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I. INTRODUCTION

"[A] lawyer who represents himself has a fool for a client."[1] While the old adage may be true, it fails to address the situation where the person invoking the right to self-representation lacks competency. Unfortunately, courts have not elucidated standards to decide whether a pro se defendant is competent to represent himself. Instead, the Supreme Court recognized competency as a limitation on the right of self-representation without giving guidance to courts on how to implement the new limitation.

The Sixth Amendment protects criminal defendants by ensuring that the accused "shall enjoy the right . . . to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."[2] Indeed, "[t]he Sixth Amendment includes a compact statement of the rights necessary to a full defense."[3] Further, the Supreme Court found that the rights embodied in the Sixth Amendment imply a right for a criminal defendant to personally "make his defense," which includes the right of self-representation.[4]

Not only does the Constitution protect defendants at trial, but the Constitution also protects defendants before trial by prohibiting states from subjecting individuals to a trial if they lack capacity to use their Sixth Amendment rights.[5] Thus, if a judge suspects a defendant

1. Kay v. Ehrler, 499 U.S. 432, 438 (1991).

2. U.S. CONST. amend. VI.

3. Faretta v. California, 422 U.S. 806, 818 (1975).

4. *Id.* at 819–20 ("Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.").

5. Drope v. Missouri, 420 U.S. 162, 171 (1975) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.").

lacks the capacity to proceed at trial, the judge should suspend the trial until the defendant fully gains the ability to use his Sixth Amendment rights.[6] If a judge does determine a defendant is not competent to stand trial, a judge may commit the defendant until the defendant regains his capacity to use his Sixth Amendment rights.[7] While examining the capacity of a defendant generally ensures that the defendant can use most of his or her Sixth Amendment rights, courts have failed to critically examine capacity when a defendant invokes the right to self-representation.[8]

In 2008, the Supreme Court decided *Indiana v. Edwards*, which dealt with the issue of competency in a pro se trial.[9] The Court concluded that a state may impose counsel upon a defendant that invokes the right of self-representation when the defendant is not competent to do so.[10] However, the Court failed to provide lower courts with guidelines on the level of competency necessary for a pro se litigant. The Ninth Circuit adopted the holding of *Edwards* in *United States v. Ferguson*, remanding the case to the district court without clear guidance on how to conduct a competency hearing in this situation.[11] This Note explains the competing rights between self-representation and competency to stand trial, and examines *Indiana v. Edwards* to see how the Supreme Court resolved these competing rights. Next, the Note will briefly describe the Ninth Circuit's first attempt to implement *Edwards*, followed by an explanation of the need to limit the right of self-representation when the defendant is not competent. Finally, this Note will propose standards that judges should use when evaluating the competency of a defendant invoking the right to self-representation.

II. FACTS AND PROCEDURAL HISTORY

Before the Supreme Court decided *Indiana v. Edwards*, Ferguson was arrested and tried on charges of child pornography and

6. *See, e.g.*, Indiana v. Edwards, 128 S. Ct. 2379, 2382 (2008).

7. *Id.*

8. *E.g.*, *id.* at 2383 (discussing the Indiana Supreme Court's belief that *Faretta* was an absolute right); United States v. Ferguson, 560 F.3d 1060, 1063 (9th Cir. 2009) (discussing the trial court's decision to allow self-representation despite questions about competency).

9. *Edwards*, 128 S. Ct. at 2381.

10. *Id.*

11. *See Ferguson*, 560 F.3d at 1070.

molestation.[12] Ferguson objected to his court appointed counsel on the grounds that neither attorney would fulfill his "six duties":

> One, request that the judge issue me the appearance bond so that I may enter a plea; two, not to argue the facts; three, request the judge close all accounts; four, request the judge waive all public charges by the exemption in accordance to public policy; and, five, request the judge present me with the order of the court; and, six, request the judge release me.[13]

Further, the defendant continuously relied on the Uniform Commercial Code as a defense.[14] As the trial grew closer, the defendant requested that he be able to represent himself because his lawyers failed to complete his "six duties."[15] The trial judge reluctantly agreed, believing the right to self-representation was an absolute right.[16]

III. SIGNIFICANT LEGAL BACKGROUND

Any court proceeding must both be fair and "appear fair."[17] Thus, the protections in the Sixth Amendment are designed to ensure not only a fair trial, but also the appearance of a fair trial. Further, ensuring that a defendant is competent to stand trial serves the purpose of having a fair trial.[18] Conversely, allowing an incompetent defendant to represent himself may frustrate the fairness of the proceedings. To develop this argument fully, this section first explains competency standards to stand trial. Second, this section

12. *Id*. at 1062.

