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Rebecca A. Miller-Rice

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THE "INSANE" CONTRADICTION OF *Singleton v. Norris*: FORCED MEDICATION IN A DEATH ROW INMATE'S MEDICAL INTEREST WHICH HAPPENS TO FACILITATE HIS EXECUTION

I. INTRODUCTION

[I]diots and lunatics are not chargeable for their own acts, if committed when under these incapacities: no, not even for treason itself. Also, if a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it: because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried: for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of nonsane memory, execution shall be stayed: for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution.¹

Ever present and alive in the United States, the death penalty and the issues surrounding its execution continue to be at the forefront of ethical debate. Currently on the table in Arkansas is the issue of forced medication which facilitates a death row inmate's execution. For years, the states have prohibited execution of the insane, with the United States Supreme Court mandating the same in *Ford v. Wainwright*.² But the Court's decision still leaves the question of what should be done with death row inmates who are mentally ill. Should the state allow an insane man to suffer from his mental illness, or should it medicate him, subjecting him to death?

Recently, the Arkansas Supreme Court made this decision for all mentally ill Arkansas death row inmates who require forced medication. In *Singleton v. Norris*,³ the Court held that it is permissible for the state to force medication upon a mentally ill death row inmate even if the collateral effect of the medication is the facilitation of his execution. It is questionable whether the *Singleton* decision comports with prior decisions of the United States Supreme Court surrounding the forcible medication issue.

Although the legal community might have assumed that this quandary had been resolved after the state decisions in *Louisiana v.*

1. *Ford v. Wainwright*, 477 U.S. 399, 406-07 (1986) (quoting 4 W. BLACKSTONE, COMMENTARIES *24-*25).

2. 477 U.S. 399 (1986).

3. 338 Ark. 135, 992 S.W.2d 768 (1999), *cert. denied*, 120 S. Ct. 808 (2000).

*Perry*⁴ and *Singleton v. South Carolina*,⁵ holding respectively that the states of Louisiana and South Carolina cannot forcibly medicate an inmate solely to facilitate his execution, any such assumptions are misguided. The Arkansas Supreme Court's recent decision on the issue gives cause to ponder the law surrounding the forcible medication to execute issue.

This comment will attempt to examine that law as it now exists and the ramifications of the *Singleton* decision for the future. Part II provides a brief synopsis of the history and justifications for the death penalty, as well as the development of and reasoning behind the prohibition against execution of the insane. Part III examines the caselaw surrounding the forced medication issue relating to prisoners and its application to death row inmates. Part IV analyzes the Arkansas Supreme Court's decision in *Singleton*, and Part V concludes that the Arkansas decision may in fact call into question the State of Arkansas's overall ability to force medication upon death row inmates pursuant to *Washington v. Harper*.⁶

II. PHILOSOPHY OF THE DEATH PENALTY AND ITS APPLICATION TO MENTALLY ILL DEATH ROW INMATES

The death penalty has long existed in the United States, recorded as early as 1608 in Jamestown Colony; each of the colonies punished crimes against the state, person, and property by public hanging.⁷ Even with the adoption of the Eighth Amendment prohibiting cruel and unusual punishment, capital punishment survived; it was thought that the amendment only prohibited extreme forms of the death penalty, such as "crucifixion or burning at the stake."⁸ The death penalty continues to be a traditional form of punishment in thirty-eight states⁹ with the

4. 610 So. 2d 746 (La. 1992).

5. 437 S.E.2d 53 (S.C. 1993).

6. 494 U.S. 210 (1990).

7. See Hugo Adam Bedau, *Background and Developments, in THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES* 3, 3 (Hugo Adam Bedau ed., 1997).

8. *Id.* at 4.

9. See Kristen Wenstrup Crosby, Comment, *State v. Perry: Louisiana's Cure-to-Kill Scheme Forces Death-Row Inmates to Choose Between a Life Sentence of Untreated Insanity and Execution*, 77 MINN. L. REV. 1193, 1193 (1993); Laurence A. Grayer, *Against the Global Trend: Support for the Death Penalty Continues to Expand Within the United States*, 7 INT'L LEGAL PERSP. 1, 10 (1995); Henry Schwarzschild, *The Death Penalty in the United States: A Commentary and Review*, 22 AM. J. CRIM. LAW 247, 247 (1994). Twelve states (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin) plus the District of Columbia do not have the death penalty. See Death Penalty Information Center, *State*

exception of a few states abolishing it in the 1900s.¹⁰ Opinion polls demonstrate that the majority of Americans have supported its use in the past; however, the numbers decrease when the inquiries are more specific about how the death penalty should be applied and whether, as a juror, one would support a sentence of death.¹¹

Death penalty advocates commonly cite retribution and deterrence to support its invocation.¹² One commentator submits the death penalty also incapacitates individuals from committing subsequent offenses.¹³ Today, however, this punishment applies not only to the rationally minded, but to mentally ill inmates on death row as well.

Many death row inmates will become mentally ill or incompetent after serving time on death row due to the stressors involved.¹⁴ Some inmates who enter the system with pre-existing mental conditions find those conditions are exacerbated by the harsh environment of death row.¹⁵ Others with no previous mental illness develop mental disorders

by *State Death Penalty Information* (visited Mar. 28, 2000) <<http://www.essential.org/dpic/firstpage.html#Notes>>.

10. The few states to abolish the death penalty during the 1900s did so as a part of the "movement to abolish the death penalty by state legislative reform." Bedau, *supra* note 7, at 8. Those states abolishing the death penalty completely included Arizona, Kansas, Minnesota, Missouri, North Dakota, Oregon, South Dakota, Tennessee, and Washington. See Bedau, *supra* note 7, at 8.

