
2 *See id.* at *1–2.
3 *See id.*
4 *Id.* at *1.

Diagnosed with bipolar disorder, Mrs. Sims suffered from delusions, which made her paranoid, unpredictable, and violent.[5]

According to Mrs. Sims's son, David, when his mother did not take her medications, she believed that she was "God's daughter 'sent to lead his army against evil demons' or 'the daughter of an alien . . . fighting some sort of intergalactic war here on Earth.'"[6] In the months leading up to the homicide, Mrs. Sims refused to take her medication due to her belief that her husband "was injecting her with drugs while she slept."[7] She further believed that her husband was "engaging in occult practices and devil worship," and she accused him of being unfaithful to her.[8]

In July 2005, police officers called to the Sims' residence found Mrs. Sims chasing her husband with two carving knives.[9] For the next few months, she lived in motels with no car keys, driver's license, or cash.[10] In September 2005, she confronted her husband in public, screaming that he had a knife and was going to kill her.[11] Witnesses to the altercation did not see a knife.[12] Mrs. Sims and her husband got into a car and drove away.[13] Later that day, Mrs. Sims called the police department to report that she had shot her husband and offered to take the police to the body.[14]

Following a court-ordered psychiatric evaluation, a psychiatrist found Mrs. Sims competent to stand trial.[15] Unhappy with her attorney's representation, Mrs. Sims asked the court for permission to serve as her own counsel.[16] The trial judge allowed her to do so.[17] In her opening statement, Mrs. Sims discussed: "'di[a]blos' . . . the Greek word for 'devil'; the Biblical story of Jezebel, a queen of Israel and a devil-worshipper; and the meaning of slander."[18] Things went downhill from there. She insisted that her husband was alive at the time the coroner photographed his body.[19] She also asserted that her husband was brutally beaten and then killed by someone else while she was in police custody—specifically, that he "was killed by friends and associates he

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5 *See id.* at *1–2.
6 *Id.* at *2.
7 *Id.*
8 *Id.*
9 *Id.*
10 *See id.* at *3.
11 *See id.*
12 *Id.*
13 *Id.*
14 *See id.* at *3–4.
15 *Id.* at *8.
16 *See id.* at *9.
17 *Id.* at *1.
18 *Id.*
19 *Id.*

had known for 15 years."[20] When the police introduced ballistics evidence, she made a motion to dismiss the case because of fraud and because "the police 'were involved in the murder . . . .'"[21] While cross-examining the lead detective, Mrs. Sims expressed her belief that she had been under illegal surveillance for the last fifteen years and asked the detective whether the police had altered her videotaped interviews.[22] Mrs. Sims questioned the pathologist about his experience with "'[s]atanic ritual killings' and torture."[23] At the close of the prosecution's case, she renewed her motion to dismiss, arguing that the prosecutor had "not even proved [that] Mr. Sims [wa]s dead" and said that the "entire case is gossip, gossip, gossip, gossip, and just a lot of gossip on top of a lot of gossip."[24] Mrs. Sims presented no evidence during the defense's case.[25] In her summation, she continued to quote from the Bible and referred to her deceased husband as a "voodoo prince."[26] Not surprisingly, the jury found her guilty,[27] and the judge sentenced her to two consecutive twenty-five-years-to-life sentences.[28]

On appeal, the California Court of Appeal asked the parties to provide supplemental briefing[29] on the significance of the intervening Supreme Court decision in *Indiana v. Edwards*.[30] In *Edwards*, the Court held that "a state may apply a different standard for competence to stand trial than for competence to represent oneself."[31] The *Edwards* majority created a new category of "gray-area" defendants who are competent to stand trial, but because of their mental illness, are not competent to proceed pro se.[32] The state appellate court concluded, despite *Edwards*, that the trial court properly allowed Mrs. Sims to represent herself.[33] The court stated: "*Edwards* simply does not tell us whether or under what circumstances a trial court must, as opposed to may, apply a heightened standard of competence to a defendant's request for self-representation at trial."[34] After recounting Mrs. Sims's mental health history and "battle with mental illness,"[35] the court concluded:

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20 *Id.*
21 *Id.* at *4.
22 *Id.*
23 *Id.*
24 *Id.* at *5.
25 *Id.*
26 *Id.*
27 *Id.* at *1.
28 *See id.*
29 *Id.* at *8.
30 554 U.S. 164 (2008).
31 *Sims*, 2008 WL 4907209, at *8.
32 *See id.*
33 *See id.* at *9.
34 *Id.* at *8.
35 *Id.* at *9.

> We acknowledge defendant did not offer much of a defense and she conducted and expressed herself bizarrely throughout . . . . [A]lthough *Edwards* may give a court the authority to deny a defendant the right of self-representation, it does not require the court to do so when the court has determined defendant is capable of self-representation. Here the court based its ruling on inquiry and evaluation of defendant's competence as required by *Edwards*.[36]

The court affirmed Mrs. Sims's conviction, finding that the trial court did not abuse its discretion in granting Mrs. Sims's request to represent herself at trial.[37] She is currently incarcerated at the Central California Women's Facility.[38]

For a number of reasons, the result in Mrs. Sims's case should be unacceptable in a civilized society. She suffers from a severe form of mental illness; she clearly was delusional at the time of the offense; and her trial was a farce. In this Essay we primarily will focus on one of the culprits responsible for Mrs. Sims's conviction—the Supreme Court's decision in *Edwards*. We will demonstrate that the *Edwards* standard is inherently unworkable, but also that it inevitably will lead to unjust results like that in *Sims*. While we agree with the Court's basic premise that severely mentally ill defendants must be protected in the criminal justice system—sometimes even from themselves—*Edwards* in its execution seems to do more harm than good. We argue that some competent but mentally ill defendants should not be permitted to proceed pro se. Part I will outline the Supreme Court's pro se jurisprudence leading up to *Edwards*, starting with its decision in *Faretta v. California*.[39] Part II will examine the data and results of our survey and analysis of all post-*Edwards* decisions. Part III will argue that the *Edwards* rule is inherently unworkable and that without specific concrete guidelines—including eliminating the pro se right in capital cases—severely mentally ill defendants like Karen Sims will be permitted to represent themselves in trials that are antithetical to the basic purposes of the criminal justice system.

I. FROM *FARETTA* TO *EDWARDS*

In 1975, in the landmark decision *Faretta v. California*, the Supreme Court recognized the constitutional right of self-representation.[40]

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36 *Id.* at *9.

37 *Id.*

38 INMATE LOCATOR, http://inmatelocator.cdcr.ca.gov (last visited Aug. 14, 2011).

39 422 U.S. 806 (1975).