13. *Id*.

14. *Id*. at 1062, 1064.

15. *Id*. at 1063.

16. *Id*. at 1063–64. Not only did the judge find reason to pause with the defendant's request, but the attorneys for the government also expressed concern. *Id*.

17. Indiana v. Edwards, 128 S. Ct. 2379, 2387 (2008) (quoting Wheat v. United States, 486 U.S. 153, 160 (1988)).

18. *E.g.*, Drope v. Missouri, 420 U.S. 162, 171 (1975) ("Some have viewed the common-law prohibition 'as a by-product of the ban against trials *in absentia*; the mentally incompetent defendant, though physically present in the courtroom, is in reality afforded no opportunity to defend himself.'") (citations omitted); Pate v. Robinson, 383 U.S. 375, 385 (1966) ("The court's failure to make such inquiry thus deprived Robinson of his constitutional right to a fair trial.").

summarizes the right to self-representation. Lastly, this section sets forth *Indiana v. Edwards*, which attempts to harmonize competency, the right to self-representation, and the state's interest of ensuring a fair trial.

A. Competency to Stand Trial

The Constitution does not allow the state to try individuals that are incapable of understanding the proceedings against them and are incapable of assisting their attorneys in the preparation of a defense.[19] Thus, judges must ensure that defendants can assist in their defense, or in other words, exercise their Sixth Amendment rights. This section explores the Supreme Court's standards on competency.

The Court first announced the modern standard of competency to stand trial in *Dusky v. United States*.[20] *Dusky* dealt with a man standing trial for kidnapping despite mental health professionals concluding that the defendant was not competent to understand the proceedings against him.[21] Reversing the decision to try Dusky, the Supreme Court announced a two-part test on competency: (1) the defendant must be able "to consult with his lawyer with a reasonable degree of rational understanding," and (2) the defendant must rationally and factually understand the court proceedings.[22] While the Court announced a competency standard, the short, per curiam opinion failed to explain to lower courts how to apply the standard in practice.

However, the Court did clarify the competency standard by providing factors and instructing judges on some basic elements of procedure in *Pate v. Robinson*.[23] Illinois tried and convicted Robinson for the murder of his common-law wife.[24] During the

19. Dusky v. United States, 362 U.S. 402 (1960) (per curiam) ("[T]he 'test must be whether he 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.'"). The Court ventured into the realm of competency for the first time in *Dusky*. *See Edwards*, 128 S. Ct. at 2383.

20. *Dusky*, 362 U.S. at 402.

21. Dusky v. United States, 271 F.2d 385, 388 (8th Cir. 1959) ("It is the opinion of the staff, following interview of the patient, that he had improved in recent weeks but his condition is still such that he is unable to understand the nature of the proceedings with reference to the charges against him and is unable to properly assist counsel in his defense.").

22. *Dusky*, 362 U.S. at 402.

23. 383 U.S. 375 (1966).

24. *Id*. at 376.

proceedings, Robinson's counsel continuously stated that Robinson was not presently competent, but the trial court chose not to conduct a competency hearing.[25] On a habeas corpus petition, Robinson successfully argued that the lack of a competency hearing violated his due process rights.[26] In order to protect a defendant's due process rights, the Court reasoned the trial court should initiate a competency hearing sua sponte when there is an indication that the defendant may not be competent.[27] The Court provided three factors to assist judges in making a determination of the competency of a defendant: (1) evidence of irrational behavior, (2) the defendant's demeanor at trial, and (3) expert testimony.[28] Because the trial court failed to accord proper weight to the expert testimony offered, as well as evidence of Robinson's irrational behavior, the Supreme Court granted Robinson a writ of habeas corpus.[29]

