McCoy v. Louisiana and the Perils of Client Control of the Defense

Abstract

Americans have long prized the principle of autonomy. Indeed, it could be argued that having the ability to shape one’s own destiny defines what it is to be an American. Lawmakers, members of the Judiciary, and private citizens alike have exalted the autonomy principle since the early days of the nation. Surprisingly, while the Sixth Amendment established a right to enlist counsel at trial, it was not until 1975 when the U.S. Supreme Court established a constitutional right to self-representation. The right to assistance of counsel, by contrast, dates back to the colonial era. Though age alone does not sufficiently gauge the importance of a right, the Sixth Amendment has come to symbolize equal access to the United States’ imposing, often convoluted, justice system.

One’s right to autonomy significantly diminishes, however, upon entering the criminal justice system. It is in the criminal justice system that the principles of incapacitation and punishment override the principle of autonomy. One example of such incapacitation stems from the Sixth Amendment’s lack of guidance or limitations on the level of assistance attorneys can provide. Courts have typically given wide latitude to counsel on matters of trial strategy, while clients retain the right to make certain decisions about their ultimate objectives.

In McCoy v. Louisiana, the Supreme Court held that it was in error for a lower court to allow counsel to concede guilt over his client’s objections. The Court reasoned that it is ultimately the defendant’s prerogative, not that of counsel, to decide on a particular objective and reiterated that, no matter the attorney’s level of expertise, the client should be afforded as much autonomy as is practicable. This Comment argues that by allocating the decision of whether to make decisions about trial objectives—specifically, whether to concede guilt—to defendants, the Supreme Court made it significantly more difficult for trained attorneys to seek justice for their clients by overlooking the difficulty of navigating the legal system. This Comment further asserts that lawyers’ legitimate concerns for their client’s best interests and society’s interest in maintaining a reliable justice system should, in certain instances, be prioritized above a defendant’s interest in self-expression. Such practices will better allow courts to provide meaningful access to justice to those who seek it.
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INTRODUCTION

The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence [sic].” This constitutional recognition of the right to assistance of counsel marked a departure from English common law and early colonial practices—where self-representation was the norm—and functioned as a critical development in the evolution of the adversarial system. The right to assistance of counsel also has its roots in the Due Process Clause of the Fourteenth Amendment, which guarantees procedural safeguards to ensure a defendant receives a fair trial. The marriage of these rights

1. U.S. CONST. amend. VI.
2. Erica J. Hashimoto, Resurrecting Autonomy: The Criminal Defendant’s Right to Control the Case, 90 B.U. L. REV. 1147, 1166 (2010). During much of the colonial period, defendants charged with felonies were barred from appearing with counsel, leaving the judge to serve as de facto defense counsel. By recognizing a right to representation—provided one had the means to obtain such representation—the Framers established the model for our current criminal justice system.
3. See id. at 1154.
serves a purpose that is twofold: (1) to protect against wrongful convictions; and (2) to produce just and reliable results within the adversarial system.\(^5\)

While the Court has recognized the importance of both assistance of counsel and a criminal defendant’s dignity and autonomy, it has had few opportunities to consider the melding of these distinct principles. \textit{McCoy v. Louisiana}\(^6\) provided the Court with an opportunity to examine whether and when a criminal defendant’s attorney should be able to make fundamental decisions about the course of the defendant’s trial, and to what extent the defendant should be allowed a platform for self-expression. Part I of this Comment will examine the Court’s prior decisions regarding criminal defendants’ rights to dictate their own defenses. Part II of this Comment provides an overview of the Court’s decision in \textit{McCoy} and its analysis of what constitutes a fundamental decision at trial. Finally, in Part III this Comment argues that, in the interest of maintaining a fair adversarial system and ensuring equal access to justice, courts must recognize attorneys as the final arbiters of defenses mounted at trial.

\section{I. Background}

The right to assistance of counsel, a relatively new concept, was borne out of the nation’s previous system of self-representation—a concept that predates the Bill of Rights.\(^7\) Throughout the seventeenth century and during the early part of the eighteenth century, neither the defense nor the prosecution appeared with counsel present as most crimes were regarded as private in nature.\(^8\) Counsel for both parties began to appear during the mid-eighteenth century, albeit in limited capacities.\(^9\) Defendants themselves were charged with speaking on issues of fact, while defense counsel cross-examined witnesses but was prohibited from addressing the jury.\(^10\) The right to counsel was borne primarily out of the Framers’ mistrust of the judiciary immediately following the Revolution, and indicated the Framers’ desire for defendants to be able to act in their own self-interest, free of government intervention.\(^11\) While defendants in this era generally elected to represent themselves in court—either due to economic constraints or plain mistrust of lawyers—the Framers recognized the importance of the presence of counsel to protect individuals against self-incrimination and to ensure defendants could adequately assert their rights protected by the Constitution.\(^12\)

\begin{footnotes}{
7. See Hashimoto, supra note 2, at 1149.
8. \textit{Id.} at 1164.
9. \textit{Id.} at 1165.
10. \textit{Id.}
11. See \textit{id.} at 1149.
12. See \textit{id.}
}
master of the trial, was viewed solely as a vessel through which defendants could exercise their personal rights.13

Nearly two hundred years after criminal defendants were first given the opportunity to employ legal counsel, the American Bar Association (ABA) released its first edition of the Criminal Defense Function Standards.14 The Standards, issued in 1964, were written as a set of best practices for criminal justice administration.15 Now in its fourth iteration, the Standards include a section titled “Control and Direction of the Case” that lists which decisions are to be left to the client, specifically: whether to proceed pro se, how to plead, and whether to testify on his or her own behalf.16

While the Court first found a right to court-appointed counsel for defendants accused of federal capital offenses in 1932,17 there existed no such right for state court defendants until 1963 in Gideon v. Wainwright.18 Gideon overturned the Court’s previous decision in Betts v. Brady,19 in which the Court reasoned that indigent defendants’ right to employ counsel was available solely to federal criminal defendants.20 The Betts Court held that refusal to appoint counsel for an indigent defendant in state court was not so “offensive to the common and fundamental ideas of fairness” as to amount to a denial of due process.21 In Gideon, Justice Black—demonstrating a shift in ideology some forty-odd years later—interpreted the Sixth Amendment right to counsel to be “so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the states by the Fourteenth Amendment.”22 The Court reasoned that in the adversarial criminal justice system, a defendant too poor to hire a lawyer is significantly disadvantaged and that “lawyers in criminal courts are necessities, not luxuries.”23 Though the Court did not provide a mechanism to implement this ideal, jurisdictions have since adopted programs (e.g., public defender offices, flat-fee contracts with local attorneys) to ensure that government entities, not the defendant, help fund defenses.24