40 *Id.* at 835–36.

The defendant in the case, Anthony Faretta, was charged with grand theft.[41] He asked the trial court for permission to represent himself because he thought the public defender could not devote sufficient time to his case due to a heavy caseload.[42] Based on the fact that Faretta had a high school education and that he previously had represented himself in a criminal trial, the court initially granted Faretta's request.[43] Several weeks later, however, the court held a hearing to assess Faretta's courtroom skills.[44] At the hearing, the judge quizzed Faretta on various rules of evidence and procedure.[45] Finding Faretta's answers unsatisfactory, the trial judge declared Faretta's waiver of the right to counsel invalid and denied his request to proceed pro se.[46] In doing so, the trial court held that "Faretta had no constitutional right to conduct his own defense," and appointed the public defender to represent him.[47] The jury found Faretta guilty as charged,[48] and the California Court of Appeal affirmed Faretta's conviction.[49]

The Supreme Court granted certiorari to determine "whether a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so."[50] In its opinion reversing the court of appeal's judgment, the Court looked to the text of the Sixth Amendment, and concluded that the language of the constitutional provision grants the right to defend to the accused personally[51]: "It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.'"[52] In addition, the Court explained that the Sixth Amendment grants the defendant the right to "the Assistance of Counsel for his defen[s]e."[53] Analyzing the language of the amendment, the Court made two observations: first, "an assistant, however expert, is still an assistant";[54] second, unless the defendant agrees to representation by counsel, "the defense presented is not the defense guar-

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41 *Id.* at 807.

42 *Id.*

43 *See id.* at 807–08.

44 *Id.* at 808.

45 *Id.*

46 *See id.* at 808–10.

47 *Id.* at 810.

48 *Id.* at 811.

49 *Id.* at 811–12.

50 *Id.* at 807.

51 *Id.*, at 819.

52 *Id.*

53 *Id.* at 818 (citing the text of the Sixth Amendment).

54 *Id.* at 820.

anteed him by the Constitution, for, in a very real sense, it is not his defense."[55]

Detailing the history of the right of self-representation in Great Britain and the United States, the Court noted that in Great Britain, only one tribunal—which flourished in the late sixteenth and early seventeenth centuries—forced counsel upon a defendant during a criminal proceeding; when that tribunal was swept away, so was obligatory counsel.[56] With respect to the United States, the Court found recognition of the right of self-representation throughout American history,[57] concluding that "there is no evidence that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel."[58]

In the Court's view, a right to self-representation does not conflict with the right to counsel: "[I]t is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want."[59] Forcing counsel upon a defendant "can only lead him to believe that the law contrives against him,"[60] and "although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.' "[61]

Therefore, the Court held that the California courts, by denying Faretta's request to proceed pro se and forcing him to accept the appointment of the public defender, violated his constitutional right of self-representation.[62] As long as the defendant's request to exercise his right to self-representation is made "knowingly and intelligently,"[63] and the judge makes the defendant "aware of the dangers and disadvantages of self-representation"[64] to ensure that he is making this decision "with eyes open,"[65] the defendant has a Sixth Amendment right to proceed pro se.[66]

It is evident from a review of *Faretta* that the primary normative value driving the Court's decision was autonomy: the defendant's right to be the master of his own fate. However, in the thirty-five years since *Faretta*, the Supreme Court has tinkered with the right of self-representa-

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55 *Id.* at 821.
56 *See id.* at 821–23.
57 *See id.* at 826–32.
58 *Id.* at 832.
59 *Id.* at 833.
60 *Id.* at 834.
61 *Id.* at 834 (quoting Illinois v. Allen, 397 U.S. 337, 350–51 (1970)).
62 *Id.* at 836.
63 *Id.* at 835 (quoting Johnson v. Zerbst, 304 U.S. 458, 464–65 (8th Cir. 2003)).
64 *Id.* (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942)).
65 *Id.* (quoting *Adams*, 317 U.S. at 279).
66 *Id.* at 819.

tion through various limitations and exceptions relying on other normative principles—primarily, the orderly administration of justice and reliability. The Court's subsequent decisions also evidence relatively low commitment to the defendant's interest in autonomy.

For example, in *McKaskle v. Wiggins*, the trial judge granted the defendant's request to represent himself but conditioned his ability to proceed pro se upon the presence of "standby counsel."[67] The defendant was convicted.[68] The United States Court of Appeals for the Fifth Circuit granted the defendant's petition for a writ of habeas corpus on the basis that the appointment of standby counsel compromised the defendant's right to proceed pro se, and the Supreme Court ultimately granted certiorari to review that judgment.[69] The Court held, subject to two limitations, that the appointment of standby counsel does not violate a defendant's right to self-representation:[70] first, the "*pro se* defendant is entitled to preserve actual control over the case . . . ." ;[71] second, standby counsel "should not be allowed to destroy the jury's perception that the defendant is representing himself."[72] The "actual control" prong—which forbids standby counsel to "make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak *instead* of the defendant on any matter of importance"[73]—is the only relevant prong if no jury is present.[74] The Court justified its holding by concluding that the appointment of standby counsel still achieves the *Faretta* goals of affirming the "dignity and autonomy" of the defendant and "allow[ing] the presentation of what may . . . be the [defendant's] best possible defense."[75]

While inconsistent in some respects with the defendant's autonomy interest, the result in *McKaskle* is easily understandable at a practical level. Many pro se defendants change their minds. Having standby counsel in place allows the case to proceed in a timely manner in the event that the client later develops "buyer's remorse." Furthermore, trial judges do not like pro se defendants.[76] Their lack of familiarity with the

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67 *See* McKaskle v. Wiggins, 465 U.S. 168, 171–72 (1984). "Standby counsel" refers to an attorney—usually one whose presence to which the defendant did not consent—who is required to answer questions or provide other assistance to the pro se defendant.

68 *Id.* at 173.

69 *Id.*

70 *Id.* at 184.

71 *Id.* at 178.

72 *Id.*

73 *Id.*

74 *See id.* at 179.

75 *Id.* at 176–77.

76 *See* Ashley G. Hawkinson, *The Right of Self-Representation Revisited: A Return to the Star Chamber's Disrespect for Defendant Autonomy? [*Indiana v. Edwards, *128 S. Ct. 2379 (2008)]*, 48 WASHBURN L.J. 465, 493 (2009).

law of evidence and the rules of procedure, which *Faretta* deemed irrelevant to the right to proceed pro se, often makes pre-trial and trial proceedings frustrating and time-consuming for all involved.[77] Many pro se defendants are mentally ill, thus exacerbating the difficulties in trying the case in an orderly fashion.[78] Moreover, without counsel, some defendants might be convicted of crimes they did not commit because they will not have the guiding hand of counsel.[79] For all of these reasons, *McKaskle* is best understood functionally, as restoring power to the trial court to balance the defendant's autonomy interests with the criminal justice system's interest in orderly procedure, fairness, and reliability.