The Court expounded upon the competency standards from *Dusky* and *Pate* in *Drope v. Missouri*.[30] *Drope* involved a man charged with raping his wife.[31] During the trial, the defendant attempted to commit suicide by shooting himself in the stomach.[32] Despite opinions offered by psychiatrists stating that any person attempting to commit suicide was not competent, the judge proceeded to trial and Drope was convicted. The Supreme Court reversed because of the evidence suggesting Drope was not competent to stand trial.[33] The Court concluded that a person absent from a trial due to a suicide attempt might not be competent to stand trial for two reasons.[34] First, a suicide attempt indicates a lack of mental stability.[35] Second, the inability of the court to observe the defendant

25. *Id.* at 384–85.
26. *Id.* at 386.
27. *Id.* at 385.
28. *Id.* at 385–86.
29. *Id.* at 386.
30. Drope v. Missouri, 420 U.S. 162 (1975).
31. *Id.* at 164.
32. *Id.* at 166–67.
33. *Id.* at 179.
34. *Id.* at 181.
35. *Id.*

at trial renders the court incapable of making a competency determination.[36] Thus, when the defendant offers evidence suggesting incompetency and the court cannot proceed through the usual analysis, the court should stay the proceedings until a competency determination occurs, even if that leads to an aborted trial.[37]

The Court reasoned that trying an incompetent person is similar to trying a person in absentia, because in both situations the state denies defendants their rights.[38] Though present for the proceedings, the mentally incompetent defendant "is in reality afforded no opportunity to defend himself."[39] Thus, the Supreme Court reasoned that a failure to conduct a competency hearing when the defendant's behavior suggests that a competency hearing may be appropriate violates a person's right to a fair trial.[40]

B. Right to Self-Representation

While competency evaluations provide one level of protection to a fair trial, the Sixth Amendment affords other levels of protection to defendants.[41] Through the years, the Supreme Court has interpreted the Sixth Amendment to afford protections to defendants at trial. The Court afforded indigent defendants counsel at the expense of the government in all criminal trials.[42] Indeed, denying a defendant the opportunity to consult an attorney infringes upon the rights of the defendant.[43] Further, the Court held defendants have the right to confront witnesses, including the opportunity to cross-examine them.[44]

Ultimately, the rights embodied in the Sixth Amendment give

36. *Id.*

37. *Id.* at 181–82.

38. *Id.* at 171.

39. *Id.* (quoting Caleb Foote, Comment, *A Comment on Pre-Trial Commitment of Criminal Defendants*, 108 U. PA. L. REV. 832, 834 (1960)).

40. *E.g.*, Pate v. Robinson, 383 U.S. 375 (1966); Dusky v. United States 362 U.S. 402 (1960).

41. U.S. CONST. amend. VI.

42. Gideon v. Wainwright, 372 U.S. 335 (1963).

43. Powell v. Alabama, 287 U.S. 45, 50 (1932) (finding that a right to counsel includes the right to consult with counsel in preparation for trial).

44. Pointer v. Texas, 380 U.S. 400 (1965).

defendants the right to personally oversee their defense at trial.[45] The Court held in *Faretta v. California* that implied in the right to counsel is the right to forgo the counsel's assistance and engage in self-representation.[46] California prosecuted Faretta for grand theft.[47] The court attempted to appoint a public defender, to which Faretta refused believing he would have a better chance representing himself.[48] While the judge expressed his disagreement with Faretta, he initially allowed Faretta to represent himself, though he warned Faretta that he "would receive no special favors."[49] At a subsequent hearing, the judge determined Faretta was unable to represent himself and appointed counsel.[50] At trial, Faretta was convicted.[51] The appellate courts in California affirmed the conviction of Faretta because the state and federal constitutions did not guarantee a right of self-representation.[52]

Reversing the conviction, the Supreme Court held defendants have a right to represent themselves at trial by "knowingly and intelligently" waiving the right to counsel.[53] The Court found historical evidence showing the existence of the right of self-representation in the beginnings of the common law and colonial charters.[54] Further, the text of the Sixth Amendment implies the right to control the defense presented at trial, which includes the right to self-representation.[55]

Because the right to self-representation conflicts with the right to counsel, only defendants that "knowingly and intelligently" waive the right to counsel can represent themselves pro se.[56] Thus, the Court imposed upon judges a requirement that they must explain to

45. Faretta v. California, 422 U.S. 806, 819 (1975).

46. *Id.* at 814–15 ("[T]he Constitution does not force a lawyer upon a defendant." (quoting Adams v. United States *ex rel.* McCann, 317 U.S. 269, 279 (1942))).