15. Id.
20. Gideon, 372 U.S. at 339–40 (“[A]ppointment of counsel is not a fundamental right, essential to a fair trial.” (quoting Betts, 316 U.S. at 471)).
23. Id. at 344.
24. Hashimoto, supra note 2, at 1181.
The right to self-representation—the default form of justice in early America25—was resurrected in *Faretta v. California*.26 The *Faretta* Court acknowledged that the text of the Constitution refers to counsel merely as the defendant’s “assistant”27 and reasoned that a defense attorney “shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally.”28 One may waive the right to assistance of counsel so long as this waiver is voluntary and intelligently decided.29 The Court further reasoned that the Sixth Amendment merely refers to “assistance” of counsel, and that counsel, “however expert, is still an assistant.”30 The Court likewise acknowledged the perils associated with self-representation, such as relinquishment of the traditional benefits associated with the right to counsel, as well as the fact that defendants electing to represent themselves fare less well than their counterparts who employ attorneys.31 But, rights so personal as the right to defend one’s self, the Court reasoned, nonetheless must be honored out of “that respect for the individual which is the life-blood of the law.”32 The Court’s holding in *Faretta* demonstrates the broad principle that defendants’ right to control their own defense is deeply rooted in the constitutional ideal of self-determination: “The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.”33 Similarly, thrusting counsel’s wisdom upon an unwilling defendant “violates the logic of the [Sixth] Amendment.”34

The 1980s saw a further shift toward defendants’ rights with the Court’s decision in *Jones v. Barnes*.35 The Court held that counsel has the prerogative to make strategic decisions in the defense, but the ultimate authority to determine the objectives of that defense belongs to the defendant.36 Specifically, counsel does not have a duty to press nonfrivolous points at the client’s request “if counsel, as a matter of professional [discretion], decides not to” pursue that line of argumentation.37 The Court rationalized that these defined roles would afford counsel sufficient flexibility in forming the defense, as experienced advocates are often better

25. See *id.* at 1148, 1163.
27. *Id.*
28. *Id.*
30. *Id.* at 820.
31. *Id.* at 834–35.
33. *Id.* at 819–20.
34. *Id.* at 820.
36. See *id.* at 754.
37. *Id.* at 751.
equipped to determine which issues will offer the defendant the greatest chance of success.\textsuperscript{38} The Court issued further protections for criminal defendants with its ruling in \textit{Strickland v. Washington},\textsuperscript{39} which created a mode of recourse for defendants whose attorneys failed to properly advocate for them.\textsuperscript{40} While the Sixth Amendment does not expressly state what constitutes effective counsel,\textsuperscript{41} Justice O’Connor determined that when challenging defense counsel’s performance or failure to abide by defendant’s wishes, a defendant must first show that counsel’s performance “fell below an objective standard of reasonableness.”\textsuperscript{42} A defendant then must demonstrate that counsel’s performance was so deficient that, but for counsel’s errors, there is a reasonable probability that the proceedings would have had a different outcome.\textsuperscript{43} While the rules established in \textit{Strickland} created an appeal mechanism for clients electing to be represented by counsel, the Court made no mention of redress for pro se defendants or defendants who insist on following a course of action against the judgment of counsel.\textsuperscript{44}

The Court once again addressed how to balance clients’ fundamental rights with counsels’ judgment in \textit{McCoy}.

\textbf{II. \textit{McCoy v. Louisiana}}

\textbf{A. Facts}

In May 2008, petitioner Robert McCoy was arrested in Idaho and charged with the first-degree murders of his estranged wife’s mother, stepfather, and son.\textsuperscript{45} McCoy was subsequently extradited to Louisiana where the murders took place.\textsuperscript{46} There, he was appointed counsel from the public defender’s office.\textsuperscript{47} A grand jury indicted McCoy on three counts of first-degree murder, for which the prosecutor sought the death penalty.\textsuperscript{48} McCoy pleaded not guilty, insisting he was out of state when the killings occurred, and asserted, in his defense, that the police killed the victims after a drug deal went awry.\textsuperscript{49}

In March 2010, after relations with his court-appointed counsel deteriorated, McCoy retained Larry English as his defense attorney.\textsuperscript{50} English,
in his professional judgment, concluded that it would be impossible for McCoy to avoid a death sentence unless there was a concession at the guilt phase that McCoy committed the killings.\textsuperscript{51} McCoy was adamant that English not concede and instead pressed English to pursue an acquittal.\textsuperscript{52} In 2011, McCoy again attempted to sever relations with his counsel, but the court refused to relieve English as the trial was set to start just two days later.\textsuperscript{53} In his opening statement at the guilt phase of the trial, English told the jury, against McCoy’s wishes, “my client committed three murders.”\textsuperscript{54} English argued that McCoy’s “serious mental and emotional issues” warranted a lesser sentence.\textsuperscript{55} The jury subsequently issued three death verdicts.\textsuperscript{56}

\textbf{B. Procedural History}

After his conviction, McCoy moved for a new trial, arguing that the trial court violated his constitutional rights by allowing English to concede guilt against his own protestations of innocence.\textsuperscript{57} The Louisiana Supreme Court affirmed the trial court’s ruling that English’s concession was permissible because counsel reasonably believed such a concession gave McCoy the best chance of avoiding a death sentence.\textsuperscript{58} The Supreme Court granted certiorari on the question of whether it is constitutional for defense counsel to concede guilt over a defendant’s unambiguous objections.\textsuperscript{59}

\textbf{C. Opinion of the Court}

Justice Ginsburg wrote for the majority. She was joined by Chief Justice Roberts as well as Justices Kennedy, Breyer, Sotomayor, and Kagan.\textsuperscript{60} The Court reversed the Louisiana Supreme Court’s ruling, holding that, under the Sixth Amendment, a criminal defendant is guaranteed the right to choose the objective of his defense and his counsel must abide by that objective.\textsuperscript{61} Justice Ginsburg first reiterated the fundamental right found in \textit{Faretta}, emphasizing that “[t]he right to defend is personal.”\textsuperscript{62} She clarified that employing counsel does not preclude a defendant from making certain decisions over the course of a trial: “To gain assistance, a defendant need not surrender control entirely to counsel.”\textsuperscript{63} Justice Ginsburg stated that an attorney’s role is one concerned with trial management, which

\begin{footnotes}
\item 51. Id.
\item 52. Id.
\item 53. Id.
\item 54. Id. at 1507 (quoting Joint Appendix at 509, \textit{McCoy}, 138 S. Ct. 1500 (No. 16-8255)).
\item 55. Id. (quoting Joint Appendix, \textit{supra} note 54, at 735).
\item 56. Id.
\item 57. Id.
\item 58. Id.
\item 59. Id.
\item 60. Id. at 1504–05.
\item 61. Id. at 1505.
\item 62. Id. at 1507 (quoting \textit{Faretta} v. California, 422 U.S. 806, 834 (1975)).
\item 63. Id. at 1508.
\end{footnotes}
deals primarily with what objections to raise and what evidence to admit. She then listed the trial decisions—namely, the decision whether to maintain one’s innocence—that are reserved for the defendant, stating, “[t]hese are not strategic choices about how best to achieve a client’s objectives; they are choices about what the client’s objectives in fact are.”

Justice Ginsburg then acknowledged that while counsel may, in their professional judgment, believe that a concession of guilt is the best means of avoiding a capital sentence, the defendant may have different goals for the trial. She provided several reasons why a defendant might elect to pursue an acquittal in light of overwhelming evidence, among them that the possibility of an acquittal may be more valuable than the difference between a life or death sentence. Regardless of the client’s reasoning, Justice Ginsburg asserted that, per the Sixth Amendment and ABA Rules of Professional Conduct, counsel “must abide by that objective and may not override it by conceding guilt.”

Justice Ginsburg posited that preservation of defendants’ rights supersedes counsel’s trial-management roles. She suggested that English, rather than resorting to a concession in his opening remarks in the guilt phase, should have instead focused on persuading the jury during the guilt phase that McCoy’s mental state did not warrant a conviction.