In *Martinez v. Court of Appeal of CA, Fourth App. Dist.*, the Supreme Court declined to extend the defendant's right of self-representation to appeals following criminal convictions.[80] The Court, returning to the text of the Sixth Amendment, concluded that the pro se right strictly pertained to trial preparation and the trial itself.[81] An appeal, on the other hand, is "purely a creature of statute" and, therefore, is not governed by the trial rights protected by the Sixth Amendment.[82] The Court also believed that when the defendant goes from being the accused to being the appellant, his autonomy interests are less compelling for three reasons: first, the defendant, as opposed to the State, is the one who initiated the proceeding; second, the presumption of innocence afforded the defendant at trial does not extend to appeals; and, third, the defendant is seeking to reverse a guilty verdict made by a judge or jury.[83] On appeal, therefore, the Court held that States may reasonably conclude that the government's interest in ensuring the integrity and efficiency of the proceeding outweighs the defendant's interest in representing himself.[84]

Like *McKaskle*, *Martinez* is also easily understandable on a practical level. The Supreme Court Justices who decided *Martinez* all had previously served as state or federal appellate judges.[85] Thus, they had first-hand experience reading motions, briefs, and other pleadings filed by pro se litigants. They were aware, as all judges are, that in many

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77 *See id.* at 493–94.

78 *See* Erica J. Hashimoto, *Defending the Right of Self-Representation*, 85 N.C. L. REV. 423, 428 (2007). Competency evaluations are ordered in just over 20% of pro se federal cases. *Id.*

79 *See* E. Lea Johnston, *Setting the Standard: A Critique of Bonnie's Competency Standard and the Potential of Problem-Solving Theory for Self-Representation*, 43 U.C. DAVIS L. REV. 1605, 1659 (2010).

80 528 U.S. 152, 163 (2000).

81 *Id.* at 159–60.

82 *Id.* at 160 (quoting Abney v. United States, 431 U.S. 651, 656 (1977)).

83 *Id.* at 162–63.

84 *Id.* at 162.

85 Justices Stevens, Rehnquist, O'Connor, Kennedy, Souter, Thomas, Ginsburg, Kennedy, and Breyer participated in *Martinez*.

instances, it can be more time-consuming for a judge or her clerks to attempt to discern the nature of a pro se litigant's claims than it would be to read a brief that an attorney prepared. Furthermore, granting the right to proceed pro se on appeal would also raise other practical issues, such as whether a pro se appellate litigant has a right to participate in oral argument. Given these considerations, it is easy to understand why the majority quickly dispensed of the defendant's autonomy interests.

The Supreme Court's next encounter with a pro se defendant came in *Indiana v. Edwards*,[86] the case mentioned earlier in this Essay.[87] In *Edwards*, the Court had to decide whether a defendant could be competent to stand trial but not competent to conduct the trial himself.[88] An Indiana trial judge concluded that Ahmad Edwards was such a defendant.[89] Edwards was charged with attempted murder and related offenses that occurred when he initially tried to steal a pair of shoes from a department store.[90] When confronted by store employees, he drew a gun, fired at a store security officer, and wounded a customer.[91] The trial judge found Edwards incompetent to stand trial on three separate occasions before determining that he had regained his competence.[92] Edwards was convicted of two of the charges, but the jury failed to reach a verdict on the charges of attempted murder and battery.[93] Just before the retrial of the latter charges, Edwards asked to represent himself.[94] The trial judge, noting Edwards's continuing struggle with schizophrenia, denied the request.[95] Edwards was subsequently convicted of all charges.[96]

Edwards appealed.[97] The Indiana Supreme Court, while sympathetic to the trial judge's plight, believed that *Faretta* compelled reversal of the trial court's decision.[98] The Supreme Court subsequently granted the state's petition for a writ of certiorari[99] and reinstated Edwards's conviction.[100] The Court held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* [*v. United States*[101]] but who still suffer from severe mental

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86 554 U.S. 164 (2008).
87 *See supra* text accompanying notes 30–32.
88 *See* 554 U.S. at 172.
89 *See id.* at 167.
90 *Id.*
91 *Id.*
92 *Id.* at 167–68.
93 *Id.* at 168–69.
94 *Id.* at 169.
95 *Id.*
96 *Id.*
97 *Id.*
98 *Id.*
99 Indiana v. Edwards, 552 U.S. 1074 (2007).
100 554 U.S. at 179.
101 362 U.S. 402 (1960) (per curiam).

illness to the point where they are not competent to conduct trial proceedings by themselves."[102]

The Court began by discussing *Dusky* and *Drope v. Missouri*.[103] *Dusky* established the standard for competency to stand trial,[104] and *Drope* affirmed the standard.[105] Neither case, in the Court's view, addressed "the relation of the mental competence standard to the right of self-representation" in cases involving mentally ill defendants.[106] However, the Court opined that language in the two cases could be read as recognizing the importance of counsel in cases with mentally ill defendants as well as an assumption of representation by counsel.[107] In *Dusky*, for example, the competency standard focused on "a defendant's 'present ability to consult with his lawyer.'"[108] Similarly, in *Drope*, the Court noted that the standard required "a 'capacity . . . to consult with counsel,' and an ability 'to assist [counsel] in preparing his defense.'"[109] The *Edwards* majority interpreted this language as suggesting that a situation in which a defendant elects to represent himself at trial presents "a very different set of circumstances" from the determination of a defendant's competency to stand trial and, therefore, requires a different standard.[110]

The *Edwards* Court stated that even the *Faretta* Court acknowledged that the right to self-representation was not absolute.[111] Additionally, *Faretta* did not involve a severely mentally ill defendant.[112] The Court also thought it was relevant that the *Faretta* Court based its conclusion "upon pre-existing state law set forth in cases all of which are consistent with, and at least two of which expressly adopt, a competency limitation on the self-representation right."[113] For these reasons, the

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102 554 U.S. at 178.

103 *Id.* at 170; Drope v. Missouri, 420 U.S. 162 (1975).

104 *Edwards*, 554 U.S. at 170. The *Dusky* standard for competency to stand trial is as follows: "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky*, 362 U.S. at 402.

105 *Edwards*, 554 U.S. at 170.

106 *Id.*

107 *See id.* at 174–75.

108 *Id.* at 174 (quoting *Dusky*, 362 U.S. at 402).

109 *Id.* (quoting *Drope*, 420 U.S. 162, 171 (1975).