47. *Id.* at 807.

48. *Id.* ("[H]e did not want to be represented by the public defender because he believed that that office was 'very loaded down with . . . a heavy case load.'").

49. *Id.* at 807–08.

50. *Id.* at 809–10.

51. *Id.* at 811.

52. *Id.* at 811–12.

53. *Id.* at 835.

54. *Id.* at 823–32.

55. *Id.* at 819–20.

56. *Id.* at 835.

defendants the implications of giving up the right to counsel.[57] However, the Court failed to detail the limits of the right.[58]

C. Indiana v. Edwards—*Competency and Self-Representation*

Because the Supreme Court enunciated a right without clearly expressing any limits, courts believed that the right to self-representation was absolute, regardless of other limitations.[59] Thus, courts reluctantly allowed competent defendants under the *Dusky* standard to represent themselves, even though they may not adequately defend themselves, because judges believed self-representation "trumped" other interests.[60] However, in *Indiana v. Edwards*, the trial judge refused to allow a defendant to represent himself when the judge believed the defendant to be mentally incompetent.[61]

In *Edwards*, Edwards attempted to steal a pair of shoes from a department store.[62] Security guards confronted Edwards who drew a gun and fired it, wounding a bystander.[63] Edwards was indicted for attempted murder and battery.[64] Edwards's appointed counsel requested a psychiatric evaluation that eventually led to the judge declaring Edwards incompetent.[65] After being committed to a state hospital, doctors testified that Edwards was competent for trial.[66] Yet, Edwards's condition worsened, leading the court to declare him

57. *Id.* ("[The defendant] should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'"(quoting Adams v. United States *ex rel.* McCann, 317 U.S. 269, 279 (1942))).

58. The Court acknowledged in a footnote that a defendant that represents himself for the sole purpose of disrupting the trial can forfeit the right to self-representation. *Id.* at 834 n.46.

59. *E.g.*, Faretta v. California, 422 U.S. 806, 820 (1975) ("To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment."). The Supreme Court indicated in dicta that a person may lack the capacity to go to trial without the assistance of counsel. Massey v. Moore, 348 U.S. 105, 108 (1954) ("If [the defendant] is insane, his need of a lawyer to tender the defense is too plain for argument.").

60. United States v. Ferguson, 560 F.3d 1060, 1064 (9th Cir. 2009).

61. Indiana v. Edwards, 128 S. Ct. 2379, 2382–83, 2388 (2008).

62. *Id.* at 2382.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

incompetent again.[67] This cycle happened one more time before Edwards was finally declared competent to stand trial.[68]

Before trial, Edwards demanded to represent himself, but the court denied the request because of Edwards's history of mental illness.[69] After the state decided to retry Edwards for attempted murder, he again asked to represent himself at trial.[70] At the second trial, a jury convicted Edwards of attempted murder and battery.[71] On appeal, both the Indiana Court of Appeals and Indiana Supreme Court held Edwards had an absolute right to represent himself.[72]

In affirming the trial court's decision, the United States Supreme Court found that competency limited the exercise of the right of self-representation.[73] Courts and states must ensure trials are not only fair, but also *appear* fair.[74] Thus, when a court allows a mentally incompetent defendant to represent himself at trial, questions arise as to the fairness of the trial.[75] Further, the Court reasoned that while a person may be competent to assist counsel, he might be unable to perform the greater and more difficult task of conducting a trial.[76] In dealing with *Faretta*, the Court pointed out several cases relied upon in *Faretta* that support the notion that the right to self-representation assumes the absence of special or unusual circumstances, including incompetency.[77] Thus, embedded in the *Faretta* doctrine was a limitation based on mental derangement. Lastly, the Court also concluded that allowing a mentally incompetent defendant to stand trial destroys the dignity of the defendant.[78] While the Court allowed states to deny the right of self-

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 2383.

72. *Id.*

73. *Id.* at 2387–88.

74. *Id.* at 2387 (citing Wheat v. United States, 486 U.S. 153, 160 (1988)).