Justice Ginsburg dismissed the government’s argument that, per Florida v. Nixon, counsel is entitled to negate a client’s autonomy by overriding that client’s defense objective. She clarified that in Nixon, the convicted defendant did not object to counsel’s concession until after trial and never protested counsel’s approach during proceedings. McCoy, by contrast, vociferously objected to English’s proposed concession of guilt at every turn. Justice Ginsburg affirmed that when a client declines to participate, counsel is then allowed to continue with the trial strategy she believes to be in the client’s best interest. Express statements of a client’s desire to maintain innocence, however, are to be stringently obeyed.

Justice Ginsburg again acknowledged the importance of a defendant’s agency

64. Id. at 1509.
65. Id. at 1508.
66. Id.
67. Id.
68. Id. at 1509 (first citing U.S. CONST. amend. VI and then citing MODEL RULES OF PROF’L CONDUCT r. 1.2(a) (AM. BAR ASS’N 2016)).
69. Id. at 1509.
70. Id.
72. McCoy, 138 S. Ct. at 1509 (citing Nixon, 543 U.S. at 181, 185). In Nixon, the Court found that defense counsel’s failure to extract defense objectives from an uncooperative defendant did not render counsel’s performance deficient. 543 U.S. at 186.
73. Id. (citing Nixon, 543 U.S. at 181, 185).
74. Id.
75. Id.
76. Id. (“When a client expressly asserts that the objective of ‘his defence’ [sic] is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override
and autonomy: “[A]ction taken by counsel over his client’s objection . . . ha[s] the effect of revoking [counsel’s] agency with respect to the action in question.”

Justice Ginsburg then rebuked the government’s assertion that English’s refusal to mount McCoy’s outlandish defense was in compliance with Louisiana Rule of Professional Conduct 1.2(d), which dictates that an attorney “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.” Justice Ginsburg refuted that there was an avowed perjury, stating that English’s mere disbelief of McCoy’s account, in light of the government’s evidence, was not a sufficient reason for English to not present the defense to the jury in accordance with his client’s demands. English would have been barred from presenting McCoy’s defense had he known perjury was involved but, as Justice Ginsburg explained, English was under no ethical obligation to concede his client’s guilt beyond McCoy’s objections.

Justice Ginsburg then addressed the dissent’s argument that instances of defendants attempting to override their attorneys’ strategies are “‘rare’ and ‘unlikely to recur.’” Justice Ginsburg responded to these claims by citing to three recent state court cases in which defendants insisted on maintaining innocence, despite counsels’ misgivings. Such disagreements, Justice Ginsburg explained, were not strategic disputes, but issues regarding the fundamental objectives of defendant’s representation. The majority opinion, Justice Ginsburg asserted, aligns with the majority of state courts in their declarations that counsel may not admit a client’s guilt over the client’s objection to that admission. Justice Ginsburg then stated that the Court is not beholden to the Strickland standards of ineffective assistance of counsel, in that McCoy’s autonomy—not the quality of English’s work—is at issue. Justice Ginsburg contended that McCoy’s right to autonomy was violated when the trial court allowed counsel to wield control over an issue within McCoy’s prerogative.

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77. Id. at 1509–10 (quoting Gonzalez v. United States, 553 U.S. 242, 254 (2008) (Scalia, J., concurring)).
78. Id. at 1510 (quoting LA. RULES OF PROF’L CONDUCT r. 1.2(d) (2017)).
79. Id.
80. Id.
81. Id. (quoting id. at 1512, 1514 (Alito., J. dissenting)).
82. Id. (first citing People v. Bergerud, 223 P.3d 686 (Colo. 2010); then citing Cooke v. State, 977 A.2d 803 (Del. 2009); and then citing State v. Carter, 14 P.3d 1138 (Kan. 2000)).
83. Id.
84. Id. (“In this stark scenario, we agree with the majority of state courts of last resort that counsel may not admit her client’s guilt of a charged crime over the client’s intransigent objection to that admission.”).
85. Id. at 1510–11.
86. Id. at 1511.
The Court also analyzed whether English’s violation of McCoy’s autonomy was subject to harmless error or structural review.\(^87\) The finding of a structural error would automatically entitle the defendant to a new trial without any need to show prejudice.\(^88\) Justice Ginsburg wrote that an error can be structural if it “affect[s] the framework within which the trial proceeds,” the right at issue does not protect the defendant from an erroneous conviction but against some other interest, or the effects of the error are too difficult to measure.\(^89\) Justice Ginsburg explained that English’s error qualified as structural because a concession of guilt “blocks the defendant’s right to make the fundamental choices about his own defense.”\(^90\) Additionally, the effects of such a concession would be impossible to measure because “a jury would almost certainly be swayed by a lawyer’s concession of his client’s guilt.”\(^91\) McCoy’s case, Justice Ginsburg asserted, warrants a new trial.\(^92\)

Finally, Justice Ginsburg concluded that, while English was in a “difficult position,” because McCoy communicated to the court and to his counsel that he wished to maintain his innocence, that objective should have superseded his counsel’s.\(^93\) She emphasized that the trial court’s allowance of English to assert his defense strategy above his client’s was “incompatible” with the Sixth Amendment and ordered a new trial.\(^94\)

**D. Justice Alito’s Dissenting Opinion**

Justice Alito authored the dissenting opinion, with Justices Thomas and Gorsuch joining.\(^95\) Justice Alito fundamentally disagreed with the majority that McCoy’s constitutional rights were violated by English’s concession of guilt, and stated, “English strenuously argued that petitioner was not guilty of first-degree murder because he lacked the intent (the mens rea) required for the offense.”\(^96\) Justice Alito described some of the government’s “overwhelming” evidence that English was forced to contend with, as well as McCoy’s defense—a “farflung conspiracy” implicating state and federal officials, his own attorney, and the trial judge—which English was unwilling to assert.\(^97\) The result of mounting such a defense, Justice Alito explained, would have “stood no chance of winning an acquittal and would have severely damaged English’s credibility in the eyes

\(^{87}\) Id.
\(^{88}\) Id.
\(^{89}\) Id. (alteration in original) (quoting Arizona v. Fulminante, 499 U.S. 279, 310 (1991)).
\(^{90}\) Id.
\(^{91}\) Id.
\(^{92}\) Id.
\(^{93}\) Id. at 1512.
\(^{94}\) Id.
\(^{95}\) Id. (Alito, J., dissenting)
\(^{96}\) Id.
\(^{97}\) Id. at 1512–13.
of the jury, thus undermining his ability to argue effectively against the imposition of a death sentence at the penalty phase of the trial." 98

Justice Alito concluded that allowing defendants to commandeer the role of attorney would have disastrous implications: “Our adversarial system would break down if defense counsel were required to obtain the client’s approval for every important move made during the course of the case.”99 He then stated that he is not of the belief that English violated any fundamental right by acknowledging McCoy’s guilt, rather he admitted McCoy was guilty of a noncapital offense to prevent a death sentence.100 Justice Alito acknowledged that “[t]hese are not easy questions . . . I would hold that [English] did not violate any fundamental right by expressly acknowledging that petitioner killed the victims instead of engaging in the barren exercise that petitioner’s current counsel now recommends.”101

III. ANALYSIS

In deciding McCoy, the Court adhered to its ruling in Faretta, recognizing defendant autonomy as one of the central tenets of criminal trials. Additionally, the Court determined a new fundamental right derived from the Sixth Amendment, acknowledging that defendants—as the parties with the most at stake in capital cases—should be the ultimate arbiters of whether to make concessions in their defense. In so doing, the Court placed a limitation on its holding in Gideon, in which the input of counsel was termed “obligatory.”102 While many of the Court’s decisions regarding pro se defendants state outright that unskilled defendants are not fully capable of making strategic decisions—and are therefore almost certain to be convicted—the Court rationalized that principles of autonomy and dignity are too entrenched in the nation’s history to allocate certain decisions to defense counsel.103 This Section will argue that the Court’s ruling in McCoy was too absolute and that the Court prioritized the autonomy principle above other serious policy considerations, namely the role of attorneys in asserting vulnerable clients’ best interests.