110 *Id.* at 174–75.

111 *Id.* at 171. The Court explained that Martinez held that there is no right to self-representation on appeal, and McKaskle permitted appointment of stand-by counsel over defendant's objection. The Court went on to assert that the *Faretta* Court itself did not intend for the right of self-representation to be absolute when it recognized that the defendant had "no right to 'abuse the dignity of the courtroom,'" "no right to avoid compliance with 'relevant rules of procedural and substantive law,'" and "no right to 'engag[e] in serious and obstructionist misconduct.'" *Id.*

112 *Id.* at 171.

113 *Id.* at 174.

Court concluded that the *Faretta* guarantee of a right to self-representation did not apply to the defendant in *Edwards*.[114]

Almost home, the majority had one more hurdle to clear: *Godinez v. Moran*.[115] In *Godinez*, the Court held that the *Dusky* competency standard applied to assessments of competency to stand trial and competency to plead guilty.[116] In so doing, the *Godinez* Court explicitly rejected the defendant's argument that different competency standards should apply to different decisions or stages or aspects of the trial.[117] The Court distinguished *Godinez* on the basis that the defendant there sought "only" to change his plea to guilty; thus, the issue of the defendant's competence to defend himself at trial was never expressly at issue.[118] Furthermore, the Court explained that the holding in *Godinez* granted a state the right to allow a "gray-area defendant" to represent himself, but did not touch upon or consider whether a state can deny such a defendant the right to self-representation.[119]

Stepping outside of its own precedent, the Court found support for creating different standards in the nature of mental illness itself. Because mental illness varies in degree and over time,[120] it did not make sense to measure competency to stand trial the same way as competency to proceed pro se. The Court found that "an individual may well be able to satisfy *Dusky*'s mental competence standard, for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel."[121] The Court cited the American Psychiatric Association's amicus brief, which indicated that a mentally ill defendant might be able to "play the lesser role of represented defendant," but may be unable to take the next step and represent himself.[122]

Finally, the Court turned to the normative principles that it believes the criminal justice system seeks to promote: the dignity and autonomy of the defendant, actual fairness, and the appearance of fairness.[123] According to the majority, allowing a defendant with an "uncertain mental state" to represent himself at trial would actually be inconsistent with the defendant's autonomy and dignity interests because "the spectacle that could well result from his self-representation at trial is at least as likely to

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114 *See id.* at 171.

115 *Id.*; Godinez v. Moran, 509 U.S. 389 (1993).

116 509 U.S. at 398.

117 *See id.* at 389–90.

118 *Edwards*, 554 U.S. at 173.

119 *Id.* at 173–74.

120 *Id.* at 165.

121 *Id.* at 175–76.

122 *Id.* at 176.

123 *Id.* at 176–77.

prove humiliating as ennobling."[124] Furthermore, fairness would be threatened, since allowing an incapable defendant to represent himself increases the likelihood of an improper conviction.[125] Quoting its decision in *Massey v. Moore*, the Court stated, "No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court."[126]

Finding the *Dusky* competency-to-stand-trial standard insufficient to cover all cases with mentally ill defendants, the Court concluded, "[T]he Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."[127] The Court, however, refused to adopt a rule or articulate what the "competent but not competent" standard was.[128] Instead, the Court granted trial courts the right to make individualized determinations of a *Dusky*-competent defendant's mental capacity to represent himself.[129] Finally, the Court declined to overrule *Faretta*, holding that *Edwards* may alleviate any unfairness that may have resulted from *Faretta*.[130]

Justice Scalia's dissent accused the majority of effectively jettisoning the pro se right, arguing that *Faretta's* core constitutional principle was that the state cannot force a lawyer upon a defendant who does not want one.[131] In his opinion, as long as the defendant knowingly and intelligently waives his right to counsel, which Edwards did, the Constitution protects his ability to act as his own attorney.[132] The only exception permitted by the Constitution, Scalia argued, is the termination of the right if necessary to preserve order during the trial.[133]

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124 *Id.* at 176. The dissent disagreed with the majority's interpretation of what dignity and autonomy refer to, "While there is little doubt that preserving individual 'dignity' is paramount among those purposes, there is equally little doubt that the loss of 'dignity' the right [to appear pro se] is designed to prevent is *not* the defendant's making a fool of himself by presenting an amateurish or even incoherent defense. Rather, the dignity at issue is the supreme dignity of being master of one's fate rather than a ward of the State-the dignity of individual choice." *Id.* at 186–87 (Scalia, J., dissenting).

125 *See id.* at 187–88.

126 *Id.* at 177 (quoting Massey v. Moore, 348 U.S. 105, 108 (1954)).

127 *Id.* at 178.

128 *See id.* at 177–78 (instructing judges to take "realistic account of the particular defendant's mental capacities").

129 *See id.*

130 *See id.* at 178–79.

131 *See id.* at 179–80.

132 *See id.* at 183.

133 *See id.* at 185. Justice Scalia observed that Edwards was not even given the chance to be disruptive. *Id.* at 185–86.

The dissent also argued that autonomy is not found in the ability to perform well at trial, but rather in the ability to choose self-representation.[134] Furthermore, the dissent said it is antithetical to the Sixth Amendment to deny a defendant the right to proceed pro se simply to achieve an appearance of fairness.[135] It further argued that Edwards never got to present his desired defense to the jury, and by forcing him to accept counsel, his trial rights as guaranteed by the Constitution were nothing short of a "legal fiction."[136] Finally, the dissent pointed out the inequity of placing this additional burden on the constitutional rights of the mentally ill, and anticipated trial court abuse-of-the-indeterminable standard set forth in *Edwards*.[137]

The result in *Edwards*, like the results in *McKaskle* and *Martinez*, is easily understood on a practical or functional level—for a host of reasons, judges do not want pro se defendants with schizophrenia or another serious mental illness to be allowed to represent themselves. However, *Edwards* cannot be easily squared with *Faretta*. The *Faretta* Court expressly said that "although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'"[138] Autonomy and dignity are not found in the defendant's performance as his own counsel in the courtroom. Rather, they are found in the defendant's right *to make the choice* about whether he wants to serve as his own counsel or not. The autonomy ship appears to have permanently sailed.

But *Edwards*, in addition to leaving the future of *Faretta* in serious doubt, created as many questions as it answered: When is a defendant "competent but not competent"? How does a judge decide? When can a judge deny the right to self-representation? Does *Edwards* only apply to mental illness? What if the defendant has an intellectual disability? As we will hopefully demonstrate below, the *Edwards* Court's vagueness on these and other issues has created quite a mess.