75. *Id.* (citing Massey v. Moore, 348 U.S. 105, 108 (1954) ("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.")).

76. *Id.* at 2386 ("[A]n 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.").

77. *Id.*

78. *See id.* at 2387.

representation, the majority failed to provide specific direction on how to conduct a competency analysis, opting instead for trial judges to make the decision.[79]

IV. THE COURT'S DECISION

The Ninth Circuit remanded *Ferguson* because *Edwards* changed the law that the trial court relied upon.[80] The court explained that before *Edwards*, defendants meeting the *Dusky* standard had the right to represent themselves.[81] After *Edwards*, however, defendants meeting the *Dusky* standard also must meet another higher standard before being allowed to represent themselves.[82] Yet the circuit court followed the Supreme Court in *Edwards* by not specifically enunciating the higher standard trial judges are to rely on.[83]

V. ANALYSIS

A. Limiting Self-Representation

When a defendant opts to represent himself, the judge must take a more active role in the trial. First, the judge must explain to the defendant the dangers and pitfalls of self-representation.[84] Second, the judge must ensure the trial appears, and in reality is, fair.[85] Thus, judges presiding over pro se trials often will assist the defendant by calling and examining witnesses, even over the objection of the pro se defendant.[86] Therefore, judges presiding over pro se cases take an active role to guarantee that the prosecution will not abuse the system and to assist the defendant, while attempting not to infringe upon the defendant's right of self-representation.

79. *Id.*

80. United States v. Ferguson, 560 F.3d 1060, 1064 (2009).

81. *Id.* at 1066–67.

82. *Id.* at 1068.

83. *Id.*

84. United States v. Mendez-Sanchez, 563 F.3d 935, 945 (9th Cir. 2009) ("[W]e recognize this constitutional right only where demanded after advice on the hazards of self-representation.").

85. Indiana v. Edwards, 128 S. Ct. 2379, 2387 (2008).

86. *See* Brown v. United States, 264 F.2d 363, 369 (D.C. Cir. 1959) (Burger, J., concurring in part).

1. Difficulties in self-representation

Mentally ill defendants experience greater difficulties in self-representation compared to otherwise competent defendants. Indeed, the American Psychiatric Association, in an amicus brief, stated that the "symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant."[87] Thus, when an incompetent defendant invokes the right of self-representation, the burden to ensure a fair trial increases. First, the incompetent defendant may have difficulties in communicating with the judge and jury.[88] Second, the defendant may have trouble managing his case, making motions, examining witnesses, and addressing the judge and the jury.[89] These difficulties may lead the trial to be a "spectacle that could well . . . [be as] humiliating as ennobling."[90] This, in turn, will require the judge to assist the defendant more to ensure a fair trial. Thus, the added difficulties of a pro se trial are heightened by allowing a mentally incompetent defendant to run his own defense.

2. Benefits of a competency evaluation

By allowing judges to conduct competency hearings when a questionably competent defendant invokes the right of self-representation, trials will more likely be fair. The protections in the Constitution would be meaningless if courts were prevented "from acting to preserve the very processes that the Constitution itself prescribes."[91] Indeed, it is paradoxical to force courts to allow incompetent defendants to represent themselves when the basic purpose of constitutional criminal law is to provide a fair trial.[92] Under a competency evaluation, judges can protect the rights of

87. *Edwards*, 128 S. Ct. at 2387 (quoting Brief for American Psychiatric Association et al. as Amici Curiae Supporting Neither Party at 26, Indiana v. Edwards, 128 S. Ct. 2379 (2008) (No. 07-208), 2008 WL 405546).

88. *E.g.*, *Ferguson*, 560 F.3d at 1063 (describing communications between the defendant and the judge as "confusing").

89. *See Edwards*, 128 S. Ct. at 2386 (citing studies explaining the impact of mental disease on basic attorney functions).

90. *Id*. at 2387.

91. Illinois v. Allen, 397 U.S. 337, 350 (1970) (Brennan, J., concurring).

92. *Edwards*, 128 S. Ct. at 2387.

competent defendants to self-representation, while ensuring all defendants will enjoy the full force of the underlying right to a fair trial.