98. Id. at 1514.
99. Id. at 1516.
100. Id. at 1516–17.
101. Id. at 1517.
103. McCoy, 138 S. Ct. at 1507–08.
A. The Court’s Interpretation of the Sixth Amendment Fails to Take into Account the Pitfalls of a Client-Centered Approach to Making Decisions and Concessions

While the Court spends much time discussing the autonomy principle as it relates to defendants, there is little analysis of how McCoy might impact the various models of lawyering and the strategies lawyers employ to defend their clients. There is much debate in the legal community about the proper allocation of responsibilities between criminal defendants and their attorneys. In deciding McCoy, the Court could have used the opportunity to either create a limiting measure on counsel’s input or else leave the issue to the prerogative of the tribunal. The Court chose instead to create a standard that assumes that defendants are better equipped to decide if and when to concede guilt. Below is a brief overview of the two most prominent models of lawyering, the ethical constraints that bind lawyers, and a critique of the Court’s interpretation of these roles as they relate to decision-making responsibilities at trial.

1. The Traditional Model of Lawyering

According to the traditional model of lawyering, the duty of lawyers—both to the client and the legal system—is to represent their client zealously within the bounds of the law. This responsibility is considered a public service, in that the lawyer assists members of the public in securing and protecting the rights and privileges available to them. The premise paints clients as passive parties who delegate decision-making responsibility to their attorneys. Scholars have posited that, in its simplest form, an attorney is to function as a “hired gun” who may, in pursuit of her client’s best interests, do anything short of breaking the law to attain those ends; the attorney is to behave almost as a mercenary. Put more gently, the traditionalist model envisions the role of an attorney as one in which the attorney uses her training and specialized knowledge to act...
within the client’s best interests. The central justification for this model is that a lawyer will function as an amoral technician, rather than emotionally involved one, and through that extreme partisan zeal will be a more effective decision maker. By hiring an attorney, the client has expressly consented to allowing attorneys to exercise their best judgment in resolving the defendant’s legal issue.

While the title “amoral technician” hints at a disregard of ethical constraints, the traditional role of attorney—particularly in the context of criminal defense—is not without certain ethical conflicts. Criminal defense attorneys are charged with attaining results for their client that many in the general population would consider immoral. Actions such as suppressing relevant evidence, not disclosing incriminating facts, or representing clients a lawyer suspects or knows to be guilty are justified in large part by principles of the traditional model. Successful representation of a criminal client will result in a beneficial outcome for the defendant, which may or may not reflect the truth.

Because English zealously pursued what he, in his experience, perceived to be in McCoy’s best interest with little regard for his client’s input, one could assert that English’s behavior was consistent with the traditional method of lawyering. English’s lawyer-centered approach empowered him to offer a concession despite his client’s objections. Under traditional principles of lawyering, English’s duty to his client was both morally justified and constitutionally mandated. Advocates for the traditional lawyering perspective might argue that based on the necessity of English’s role in the adversary system, his zealous advocacy of his client’s best interest was defensible. While McCoy strongly objected to Eng-

112. See id.
113. Uphoff & Wood, supra note 104, at 7; see also People v. Hamilton, 48 Cal. 3d 1142, 1162 (1989) (“An accused who chooses professional representation, rather than self-representation, has no right to participate as [co-counsel].”).
115. Id. This statement is not meant to demonstrate that criminal defense attorneys are any less meritorious than prosecutors or attorneys in the civil law arena. Indeed, such practices are applicable to virtually every law practice. However, because this Comment focuses on the ethical obligations of criminal defense attorneys, the examples presented are meant only to show the various ethical dilemmas criminal defense attorneys encounter during the course of their representation.
116. Id. at 1249–50.
117. Richard Wasserstrom, Lawyers as Professionals: Some Moral Issues, 5 HUM. RTS., Fall 1975, at 1, 1 (acknowledging criticisms “that it is the lawyer-client relationship which is morally objectionable because it is a lawyer-client relationship which is morally objectionable because it is a relationship in which the lawyer dominates and in which the lawyer typically, and perhaps inevitably, treats the client in both an impersonal and a paternalistic fashion”).
119. See id.; Ogletree, supra note 109, at 1245.
lish’s tactical decision to concede the actus reus, English helped to preserve McCoy’s right to autonomy by allowing McCoy to decide how to plead and whether to testify. An advocate for the traditional model of lawyering might assert that English’s partisan zeal on behalf of McCoy was not only permissible but justified.

2. The Client-Centered Model of Lawyering

The client-centered model, or participatory model, on the other hand, dictates that an attorney’s role is to help the client identify legal issues, devise solutions in line with the client’s objectives, and present the benefits and pitfalls of each potential solution. This approach serves to maximize client autonomy by fostering active participation in the client’s own case. The model operates under the assumption that clients are the best—and perhaps only—resource for deciding what constitutes their “best interest.” According to this view, clients must be able to make their own choices because they will be the one to confront the consequences from the decisions made in their case. Though the name implies that ultimate decision-making control should go to clients, the model also affords discretion to attorneys for making tactical and strategic choices. Some proponents of the client-centered model have gone so far as to say that defendant autonomy is so vital that the mere presence of a lawyer impedes access to justice by creating yet another barrier for the client’s defense. The traditional and client-centered models differ in terms of who should be the primary decision maker but both are premised on the idea of acting in the client’s best interest. “[T]he values of autonomy and equality suggest that . . . the client’s conscience should be superior to the lawyer’s.”

A major criticism of the client-centered theory is the lack of consensus as to what degree of decision-making clients ought to be engaged in. Some advocates of the client-centered model say that while certain tactical maneuvers require client consultation, most decisions are within lawyers’ exclusive domain. Others contend that clients should be responsible for decisions beyond those deemed “fundamental,” such as whether to call a witness, whether to cross-examine witnesses, and what tactics to use to

121. See Uphoff, supra note 111.
122. Id. at 768–69.
123. See id. at 769 n.22 (quoting William H. Simon, Lawyer Advice and Client Autonomy: Mrs. Jones’s Case, 50 MD. L. REV. 213, 222–26 (1991)).
125. See Uphoff, supra note 111, at 769.
126. Ogletree, supra note 109, at 1250–51.
127. See Uphoff, supra note 111, at 769.
128. Ogletree, supra note 109, at 1251 (second alteration in original) (quoting Pepper, supra note 120, at 618).
129. Miller, supra note 124, at 506.
elicited testimony.\textsuperscript{131} Criminal defense attorneys are given broad discretion when it comes to deciding whether to allow their clients to participate in strategic decision-making.\textsuperscript{132} Both camps agree that certain decisions at trial are the sole prerogative of the defendant, though there is significant debate as to where the line between choices that impact the case’s outcome (ends) and strategic choices (means) should be drawn.\textsuperscript{133}