II. DEFERENTIAL EQUATIONS: A STATISTICAL LOOK AT POST-*EDWARDS* DECISIONS

Edwards was decided on June 19, 2008.[139] We have reviewed and analyzed all post-*Edwards* decisions involving challenges to a trial court's decision to allow or deny a criminal defendant the right to pro-

134 *See id.*

135 *See id.* at 187–88.

136 See *id.* at 188 (quoting *Faretta*, 422 U.S. 806, 821 (1975)).

137 *See id.* at 188–89.

138 *Faretta*, 422 U.S. at 834 (1975) (quoting Illinois v. Allen, 397 U.S. 337, 350–51 (1970) (Brennan, J., concurring)).

139 554 U.S. 164 (2008).

ceed pro se. We identified thirty-nine such decisions, thirty-six of which were appellate decisions. The dominant trend in the post-*Edwards* cases is deference to the trial court's decision. This is true regardless of whether or not the trial court permitted or refused to allow the defendant to proceed pro se. Appellate courts have affirmed the trial courts' decisions 80.5% of the time. Most of the cases (69.4%) affirmed trial court decisions allowing self-representation. A much smaller set of cases (11.1%) found that the trial court properly denied the defendant the right to proceed pro se. The appellate court concluded that the trial judge erred in only 5.5% of the cases, and those cases (n=2) both found that the trial judge erred in denying the defendant the right to represent himself. We found no decisions where an appellate court concluded that the trial judge should have required that a defendant be represented by counsel. However, in a small number of cases (n=3), the appellate court remanded the case to the trial court for additional proceedings to determine, in light of *Edwards*, whether the defendant should have been granted the right of self-representation. Finally, there are three cases pending at the trial court level where courts have ordered defendants to undergo competency evaluations to determine their ability to stand trial and ability to represent themselves.

	TOTAL NUMBER OF CASES POST-*EDWARDS*	TRIAL COURT DECISION AFFIRMED BY APPELLATE COURT	REMAND TO DISTRICT COURT FOR COMPETENCY DETERMINATION
Self-representation granted by the trial court	30	25 (83.33%)	5 (16.67%)
Self-representation denied by the trial court	6	4 (66.67%)	N/A

While this data is preliminary because only three years have elapsed since *Edwards* was decided, several observations (admittedly equally preliminary) are in order. First, in most instances, trial judges are still allowing defendants, even defendants with severe mental illnesses, to proceed pro se. Second, the trial courts' decisions, either granting or denying defendants pro se status, will almost certainly be affirmed on appeal. Neither result is surprising, however, given the Supreme Court's refusal to articulate a standard for lower courts to use in deciding whether the defendant is "competent [to stand trial] but not competent [to proceed pro se]." Given the lack of guidance, trial judges are reluctant to deny the right to proceed pro se, and appellate courts are, for the most part, deferring to the decisions of the trial judges. This is disturbing, however, given that our examination of the twenty-five cases where ap-

pellate courts deferred to trial court decisions allowing self-representation, four of the defendants had been diagnosed with a severe mental illness at the time of trial, and one had been diagnosed with psychotic delusional disorder two years prior to trial and exhibited many of the associated symptoms during trial. Other defendants within the pool of twenty-five cases had a "history of mental illness, including bipolar disorder,"[140] demonstrated "signs of delusion,"[141] exhibited a "bizarre nature of some of the communications" to the court and counsel,[142] or were prescribed psychotropic medications for behavior that "seemed almost manic at times and depressed at times."[143] The *Edwards* Court's failure to articulate a standard has made it virtually impossible for trial and appellate courts to distinguish between defendants competent to stand trial and proceed pro se, on the one hand, and defendants competent to stand trial but *not competent to represent themselves* at trial, on the other hand.

III. ACHIEVING THE GOALS OF *EDWARDS*, WITHOUT *EDWARDS*

In theory, *Edwards* was intended to protect defendants who are competent to stand trial, but are mentally ill and thus "unable to carry out the basic tasks needed to present [their] own defense without the help of counsel."[144] In many cases, however, this assessment cannot be reliably made until the trial is underway.[145] Thus, the *Edwards* Court's purported concern for protecting the dignity and autonomy of the defendant by preventing the defendant from creating a "spectacle in the courtroom" is, for the most part, illusory.[146] The defendant will have to first create the spectacle *Edwards* was intended to prevent. At that point, however, the courts' options are limited. Declaring a mistrial, for example, may well create a double jeopardy bar to a second prosecution;[147] appointing standby counsel could raise issues of ineffective assistance of counsel due to lack of preparation.[148] Of course, the trial judge might speculate

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140 United States v. Back, 307 F. App'x 876, 877 (6th Cir. 2008).

141 United States v. Berry, 565 F.3d 385, 386 (7th Cir. 2009).

142 Unites States v. Rauser, 378 F. App'x 229, 232 (3d Cir. 2010) (quoting observations made by the District Judge).

143 United States v. Tabatabai, 370 F. App'x 845, 845 (9th Cir. 2010). This behavior—swings between manic and depressive moods—is symptomatic of Bipolar Disorder. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS-IV-TR 382–83 (Am. Psychiatric Ass'n ed., 2000).

144 *Edwards*, 554 U.S. at 176–77.

145 *See* Christopher Slobogin, *Mental Illness and Self-Representation*: Faretta, Godinez *and* Edwards, 7 OHIO ST. J. CRIM. L. 391, 406 (2008).

146 *See Edwards*, 554 U.S. at 176.

147 *See* Illinois v. Somerville, 410 U.S. 458, 463 (1973) (holding that a mistrial may create a double jeopardy bar to a second prosecution if the mistrial was not a manifest necessity).

148 *See, e.g.*, United States. v. Schmidt, 105 F.3d 82, 90 (2d Cir. 1997) (holding that a defendant may raise an ineffective assistance of counsel claim against standby counsel if the standby counsel acted as the defendant's lawyer throughout the proceedings).

as to how the defendant will act,[149] and this speculation will usually result in a court-ordered psychiatric evaluation as to competency to stand trial and competency to proceed pro se. However, without more concrete guidelines as to the difference between the two standards, the psychiatrists will be guessing too. The blind will be leading the blind.

Therefore, as things currently stand, *Edwards* will result in one of two undesirable outcomes: total deference to trial courts, or uninformed decision-making by judges and mental health experts. The *Edwards* Court's stated goals of protecting mentally ill defendants from themselves and preserving the integrity and fairness of criminal trials[150] will mostly amount to empty promises. However, there are alternative approaches, which would actually serve the underlying aims that the Supreme Court identified in *Edwards*.