B. Standards to Evaluate Competency in Pro Se Trials

While the Supreme Court headed in the right direction by limiting the right to self-representation when the defendant is incompetent,[93] it failed to provide adequate guidance to assist courts in making the necessary determination of competency—the Court insisted on a new standard but failed to articulate the standard to follow.[94] The Ninth Circuit had the chance in *Ferguson* to provide clarity to district courts but failed to do so.[95] This section develops a proposed standard to assist judges in making a competency evaluation.

The *Dusky* standard for mental competency is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether the defendant has a rational and factual understanding of the proceedings against him."[96] This standard fails to assist judges in making a self-representation competency decision for two reasons. First, a person invoking the right of self-representation does not have a lawyer to consult. The first prong of the test, therefore, does not provide a basis for analyzing a defendant's competency in this respect. Second, with respect to the second prong, a pro se defendant has the burden of understanding the substantive law against him, not just a rational and factual understanding of the proceedings.

Working from the *Dusky* competency to stand trial standard, a new standard must take into account the defendant's active role in the trial. First, a competent person under this new standard must have the ability to communicate with the court, witnesses, and jury. Second, a competent person must not only factually understand the

93. *Id.*

94. *See* United States v. Ferguson, 560 F.3d 1060, 1067–68 (9th Cir. 2009) (holding that "[t]he standard for a defendant's mental competence to stand trial is now different from the standard for a defendant's mental competence to represent himself or herself at trial" but then remanding to the district court without articulating the standard to be applied).

95. *Id.* at 1067.

96. Dusky v. United States, 362 U.S. 402, 402 (1960).

proceedings against him, but he must possess a de minimis understanding of both the substantive and procedural law being applied against him. This standard serves to protect a defendant by ensuring the defendant will be able to adequately take advantage of his Sixth Amendment rights by communicating with witnesses,[97] understanding the proceedings against him,[98] and knowingly waiving the right to counsel. In applying this new standard, judges will still be able to use the *Pate* factors to make a decision: (1) irrational behavior, (2) demeanor in court, and (3) prior medical history.

VI. CONCLUSION

The Sixth Amendment affords protections to criminal defendants on trial.[99] Among the rights specified in the text of the Constitution is an implied right of self-representation.[100] Courts routinely have allowed defendants to "knowingly and intelligently" waive the right to counsel despite the competency of the defendant because the right to self-representation was viewed as absolute.[101] Allowing all defendants to represent themselves posed problems, however, especially when a defendant suffered from a mental illness that made managing a trial difficult.[102]

To address these problems, the Supreme Court in *Edwards* established a competency limitation on the right of self-representation.[103] Unfortunately, both the Supreme Court in *Edwards* and the Ninth Circuit in *Ferguson* failed to give guidance to lower courts on the appropriate standard to determine such competency of a pro se defendant.

To provide a fair trial by preserving the rights of the defendant, the judge should determine the competency of the defendant to

97. U.S. CONST. amend. VI ("[T]he accused shall enjoy the right . . . to be confronted with the witnesses against him [and] to have compulsory process for obtaining witnesses in his favor."); *see also* United States v. Cooper, 4 U.S. (4 Dall.) 431 (C.C. Pa. 1800) (Chase, Circuit Justice). *See generally* Crawford v. Washington, 541 U.S. 36 (2004) (discussing the right to confrontation).

98. *Dusky*, 362 U.S. at 402.

99. Faretta v. California, 422 U.S. 806, 818–19 (1975).

100. *Id.*

101. *E.g.*, United States v. Ferguson, 560 F.3d 1060, 1063 (9th Cir. 2009).

102. Indiana v. Edwards, 128 S. Ct. 2379, 2387 (2008) (quoting a psychiatrist's reaction to seeing a mentally incompetent patient defend himself: "[H]ow in the world can our legal system allow an insane man to defend himself?'" (citations omitted)).

103. *Edwards*, 128 S. Ct. at 2387–88.

represent himself: first, by deciding whether the defendant will be able to communicate with the judge, the jury, and witnesses; and second, by determining whether the defendant has a de minimis substantive and procedural legal understanding of the proceedings as well as a factual and rational understanding. This standard will protect the dignity of the defendant as well as the criminal process guaranteed in the Constitution.

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