Early on in McCoy and English’s relationship, it was clear that English intended to buck a client-centered approach for a traditional lawyer-centered one.\textsuperscript{134} It is not clear what, if any, “meaningful information” English supplied to McCoy and, therefore, impossible to know whether McCoy would have eventually assented to English’s proposed concession. English usurped McCoy’s autonomy by offering the concession, which the Court deemed incompatible with the promise of assistance of counsel found in the Sixth Amendment.\textsuperscript{135} McCoy, the Court ruled, was to be the sole decider of fundamental choices associated with his case.\textsuperscript{136}

3. The Model Rules of Professional Conduct and ABA Standards

As discussed above, the ABA Model Rules of Professional Conduct (Model Rules) aim to provide counsel with ethical guidance for the allocation of authority between themselves and their client.\textsuperscript{137} According to Rule 1.2 of the Model Rules, attorneys must consult with their clients about what their trial objectives are and how those are to be pursued.\textsuperscript{138} Rule 1.2 also dictates that in criminal cases, attorneys are to abide by a client’s decision as to the plea to be entered, whether to waive a jury trial, and whether the client will testify.\textsuperscript{139} While the Model Rules delineate de-


\textsuperscript{132} Uphoff & Wood, supra note 104, at 6.

\textsuperscript{133} Johnson, supra note 44, at 55 (“Specific defense decisions, then, are allocated according to whether they involve the objectives of the representation or merely the means of achieving those objectives. . . . The ends/means theory, however, has come under significant criticism. Its chief flaw lies in the difficulty of distinguishing the means from the ends. . . . “[M]any decisions can easily be characterized both as strategic ones regarding means and as fundamental ones regarding objectives.” (footnotes omitted) (quoting Martin Sabelli & Stacey Leyton,\textit{ Train Wrecks and Freeway Crashes: An Argument for Fairness and Against Self Representation in the Criminal Justice System}, 91 J. CRIM. L. & CRIMINOLOGY 161, 182 (2000))).

\textsuperscript{134} See McCoy v. Louisiana, 138 S. Ct. 1500, 1506 (2018) (“McCoy, English reported, was ‘furious’ when told, two weeks before trial was scheduled to begin, that English would concede McCoy’s commission of the triple murders.” (quoting Joint Appendix, supra note 54, at 286)).

\textsuperscript{135} Id. at 1508 (“The choice is not all or nothing: To gain assistance, a defendant need not surrender control entirely to counsel. For the Sixth Amendment, in ‘grant[ing] to the accused personally the right to make his defense,’ ‘speaks of the “assistance” of counsel, and an assistant, however expert, is still an assistant.’” (alteration in original) (quoting Faretta v. California, 422 U.S. 806, 819–20 (1975))).

\textsuperscript{136} See id. at 1511.

\textsuperscript{137} MODEL RULES OF PROF’L CONDUCT r. 1.2(a) (AM. BAR ASS’N 2016).

\textsuperscript{138} Id.

\textsuperscript{139} Id.
cision-making authority with regard to “objectives and means,” they provide little guidance on where the veil between the two is drawn. In addition to not providing a meaningful ends/means test, the Model Rules suggest only that, should attorneys and their clients reach an impasse in the representation, lawyers should either consult with the clients or withdraw from the representation altogether.

From the standpoint of Rule 1.2, it appears that English comported with the Model Rules in his representation of McCoy. The record indicates that English consulted with McCoy regarding the concession strategy and did not interfere with McCoy’s fundamental rights at trial. It is not entirely clear, however, whether English improperly substituted his own objectives for McCoy’s. In many cases, the lawyer’s strategic choices are so bound up in the client’s substantive rights and trial objectives that it is impossible to draw neat lines as to where control should be ceded. One could argue that English violated Rule 1.2 on its face. However, because English’s tactical decision was made in the interest of achieving a lesser sentence—one of McCoy’s substantive rights—it could also be argued that no violation occurred.

4. Guilt Concessions and the Models of Lawyering

The Court found that English impermissibly supplanted his own legal strategy over his client’s and, in doing so, it indicated a preference toward the client-centered theory. Indeed, the Court decided that English’s approach to concession making was unconstitutional. However, in some circumstances, good lawyers may be compelled to override their client’s wishes and balk at the idea of following dubious instructions to protect the client from serious harm. By deferring to McCoy’s irrational strategy, English would have ostensibly violated his solemn duty to act as a zealous advocate on his client’s behalf. The Court emphasized that English’s

141. MODEL RULES OF PROF’L CONDUCT r. 1.2 cmt. (AM. BAR ASS’N 2016) (“The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. Conversely, the client may resolve the disagreement by discharging the lawyer.” (citation omitted)).
143. See Uphoff & Wood, supra note 104, at 14.
144. It could be argued that because English did not share in McCoy’s goal of acquittal and made the strategic decision to concede to the triple homicide, that English denied his client a substantive right. It should be noted, however, that the concession did not occur until the sentencing phase. English’s silence on the matter of McCoy’s alibi and decision to present the concession as a means to negate one of the elements of the crime, therefore, could be termed a strategic choice.
145. See McCoy, 138 S. Ct. at 1509. The Author recognizes that the Court did not rule on a method of lawyering, but whether a lawyer can unilaterally decide to invoke a concession in his client’s defense. However, the Court’s frequent mention of principles of client autonomy and choice point strongly to its favoring of a client-centered approach.
146. Id.
147. Uphoff, supra note 111, at 771.
148. Id. at 814.
concession at the guilt phase was not, in fact, a tactical decision, but one concerning McCoy’s trial objectives. However, English heartily believed that a concession would allow his client to stay alive. Such instances likely to cause significant harm to the client present a persuasive argument for adopting a lawyer-centric approach when it comes to concessions.

The client-centered model that the Court implies a preference for, while meritorious, may simply be impracticable for many attorneys. Public defenders, for example, are typically burdened with heavy caseloads, face limited resources, and are met with clients who are angry and frustrated with their lack of choice in representation. Constraints like these make it difficult to recognize client autonomy; in situations where that autonomy is recognized, lawyers might be willing to let their clients act on their own strategy and objectives out of exasperation rather than empowerment. Additionally, lawyers might be confronted with clients who, in other respects, are competent decision makers and are capable of making informed choices. Despite these abilities, clients like McCoy may fail to appreciate the long odds against their proposed objective, or else perceive their choice as maximizing their chances for acquittal or a lesser sentence. Also, similar to McCoy, the lawyer might be certain that the client’s objective or strategy harms the case. The more harmful lawyers predicts their client’s objective to be, the less obligated they may feel to pursue that course of action. English was advised as much at McCoy’s trial: “[Y]ou are the attorney . . . and ‘you have to make the trial decision of what you’re going to proceed with.’”

Though English served his client as a private counselor, he, like the majority of public defenders, faced comparatively little time to prepare for trial and a distrustful client. English’s rational fear that the jury would sentence McCoy to death—which eventually did occur—if he did not establish credibility with the jury by conceding guilt should have afforded

149. McCoy v. Louisiana, 138 S. Ct. at 1506 (“Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant’s own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial. These are not strategic choices about how best to achieve a client’s objectives; they are choices about what the client’s objectives in fact are.”).