In our view, the place to start is with the competency to stand trial standard. Sol Wachtler is famous for saying that a prosecutor could get an indictment against a ham sandwich.[151] We do not dispute that. In fact, we would go further and say that the same ham sandwich would also likely be found competent to stand trial. Any practicing criminal defense attorney has a number of stories involving seriously mentally ill defendants who were found competent to stand trial. Additionally, many cases—including *Edwards*—pose problems for the criminal justice system at or after trial. Defendants who are not truly competent to stand trial, even under the *Edwards* Court's pro-competency standard—"whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him,"[152]—are deemed competent. The fact that someone like Mrs. Sims[153] was found competent to stand trial under this standard is further support for our contention that the current competency-to-stand-trial standard is flawed and a significant part of the problem.

A. Modifying the Competency-to-Stand-Trial Standard

So, what to do? First, a modification to the definition of competency-to-stand-trial is in order. Although not a major shift, if the words "reasonable" and "sufficient" in the current definition were changed to

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149 *See Edwards*, 554 U.S. at 176.

150 *See id.* at 176–77.

151 *See* Marcia Kramer & Frank Lombardi, *New Top State Judge: Abolish Grand Juries and Let Us Decide*, N.Y. DAILY NEWS, Jan. 31, 1988, at 3.

152 *Dusky*, 362 U.S. 402, 402 (1960) (quoting then Solicitor General of the United States, J. Lee Rankin).

153 *See supra* Introduction; *see also supra* Part II, DEFERENTIAL EQUATIONS: A STATISTICAL LOOK AT POST-*Edwards* Decisions, paragraph 2 (discussing other defendants who should not have been found competent to stand trial, let alone make pro se decisions).

"significant," the standard would offer more protection to severely mentally ill defendants. Thus, if a defendant does not have a "significant [as opposed to sufficient] present ability to consult with counsel with a significant degree of rational understanding," the defendant would not be deemed competent to stand trial. Second, mental health experts conducting court-ordered competency evaluations and judges making competency determinations should be encouraged (or required) to give meaningful consideration to defense counsels' opinions regarding the competency of defendants.[154] At present, despite the fact that part of the competency to stand trial standard is whether the defendant has the "ability to consult with counsel,"[155] defense attorneys' opinions regarding competency are rarely sought. This is unfortunate because, in many cases, defense attorneys will have important information and significant insights into defendants' mental states.

There are other changes which could also prove helpful—in particular, more adequate funding for facilities for mentally ill pre-trial detainees to decrease the pressure that government forensic mental health examiners and judges feel to find defendants competent in order to move the case along. But the bottom line is that many defendants who are not truly competent to stand trial are found competent.[156]

B. Adopting a Diagnostic Approach to Pro Se Representation

Another possible solution would be the adoption of a blanket diagnostic approach to determining whether a mentally ill defendant may proceed pro se. Using this method, defendants with certain psychiatric diagnoses would, categorically, not be able to waive the right to counsel, even if found competent to stand trial. Defendants, diagnosed with schizophrenia, severe untreated bipolar disorder, or mental retardation, for example, would be denied the right to self-representation. We have selected these particular mental health disorders because given the severity of these illnesses and the nature of the symptoms, it is exceedingly unlikely that a defendant suffering from any of them would be competent to represent themselves. We acknowledge that the approach will be both under- and over-inclusive, as some truly "competent but not competent"

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154 *See* Norma Schrock, *Defense Counsel's Role in Determining Competency to Stand Trial*, 9 GEO. J. LEGAL ETHICS 639, 661–63 (1996).

155 *See Dusky*, 362 U.S. at 396.

156 For further discussion of the ways in which courts find mentally-ill defendants competent under the lax *Dusky* standard, see, for example, Joanmarie Ilaria Davoli, *Physically Present, Yet Mentally Absent*, 48 U. LOUISVILLE L. REV. 313, 331–34 (2009); John Matthew Fabian, *Rethinking "Rational" in the* Dusky *Standard: Assessing a High-Profile Delusional Killer's Functional Abilities in the Courtroom in the Context of a Capital Murder Trial*, 25 QUINNIPIAC L. REV. 363, 384–95 (2006); Bruce J. Winick, *Restructuring Competency to Stand Trial*, 32 UCLA L. REV. 921, 923–24 n.4 (1985).

defendants will have other diagnosed mental health disorders, and a small percentage of defendants within our list of designated defendants may be competent to represent themselves. Nonetheless, in our view, this approach would come closer to protecting severely mentally ill defendants. Requiring trial judges to use a categorical diagnostic approach would eliminate some of the guesswork and uninformed decision-making inherent in the *Edwards* "competent but not competent" standard, and at the same time, would further systemic interests in fair and reliable outcomes.

C. *Overruling* Faretta

Finally, the Supreme Court could simply overrule *Faretta*. The Court's post-*Faretta* decisions evidence very low commitment to defendants' autonomy interests in general and to the right of self-representation in particular. *Edwards* is the latest and most significant decision in that line of cases. While the empirical evidence regarding the effect of pro se representation on trial outcomes is equivocal,[157] the systemic values of efficiency and the appearance of fairness presently trump the autonomy interests justifying the right of self-representation. Thus, the logical next step is to overrule *Faretta*. Doing so would significantly increase the efficiency of court proceedings because, first, less time would be wasted by pro se defendants lacking knowledge of the rules of evidence and procedure,[158] and, second, appeals based on either denials or grants of the right to proceed pro se would be eliminated. On balance, this would also increase fairness and the appearance of fairness because severely mentally ill persons such as Mrs. Sims would no longer have the ability to thwart the most important values underlying our criminal justice system.

In order to counter-balance defendants' loss of autonomy, we also recommend that indigent defendants be given some "choice" in who will represent them. Most non-mentally-ill criminal defendants who seek to represent themselves do so because of personality conflicts or strategic disagreements with their court-appointed counsel, or because of concerns—clearly sometimes legitimate—that appointed attorneys do not have time to prepare and conduct adequate defenses.[159] Thus, most pro se defendants are choosing self-representation—not because they think they can do a better job than a lawyer—but because they think they can do a better job than the particular lawyer that the court has assigned to

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157 *See* Indiana v. Edwards, 554 U.S. 164, 178 (2008).

158 *See* Hawkinson, *supra* note 76, at 493–94.

159 *See* Douglas R. Morris & Richard L. Frierson, *Pro Se Competence in the Aftermath of* Indiana v. Edwards, 36 J. AM. ACAD. PSYCHIATRY & L. 551, 554 (2008); Hashimoto, *supra* note 78, at 465–67.

their case.[160] Providing defendants at least a limited ability to choose (or fire) court-appointed counsel would, in many instances, sufficiently serve the defendants' autonomy interests.

