

THE CRIME, THE CASE, THE KILLER COCKTAIL: WHY MARYLAND'S CAPITAL PUNISHMENT PROCEDURE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT

I. INTRODUCTION

"[D]eath is different . . ." ¹ It is this principle that establishes the death penalty as one of the most controversial topics in legal history, even when implemented only for the most heinous criminal acts. ² In fact, "[n]o aspect of modern penal law is subjected to more efforts to influence public attitudes or to more intense litigation than the death penalty." ³ Over its long history, capital punishment has changed in many ways as a result of this litigation and continues to spark controversy at the very mention of its existence. ⁴

This Comment will address the newest controversy in capital litigation: The possibility of undue pain and suffering caused to a defendant executed by lethal injection. Central to this emerging issue is a Supreme Court case, *Hill v. McDonough*, ⁵ and a Maryland case, *Evans v. State*. ⁶ *Hill* became the foundation for capital challenges based on the unconstitutionality of the method of execution. ⁷ Although the court has yet to render a decision in *Evans*, this case could forever affect Maryland's capital punishment structure, and potentially abolish the death penalty in Maryland.

As no decision on a controversial issue of law can be reached without a firm grasp of the history of that issue, this Comment will begin with an examination of the history of capital punishment both

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1. *Gregg v. Georgia*, 428 U.S. 153, 188 (1976).
 2. See THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES v (Hugo Adam Bedau ed., 1997).
 3. J. Richard Broughton, *The Second Death of Capital Punishment*, 58 FLA. L. REV. 639, 640 (2006).
 4. See FRANKLIN E. ZIMRING & GORDON HAWKINS, CAPITAL PUNISHMENT AND THE AMERICAN AGENDA xiv-xvi (1986).
 5. 126 S. Ct. 2096 (2006).
 6. As of January 4, 2008, an opinion has not been rendered in *Evans*. Mr. Evans's suit was filed in the U.S. District Court in Baltimore City under Chief Judge Benson Legg.
 7. Gail Gibson & Jennifer McMenamin, *Death Row Appeals Backed; Justices Allow More Challenges to Lethal Injection and New Claims of Innocence*, BALT. SUN, June 13, 2006, at 1A.