151. See Uphoff & Wood, supra note 104, at 29.

152. See id. at 28.

153. Uphoff, supra note 111, at 825.

154. See id.

155. Id.


157. See id. (“In December 2009 and January 2010, McCoy told the court his relationship with assigned counsel had broken down irretrievably. He sought and gained leave to represent himself until his parents engaged new counsel for him. In March 2010, Larry English, engaged by McCoy’s parents, enrolled as McCoy’s counsel.”).
him the discretion to adopt a lawyer-centered approach to McCoy’s con-
cession. 158 Additionally, by designating a lawyer’s decision to concede his
client’s guilt as a trial objective (an “end” according to the ends/means

158. Mays, supra note 150 (“Mr. English said it was Mr. McCoy’s delusions of a grand conspir-
acy that made his client unable to participate in his defense that led him to believe he had no choice
but to try to save his client’s life.”).
159. See Uphoff, supra note 111, at 795.
160. See Johnson, supra note 44, at 51.
161. Uphoff & Wood, supra note 104, at 47.
162. Johnson, supra note 44, at 104.
163. Id. at 61.
166. See Sabelli & Leyton, supra note 133, at 208.
defendants may not waive their rights to a trial except in certain narrow circumstances. 167

While the majority in McCoy suggests that capital defendants’ autonomy and dignity are to be protected by any means available, the Court once again overlooks some concerns about the pitfalls of this practice, specifically regarding concessions. Some scholars argue that the power to override counsel’s defense strategies by asserting unwise objectives filters relevant (and potentially mitigating) evidence from the fact-finding process. 168 This shifts the focus to the validity of the defendant’s desires rather than the overall fairness of the trial. 169 This Section argues that the community’s interest in fair adjudication should, in instances where a defendant’s life is at stake, override a client’s autonomy interest, and that courts should devise a balancing test that weighs the client’s best interests against those of the community’s interest in a reliable justice system.

1. Defendant’s Interest in Granting Choices of Trial Objectives to Counsel

It has been long established that the government cannot force a lawyer upon an unwilling defendant. 170 Nor is the choice of whether to accept legal representation “all-or-nothing.” 171 A defendant’s exercise of his right to counsel, however, does not negate the risk of an unfair trial. As mentioned above, the fundamental purpose of an adversary trial is to determine the truth of the charge. 172 Should defendants forgo counsel’s advice, forgo counsel completely, decide to mount an ill-advised defense, or forbid counsel from making a potentially life-saving concession, 173 the focus of the trial shifts to the defendant’s own self-expression, rather than investigation. 174 A defendant’s choice to exclude testimony or other forms of evidence, even if rendered autonomously, undercuts the factual basis of a verdict or sentence and thereby defies the public’s interest in a fair and just trial. 175

168. See Sabelli & Leyton, supra note 133, at 164.
169. Id.
170. Faretta v. California, 422 U.S. 806, 834 (1975) (“To force a lawyer on a defendant can only lead him to believe that the law contrives against him.”).
171. McCoy v. Louisiana, 138 S. Ct. 1500, 1508 (2018) (“To gain assistance, a defendant need not surrender control entirely to counsel. . . . Counsel provides his or her assistance by making decisions such as ‘what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence.’” (quoting Gonzalez v. United States, 553 U.S. 242, 248 (2008))).
172. Johnson, supra note 44, at 120.
173. In McCoy, the mitigating evidence was that McCoy, due to his “serious mental and emotional issues” lacked the requisite mens rea to be convicted of first-degree murder. 138 S. Ct. at 1506–07 (quoting Joint Appendix, supra note 54, at 735).
175. Sabelli & Leyton, supra note 133, at 210.
Separately, pitting the strategies of a lay defendant, however intelligent, against those of an aggressive prosecutor would serve to diminish the parity of the adversarial system envisioned by the Framers.176 The argument that defendants’ best interests should outweigh their autonomy has been framed as a paternalistic one.177 Attorneys must be made to accept that the “best interests” they are advocating for can only be articulated by the defendant.178 This view, however, does not provide for society’s interest in a full, fair, and final criminal process. Allowing a defendant to make certain decisions on behalf of the defense may result in a proceeding in which the jury does not hear exculpatory evidence and will return an “incorrect” verdict that, but for the defendant’s decision, would have been presented.179 Society’s interest in maintaining the integrity of the justice system may be upheld by allowing attorneys to override a defendant’s self-destructive trial objective, specifically in capital cases.180 It is for these reasons that the legal profession should grant defense counsel wider latitude in steering defense objectives and deciding whether to mount exculpatory evidence; this concept flows from defendants’ Sixth Amendment rights, as well as the societal interests implicated in a fundamental right to a fair tribunal.181

While English negated McCoy’s autonomy in conceding his guilt, his rationale was in line with the “best interests trump autonomy” school of thought.182 English, aware of the unlikelihood of McCoy being given a life sentence (and even greater unlikelihood of an acquittal if McCoy presented his alibi) and Louisiana’s aggressive penal system, advocated for what he firmly believed to be his client’s best chance at life.183 McCoy’s vulnerability against a jury that “had death in their eyes,” therefore, required that English override McCoy’s unbelievable defense strategy and equip his client with the best chance of staying alive.184 English’s tactical concession carried with it the risk of a death sentence (which the jury eventually did issue), while failing to mount the mitigating evidence virtually guaranteed such a sentence.

178. Id. at 200.
179. Johnson, supra note 44, at 139.
180. See Sabelli & Leyton, supra note 133, at 200–01.
181. United States v. Farhad, 190 F.3d 1097, 1105 (9th Cir. 1999) (“The Due Process Clause of the Fifth Amendment guarantees every criminal defendant a fundamental, absolute right to a fair trial in a fair tribunal.”).
182. Mays, supra note 150.
183. McCoy v. Louisiana, 138 S. Ct. 1500, 1514 (2018); Mays, supra note 150 (“‘Larry kept saying to me that he didn’t want this boy to die on his watch,’ Ms. Brown said. ‘He felt the jury had death in their eyes.’”).
184. Mays, supra note 150.
2. The Community’s Interest in a Fair Adjudication

The right to a fair trial extends to society too. The community at large—whether that be the defendant’s own jurisdiction or the nation—has an interest that is independent of the accused’s in ensuring the integrity of societal institutions. This concern is elevated in capital cases where punishment is irrevocable. The risks of a punishment assigned as the result of an ill-advised defense strategy may justify counsel’s intervention over the defendant’s objection. The consequences of an unreliable conviction resulting from a defendant’s refusal to mount potentially mitigating evidence are not limited to the defendant: family, defense counsel, and taxpayers suffer in the wake of such errors, and it is the community that must square taking an individual’s life and liberty. A nation’s criminal justice system is representative of the society in which it exists. In the United States, specifically, individuals serve on juries, elect judges, and, perhaps most importantly, act with deference to the penal code. The community’s collective interest in a strong adversarial system, where capital defendants are given the best line of defense, therefore must outweigh individuals’ ability to express their autonomy against their own self-interest. When a court reviews a capital sentence, it often does so on the premise that society has an interest in the integrity of its criminal punishment systems and in the dignity through which those processes are conducted. The damage inflicted by an “incorrect” verdict is not mitigated by the explanation that the defendant exercised his right to “autonomy” and went to jail as a result of his own efforts to assert his prerogative, against the behest of counsel. As Justice Burger describes in his dissent in Faretta, “The system of criminal justice should not be available as an instrument of self-destruction.”