D. *The Special Case for Eliminating the Self-Representation Right in Capital Trials*

If the Supreme Court is not willing to go as far as to overturn *Faretta*—and it likely is not—there is one category of defendants whom we believe should not be allowed to represent themselves: capital defendants. Courts should require that defendants facing society's ultimate punishment be represented by counsel. Given the unique and irrevocable nature of capital punishment, defendants' individual autonomy and dignity interests are outweighed by the interests of both society in general and the criminal justice system in particular.

This is not an insignificant problem. Our review of the post-*Edwards* decisions revealed that four of the thirty-nine cases (12%) involved capital defendants who wished to proceed pro se.[161] This is a disproportionate number of cases in relation to the total number of defendants who proceed pro se in general.[162] Furthermore, a court found that a defendant should not be allowed to represent himself in only one of the cases—*State v. Baumruk*.[163] In that case, police officers had to shoot Mr. Baumruk in the head to subdue him after he killed his wife and shot at eight other people in a courthouse.[164] As a result, Mr. Baumruk suffered permanent brain damage, specifically in the areas of the brain that concern the formation, storage, and retrieval of memory.[165] The trial court denied Mr. Baumruk's request to represent himself.[166] He was subsequently convicted of all eighteen counts under the indictment, including first-degree murder, and was sentenced to death.[167] On appeal,

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160 *See* Hashimoto, *supra* note 78, at 465–67.

161 State v. Gunches, 234 P.3d 590 (Ariz. 2010) (en banc); Muehleman v. State, 3 So. 3d 1149 (Fla. 2009); State v. Baumruk, 280 S.W.3d 600 (Mo. 2009) (en banc); State v. Lane, 669 S.E.2d 321 (N.C. 2008). The classification of these cases as "post-*Edwards* cases" means that these opinions referred to *Edwards* in some meaningful way, which should mean that these defendants were more likely to be "gray-area defendants" than average defendants. Additionally, if *Edwards* had functioned in these cases as it was intended to, these defendants should have been denied the opportunity to proceed pro se at a higher rate than defendants denied pro se in a completely random sampling of cases (including cases prior to the *Edwards* decision).

162 *See* Hashimoto, *supra* note 78, at 478 n.214 ("[O]nly between 0.3% and 0.5% of defendants charged with felonies in either state or federal courts represent themselves at the time of case termination"). The State Court Database provides no data on misdemeanor pro se defendants. *Id.* at 478 n.215.

163 *Baumruk*, 280 S.W.3d at 612.

164 *Id.* at 605–06.

165 *Id.* at 611.

166 *See id.* at 609.

167 *See id.* at 606–07.

Mr. Baumruk argued that he was too mentally incapacitated to stand trial, but that if he had been competent to stand trial, he should have been allowed to represent himself.[168] Based on evidence presented by Mr. Baumruk himself of his brain injury as well as the trial court's observations of his pre-trial behavior, the appellate court affirmed the trial court's decision to deny Mr. Baumruk the right to proceed pro se.[169] The court referenced the expected deference-to-the-trial-court *Edwards* language, stating that "the trial court was best able to make fine-tuned mental capacity decisions tailored to Mr. Baumruk's individualized circumstances."[170] This case lies on the more straightforward end of the *Edwards* spectrum because Mr. Baumruk suffered from post-traumatic amnesia and was unable to remember his thoughts and emotions preceding and during the crime.[171] In the other capital cases surveyed, however, trial courts allowed defendants to represent themselves,[172] and in only one of these cases did an appellate court remand the case to the trial court for a reevaluation of the pro se decision.[173]

In *State v. Gunches*, for example, the defendant was charged with first-degree murder and kidnapping.[174] After the trial court found Mr. Gunches competent to stand trial and competent to waive the right to counsel, he pleaded guilty, stipulated to the existence of one aggravating circumstance (thus making himself eligible to be sentenced to death), and presented no mitigating evidence during the sentencing hearing.[175] Consequently, Mr. Gunches was sentenced to death. We think it is fair to say that only an attorney with an ineffective assistance of counsel "death wish" for his client would have pursued the trial strategy chosen by Mr. Gunches.

On the one hand, some would argue that Mr. Gunches is exactly the type of defendant whose autonomy *Faretta* sought to protect. Although he conducted his defense "to his own detriment," Mr. Gunches was the "captain of the ship" and the "master of his fate."[176] On the other hand, what about society's interests in making sure that the death penalty is only administered to those who are truly deserving of the ultimate punishment? Does having a pro se defendant effectively tie the hangman's noose fulfill that interest? Unless the sentencer—whether it be a jury or

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168 *Id.* at 610.

169 *See Baumruk*, 280 S.W.3d at 611–12.

170 *Id.* at 612.

171 *See id.* at 611–12.

172 *See* State v. Gunches, 234 P.3d 590, 592 (Ariz. 2010) (en banc); Muehleman v. State, 3 So.3d 1149, 1156 (Fla. 2009); State v. Lane, 669 S.E.2d, 321 322 (N.C. 2008).

173 *See Lane*, 669 S.E.2d at 322.

174 *See Gunches*, 234 P.3d at 592.

175 *See id.* at 593.

176 *See supra* notes 62–68 and accompanying text.

judge—is presented with an accurate picture of the evidence in aggravation of punishment and the full range of mitigating evidence, how can a "reasoned moral" decision be made as to whether the defendant should be sentenced to life imprisonment without the possibility of parole or the death penalty? In pro se cases, neither is likely to happen.[177] Furthermore, most capital sentencing schemes require appellate review to determine whether the death sentence was disproportionate in light of the evidence about the crime and the defendant.[178] The purpose of this type of appellate review is to have appellate courts serve as a "backstop" because of the importance of maintaining a fair and rational capital punishment system.[179] This function cannot be met in cases where pro se defendants fail to fulfill the role of competent trial counsel. In light of the complexity of capital trials, the unique and irrevocable nature of capital punishment, and society's interest in having the death penalty only imposed on those who are the most deserving, there should be no right of self-representation in capital cases.

Given *Faretta*—even the shadow of its former self that exists today—it is not surprising that no court has forbidden capital defendants from proceeding pro se. However, both Florida and New Jersey have held that standby counsel may present mitigating evidence after a capital conviction over the pro se defendant's objection.[180] New Jersey, prior to abolishing capital punishment, *required* standby counsel to do exactly that.[181] Although this is not the same as requiring a capital trial defendant to be represented by counsel, the New Jersey court's reasoning in *State v. Reddish* supports our proposal. The *Reddish* court grounded its decision in the inherent complexities of death penalty cases, noting that even the most well-intentioned attorneys are unable to adequately defend their clients' rights at trial due to all the special rules involved in these

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177 For example, South Carolina death row inmate James Reed was allowed to proceed pro se at his capital trial despite testimony indicating that he had an I.Q. of 77 and a history of mental illness. After the jury found Reed guilty of murder at the first phase of his trial, Reed asked that his standby counsel be permitted to represent him at the penalty phase. His standby counsel said that he was not prepared, and the trial judge ruled that Reed's request was made too late in the game. Reed failed to object to any evidence, including voluminous victim impact evidence, and presented no evidence in mitigation. His convictions and death sentence were affirmed on appeal. State v. Reed, 503 S.E.2d 747 (S.C. 1998). Reed later dismissed his post-conviction counsel, waived his appeals, and was executed. *See* Jill Coley & Yvonne Wenger, *Reed Executed in Electric Chair*, POST AND COURIER, Jun. 21, 2008, http://www.postandcourier.com/news/2008/jun/21/reed_executed_electric_chair45296; *see also* State v. Roberts, 632 S.E.2d 871 (S.C. 2007) (affirming the conviction and death sentence of a bipolar pro se capital defendant who presented no mitigating evidence).

178 *See* Harold Hongju Koh, Lecture, *Paying "Decent Respect" to World Opinion on the Death Penalty*, 35 U.C. DAVIS L. REV. 1085, 1097 (2002).

179 *See* Gregg v. Georgia, 428 U.S. 153, 198 (1976).

180 *See* Erica J. Hashimoto, *Resurrecting Autonomy: The Criminal Defendant's Right to Control the Case*, 90 B.U. L. REV. 1147, 1157 (2010).

181 *See* State v. Reddish, 859 A.2d 1173, 1203–04 (N.J. 2004).

cases.[182] The court then turned to Justice Blackmun's dissent in *Faretta* for support, and applied it to the context of capital cases: "The most 'solemn business' of executing a human being cannot be 'subordinate[d] . . . to the whimsical—albeit voluntary—caprice of every accused who wishes' unwisely to represent himself."[183] If self-representation in capital trials were left uninhibited, the New Jersey court worried, its decisions could amount to "state aided suicide."[184] The *Reddish* court acknowledged that it "respect[ed] defendant's autonomy in decisions of representation,"[185] but concluded that autonomy was outweighed by the law's "heightened obligation to ensure 'consistency and reliability in the administration of capital punishment.'"[186]

To be sure, a criminal defendant's autonomy interest in a criminal proceeding should not be cavalierly cast aside. In many instances, a trial represents a defendant's last chance to exert autonomy before the government confiscates it as punishment for breaking the law.[187] However, when it comes to a criminal defendant facing society's ultimate punishment, the defendant's more symbolic interests in dignity and autonomy are outweighed by the criminal justice system's interests, as well as society as a whole's interests, in accuracy and fairness.

CONCLUSION

Roderick Allen stabbed his sister to death.[188] He maintained that he killed his sister in order to protect his mother from his sister's physical abuse.[189] He also insisted that his deceased sister was in cahoots with his other siblings to keep the existence of a real estate trust, of which he was the beneficiary, a secret from him.[190] In addition, Allen claimed that his father (Claude W. Allen, Jr.) was not really his father, but rather was a serial killer responsible for the disappearance of several missing persons.[191]

After numerous psychological evaluations, Allen was twice found incompetent to stand trial before finally being labeled competent.[192] Allen then requested that his court-appointed counsel be relieved because he thought his attorney was colluding with the prosecutor.[193] Allen fur-

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182 *See id.* at 1200.
183 *Id.* at 1201 (Blackmun, J., dissenting) (quoting *Faretta*, 422 U.S. at 849).
184 *Id.* (quoting Massie v. Sumner, 624 F.2d 72, 74 (1980)).
185 *Id.*
186 *Id.* (quoting State v. Ramseur, 524 A.2d 188 (1987)).
187 *See* Hashimoto, *supra* note 180, at 1170–71.
188 People v. Allen, 929 N.E.2d 583, 586 (Ill. App. Ct. 2010).
189 *Id.* at 586.
190 *Id.*
191 *Id.*
192 *See id.* at 586–88.
193 *Id.* at 587.

ther asserted that several prosecuting attorneys and the trial judge were ignoring the case against the serial killer Claude Allen, and instead were "maliciously prosecut[ing] the then and now defendant, Roderick T. Allen, in order to facilitate Claude Allen's efforts to cheat Roderick Allen of an inheritance."[194] Due to his bizarre behavior, Allen was again deemed incompetent to stand trial.[195] One evaluating psychiatrist reported that Allen "harbor[ed] numerous persecutory delusions regarding his attorney, the [S]tate's [A]ttorney, and the judge," and that his writings and requests were "replete with delusional material."[196]

Eventually, after his competency was "restored," Allen filed a motion to proceed pro se, which the trial court granted.[197] Prior to trial, he filed a number of pro se motions, including thirteen motions requesting substitution of the judge, all of which were all denied.[198] During the trial, the judge again expressed concerns regarding Allen's competency, noting on one occasion that he was "trying to make sense of where [Allen was] going with much of this."[199] Allen was convicted of first-degree murder for the death of his sister,[200] and sentenced to consecutive prison terms of sixty and twenty-five years, respectively.[201]

Allen's appellate counsel argued that the trial court should not have permitted the defendant to proceed pro se.[202] Nonetheless, the appellate court, relying on *Edwards*, affirmed the trial court's decision.[203] The verdict stands.[204]

Edwards identified a very real problem. We agree with *Edwards*'s basic premise that courts should not allow severely mentally ill defendants to proceed pro se.[205] Unfortunately, *Edwards* did little to solve the problem. Its vague "competent but not competent" standard has left courts with little guidance. Thus, the purported fix is for the most part illusory. Defendants like Karen Sims and Roderick Allen are still allowed to proceed pro se in trials where there can be no confidence that a reliable result will be reached. We believe that this is morally wrong, but more importantly, that sham trials involving severely mentally ill pro se defendants cannot be squared with the criminal justice system's normative values of reliability and fairness. In this Essay, we have briefly set

194 *Id.*
195 *See id.*
196 *Id.*
197 *Id.* at 588.
198 *Id.*
199 *Id.*
200 *Id.* at 590.
201 *Id.* at 586.
202 *Id.* at 592.
203 *Id.* at 594, 597.
204 *See id.*
205 *See* Indiana v. Edwards, 554 U.S. 164, 177–78 (2008).

forth some options that might actually afford mentally ill criminal defendants more protection, admittedly from themselves. The Karen Sims and Roderick Allens of the world should not be allowed to become prisoners of their own device.