The life-or-death stakes in capital cases can push some attorneys to place their own sense of morality and duty to their client ahead of their client’s decisions. For these attorneys, the goal of preventing the government from sentencing an individual to death outweighs the attorneys’ usual obligation to respect their client’s autonomy. Society also has an interest in assuring that the death penalty is administered reliably. This reliability requires that all mitigating evidence (and possibly concessions,

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185. Sabelli & Leyton, supra note 133, at 209.
186. Bonnie, supra note 164, at 1369.
187. Id. at 1370.
188. See id. at 1370–71.
189. See Johnson, supra note 44, at 117–18.
190. See Sabelli & Leyton, supra note 133, at 209.
191. Id.
192. Bonnie, supra note 164, at 1369.
194. Id. at 840.
195. Sabelli & Leyton, supra note 133, at 196.
196. Id. at 196–97.
197. Bonnie, supra note 164, at 1382.
if those might serve to reduce an individual’s sentence) be presented, thus, overriding the defendant’s autonomy. In a brief written on McCoy’s behalf, Professor Lawrence J. Fox wrote that by adhering to a client’s defense strategy, “[i]t means some clients on death row may be committing suicide, but that’s their choice to make.” This sentiment ignores that while individuals sentenced to death still retain a degree of constitutionally protected autonomy, as mentioned by Professor Fox, individuals are not automatically permitted to choose a punishment that bears on society’s collective conscience. Because the criminal justice system speaks in the name of society, each member of society is implicated when the state executes one of its own citizens. Allowing for attorneys to override their clients’ wishes on a concession or presentation of mitigating evidence is vindicated by society’s interest in preventing that moral decision from weighing on the consciences of its citizens.

C. The Court Places the Value of Autonomy Above Meaningful Access to Justice

In its most basic form, the Sixth Amendment reflects the idea that the assistance of counsel is necessary to obtain a fair trial. Though the text of the Amendment does not offer an explanation of what constitutes “assistance,” courts have interpreted the Amendment to ensure certain safeguards for the accused and some degree of parity between the defendant and the government during the adversarial process. An additional justification for the Amendment is securing defendants’ access to justice. Despite courts’ recognition that forgoing counsel is often unwise, courts also often disregard the extent to which a defendant’s access to justice depends on effective representation by counsel. Allocating outcome determinative decisions—like whether to concede guilt against overwhelming evidence—to capital defendants not versed in the intricacies of law does neither of those. Adopting an allocation theory that makes the

198.  Id.
199.  Mays, supra note 150.
200.  See Bonnie, supra note 164, at 1376; Mays, supra note 150.
201.  See Note, Rethinking the Boundaries of the Sixth Amendment Right to Choice of Counsel, 124 HARV. L. REV. 1550, 1550, 1556–57 (2011).
204.  McCoy v. Louisiana, 138 S. Ct. 1500, 1508 (2018) (“Some decisions, however, are reserved for the client—notably, whether to plead guilty, waive the right to a jury trial, testify on one’s own behalf, and forgo an appeal. Autonomy to decide that the objective of the defense is to assert innocence belongs in this latter category. Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant’s own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial.”).
205.  Poulin, supra note 203.
lawyer the presumptive decision maker on issues of concession would allow for more predictable, consistent, and reliable administration of justice.\textsuperscript{206}

From the canon of American legal history, there is indication that the Sixth Amendment arose out of a general mistrust of the judiciary during the colonial era.\textsuperscript{207} Today, standards put in place by the ABA ensure that clients enlisting the assistance of counsel are armed with a “loyal and zealous advocate[]” thereby fulfilling the implicit promise of access to the courts.\textsuperscript{208} Additionally, courts have implemented mechanisms for review, which provide defendants with access to an appeal and lessen the possibility that defendant will receive a wrongful conviction.\textsuperscript{209} The McCoy Court takes a literal approach to the text of the Sixth Amendment, emphasizing that access to meaningful representation should be categorized as mere assistance.\textsuperscript{210} Read broadly, the Court appears to relegate the role of defense attorneys to merely a vehicle for voicing defense objectives that, based on their expertise, will put their client’s liberty (and sometimes life) in jeopardy.

Prohibiting defense counsel from making what they believe to be life-saving concessions only sets them up for failure to fulfill the duty of zealous advocacy they are bound to.\textsuperscript{211} This is especially true for indigent defendants who rely on the courts to appoint counsel, and who look to the courts for relief in instances of inadequate representation.\textsuperscript{212} While the historic underpinnings of the Amendment also hint at a desire to prevent government intrusion in the lives of criminal defendants, interpreting the Sixth Amendment as a fundamental right to reject counsel’s advice regarding the defendant’s best interests only sets defendants up for the possibility of more government intrusion in the form of incarceration.

Access to justice can be manifested in several forms: legal services, legal research materials, procedural know-how, and methods of navigating the courts themselves.\textsuperscript{213} Counsel can function as a channel through which

\begin{itemize}
\item \textsuperscript{206} Johnson, \emph{supra} note 44, at 51–52.
\item \textsuperscript{207} See Hashimoto, \emph{supra} note 2, at 1167–68.
\item \textsuperscript{208} CRIMINAL JUSTICE STANDARDS FOR THE DEF. FUNCTION \S \textsuperscript{4-1.2(b)} (AM. BAR ASS'N 2015).
\item \textsuperscript{209} See Johnson, \emph{supra} note 44.
\item \textsuperscript{209} McCoy v. Louisiana, 138 S. Ct. 1500, 1508 (2018) (quoting Faretta v. California, 422 U.S. 806, 819–20 (1975)).
\item \textsuperscript{211} Johnson, \emph{supra} note 44, at 62–63; see also Christopher Slobochin & Amy Mashburn, The Criminal Defense Lawyer’s Fiduciary Duty to Clients with Mental Disability, 68 FORDHAM L. REV. 1581, 1612 (2000).
\item \textsuperscript{212} Poulin, \emph{supra} note 203, at 1215–16.
\item \textsuperscript{213} See John F. Decker, \emph{The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After Faretta}, 6 SETON HALL CONST. L.J. 483, 535–36 (1996); Poulin, \emph{supra} note 203, at 1215–16.
\end{itemize}
defendants can gain access to otherwise unobtainable materials. For example, clients who elect representation gain the advantages of having counsel knowledgeable of how to compel discovery and with access to research tools the clients would otherwise be without. This knowledge and these tools will in turn provide for the jury a more accurate account of the facts of the case will result in a more reliable verdict. Represented defendants, unlike their pro se counterparts, retain the right to additional protection through appellate advocacy. Additionally, the ABA dictates that defense counsel “advocate with courage and devotion” and not “execute any directive of the client which violates the law or [ethical] standards.”

While people are often rightly suspicious of being told that they do not know what is best for themselves, a good practitioner cannot stand idly by when clients make self-defeating decisions. In fact, some clients might choose to exercise their autonomy by ceding to the authority of their attorney, and have legal decisions made for them. Rather, it should be regarded as part of a larger scheme of values that also includes deferral to legal expertise and zealous advocacy on behalf of the defendant.

D. Allocating Decisions to Defendants Ignores the Injustices Faced by Vulnerable Populations

Given the bleak success rates of defendants who elect to go against the advice of counsel or proceed pro se, there is a strong argument that the lawyer should be appointed as the primary decision maker. This allocation of responsibility, however, could possibly be viewed as an assault....


215. Poulin, supra note 203, at 1275–76. Though there is a valuable discussion to be had on the barriers faced by pro se litigants, and the idea that defendants should not be made to make a “Hobson’s choice” between an ill-equipped attorney and self-representation, the crux of this Comment is how defendants are better served by assenting to their attorneys’ strategies.

216. CRIMINAL JUSTICE STANDARDS FOR THE DEF. FUNCTION § 4-1.2(b) (AM. BAR ASS’N 2015).

217. See Fred C. Zacharias, Limits on Client Autonomy in Legal Ethics Regulation, 81 B.U. L. Rev. 199, 203 (2001) [hereinafter Zacharias, Limits] ("[T]he professional responsibility codes regulate uninformed client decisionmaking to minimize the risk that the exercise of autonomy will be self-destructive.")

218. See Fred C. Zacharias, Coercing Clients: Can Lawyer Gatekeeper Rules Work?, 47 B.C. L. Rev. 455, 455–56 (2006) ("[L]awyers . . . have special expertise that often leads clients to defer to their recommendations.")

219. See Zacharias, Limits, supra note 217, at 203–06 (describing the justifications for overriding client decisions).

220. See Stephan Landsman, The Growing Challenge of Pro Se Litigation, 13 LEWIS & CLARK L. REV. 439, 442 (2009). While data on nationwide pro se litigant success rates are virtually nonexistent, scholars find that pro se litigants—and, by analogy, those who proceed against the advice of their counsel—across the country typically face the same issues: lack of technical procedural knowledge, general mistrust of the court system, and unrealistic expectations of their cases’ outcomes. See id. at 440, 449–53; Uphoff & Wood, supra note 104, at 52–53.
to the autonomy and dignity of criminal defendants who have already borne the loss of their privacy and freedom. Equipping defendants with zealous advocates and allowing those advocates to present the most effective defense, per their professional judgment, actually protects defendants’ dignity and autonomy by equipping them with the most tactically advantageous route possible.

It has been argued that thrusting a lawyer upon a defendant can only serve to engender distrust toward the legal system and will deepen the divide between wealthy and indigent clients. Additionally, public defenders—while ostensibly governmental agents—are not immune from ineffective assistance of counsel claims, thus, allowing ill-served defendants a form of recourse. While it is true that one need not be equipped with a law degree to exercise common sense, attorneys are in a unique position to navigate the justice system and, therefore, are more likely to see that their client obtains either an acquittal or lesser sentence. Indeed, equipping defendants with a zealous advocate like English—specifically defendants charged with capital offenses—could help to ensure that clients, regardless of economic standing, are afforded equal access to justice and are not relegated to the outcomes predicted by Justices Burger and Ginsburg.

There is also an economic argument for prohibiting defendants from undermining counsel’s efforts. Aside from the wrenching effects a wrongful conviction would have on a defendant’s family and community, there are enormous costs associated with incarcerating individuals. Our country’s prison population is higher than that of any other nation and comes at the expense of taxpayers. Indigent defense spending, on the other hand, has remained largely inadequate. While there are a myriad of issues surrounding indigent defense (and therefore not discussed in this

221. See Hashimoto, supra note 2, at 1174.
222. Johnson, supra note 44, at 111–12.
223. See Zelnick, supra note 5, at 368.
224. See, e.g., Johnson, supra note 44, at 41–44.
226. Johnson, supra note 44, at 117.
228. See, e.g., HOLLY R. STEPHENS ET AL., AM. BAR ASS’N, STATE COUNTY AND LOCAL EXPENDITURES FOR INDIGENT DEFENSE SERVICES FISCAL YEAR 2008, at 30 (2010), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/is_sclaid_def_expenditures_fy08.authcheckdam.pdf. Indigent defense in Louisiana, where McCoy was tried, is funded by the county, primarily by traffic tickets and local court fees. Id. A majority of districts utilize private attorneys who contract their services. Id. Louisiana spent a total of $45,391,629 on indigent defense for the 2008 fiscal year. Id. By contrast, the Colorado State Public Defender, which employs approximately 300 trial attorneys, spent $81,270,241 that same year. Id. at 17. The Colorado Public Defender’s Office is funded entirely by the state and in 2008 had roughly the same population as Louisiana. Compare id., with id. at 30.
Comment), there is an argument that public defenders are not given sufficient opportunity to establish meaningful relationships with those who rely on them, and as a result, are not capable of providing meaningful representation as guaranteed by the Sixth Amendment. A strong public defense fund will allow for increased efficiency; ensure the legitimacy of the criminal justice system; and, above all, see that defendants are given proper assistance of counsel.

A final, grave consideration concerns criminal defendants suffering from mental illness. In instances where a client is found competent to stand trial, but whose lawyer knows or reasonably believes suffers from a mental illness, the lawyer may be faced with a question of whether his client’s autonomy demands his deference to the client or if concerns about decision-making or decorum justify disclosure. Defendants with mental illness may be able to interact with their attorney sufficiently to meet the threshold competency requirements, but the uncertain nature of the client’s decision-making ability may make the attorney reluctant to abide by those decisions. As a result, the lawyer may take on a paternalistic role. For example, an attorney may be compelled to raise doubts about a client’s decisional competence if the defendant instructs the attorney not to present mitigating evidence at a sentencing proceeding. That same attorney, however, might not feel obligated to raise similar concerns if a client assents to a recommendation. The defendant, aware of the consequences of mental health disclosure, may feel tacit pressure to comply with the attorney’s strategy at every turn, thus negating their autonomy entirely. Again, the purpose of this Comment is not to delve into mental health and the justice system, but in the context of attorney–client decision-making, it could be suggested that “gray-area” defendants—like McCoy—not be penalized harshly if their attorney raises issues of competency with the court. As the competency model stands now, the consequences associated with raising competence (including involuntary commitment and submission to intrusive examinations) may have a chilling effect on attorneys broaching the defendant’s mental condition. Additionally, courts and professional associations might consider making mental health awareness events a required component of Continuing Legal Education for members

229. See Uphoff, supra note 111, at 797.
230. Slobogin & Mashburn, supra note 211, at 1584.
233. Id. at 559.
234. Id.
236. Id. at 1599 (“The better way to deal with these concerns is not to lower the competency standard arbitrarily, but to ensure that the consequences of an incompetency finding are not onerous. Moreover, if a utilitarian analysis is to inform conclusions about the proper competency test, it is not clear that the costs of an incompetency finding outweigh the benefits.”).
of the criminal law field. Learning best practices for competent representation of mentally ill persons will only make for fairer proceedings and more effective defenses.

CONCLUSION

The Court’s decision in *McCoy* introduces a problematic version of lawyer–client relationship decision-making and diminishes the value of the current adversary system. Defense counsel—now prohibited from presenting concessions over their client’s often ill-advised rationale—could see a trend of client distrust and a breakdown of a relationship they have a duty to protect. Defendants, on the other hand, will see increased courtroom freedoms, and possibly serious sentencing consequences flowing from a lack of attorney-driven decisions. Empowering attorneys to make decisions about trial objectives in their clients’ best interests is the only way to ensure defendants’ fundamental Sixth Amendment right to assistance of counsel.

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