11. See Douglas Mossman, M.D., *The Psychiatrist and Execution Competency: Forging Murky Ethical Waters*, 43 CASE W. RES. L. REV. 1, 12-13 (1992).

12. See David L. Katz, Note, Perry v. Louisiana: *Medical Ethics on Death Row—Is Judicial Intervention Warranted?*, 4 GEO. J. LEGAL ETHICS 707, 709 (1991). Katz defines retribution as "restoring a previously existing equilibrium 'to what it had been before the offensive behavior had been committed.'" *Id.* (quoting Wolfgang, *The Medical Model Versus the Just Deserts [sic] Model*, 16 BULL. AM. ACAD. PSYCHIATRY L. 111, 113 (1988)). Deterrence "is the act or process of discouraging others from acting in a similar behavior." *Id.*

13. See Jack P. Gibbs, *Preventive Effects of Capital Punishment other than Deterrence*, in THE DEATH PENALTY IN AMERICA 103, 106 (Hugo A. Bedau ed., 1982). Incapacitation is defined as "keeping a particular killer from killing again." Phoebe C. Ellsworth & Samuel R. Gross, *Hardening of the Attitudes: Americans' Views on the Death Penalty*, in THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES, *supra* note 7, at 90, 98.

14. See Keith Alan Byers, *Incompetency, Execution, and the Use of Antipsychotic Drugs*, 47 ARK. L. REV. 361, 367 (1994).

15. See Robert M. Harding, "Endgame:" *Competency and the Execution of Condemned Inmates—A Proposal to Satisfy the Eighth Amendment's Prohibition Against the Infliction of Cruel and Unusual Punishment*, 14 ST. LOUIS U. PUB. L. REV. 105, 114 (1994). Professor Harding cites Michael Perry as an example of an individual whose "reality has continued to be negatively affected" after starting out in the system with mental deficiencies and severely deteriorating following his incarceration. *Id.* at 114-15 (discussing Michael Perry of *State v. Perry*, 610 So.2d 746 (La. 1992), discussed *infra* Part III.B.1). Also of interest to those in Arkansas, Professor Harding points to Ricky Ray Rector as another death row inmate who entered with a mental illness and

upon incarceration on death row.¹⁶ The stressors affecting these death row inmates are numerous:

[I]t has been stated that "[o]ne of the least common and possibly the most stressful of all human experiences is the anticipation of death at a specific moment and time and in a known manner." In addition to the stress accompanying the knowledge of looming death, the very nature of being on death row places an individual in a position where he is more susceptible to becoming incompetent. Specifically, "death row inmates generally experience social isolation and a lack of exercise, education, and work programs; family visits are infrequent and burdened with security restrictions."¹⁷

Even though it has deemed the death penalty acceptable for retribution and deterrence purposes, the United States Supreme Court has placed some limitations on its use, especially as it concerns mentally ill death row inmates.¹⁸ The most profound limitation on its use is the prohibition of using the death penalty against an insane person.¹⁹ Courts have historically justified the prohibition in several ways: (1) the execution of the incompetent "offends general notions of humanity," (2) execution of a "madman does not successfully achieve deterrence," (3) an incompetent person cannot "'suffer' for committing the crime" because of his inability to understand the punishment, (4) religious beliefs, and (5) the belief that a mentally ill person is "punished by his madness alone."²⁰ However rationalized, this prohibition brings forth

deteriorated after incarceration. See *id.* at 115 (discussing Ricky Ray Rector of *Rector v. Clark*, 923 F.2d 570 (8th Cir. 1991), whose mental illness was indicated by the fact that he shot himself in the head prior to trial).

16. See *id.*

17. Byers, *supra* note 14, at 367-68 (internal citations omitted). Professor Harding notes one study in which inmates exhibited upon condemnation the following tendencies: "suspicious[ness]," "grandiose[ness]," "progressive[] depress[ion]," and "paranoi[a] after being incarcerated on death row." Harding, *supra* note 15, at 115 (quoting Harvey Bluestone, M.D., & Carl L. McGahee, M.D., *Reaction to Extreme Stress: Impending Death by Execution*, 119 AM. J. PSYCHIATRY 393 (1962)).

18. See Rhonda K. Jenkins, Comment, *Fit to Die: Drug-Induced Competency for the Purpose of Execution*, 20 S. ILL. U. L.J. 149, 151 (1995).

19. See *Ford v. Wainwright*, 477 U.S. 399 (1986). The prohibition against executing the insane existed prior to the decision in *Ford*, stemming from the English common law. See Eric M. Kniskern, *Does Ford v. Wainwright's Denial of Executions of the Insane Prohibit the State from Carrying Out Its Criminal Justice System?*, 26 S.U.L. REV. 171, 179 (1999).

20. Harding, *supra* note 15, at 110-12. The United States Supreme Court also cited several reasons for prohibiting the execution of the insane in its opinion in *Ford v. Wainwright*. Specifically, Justice Marshall stated that this bar was necessary because execution of the insane "ha[d] been branded 'savage and inhuman,'" served as no

another issue: "[W]hether a state can force an incompetent inmate to take medication that would render him competent to be executed," the very question addressed in *Louisiana v. Perry* and *Singleton v. South Carolina*.²¹ Further still is the question posed to the Arkansas Supreme Court in *Singleton v. Norris*: whether the state can force medication upon a death row inmate for reasons other than making the inmate competent to be executed when the collateral effect is that the inmate becomes competent to be executed while on the medication.

In answering these questions, the Louisiana, South Carolina, and Arkansas supreme courts have turned to three significant United States Supreme Court decisions for guidance. These Supreme Court cases addressed whether or not one can execute an insane person, whether it is a violation of a prisoner's rights to forcibly medicate him against his will, and whether forced medication during trial violates a defendant's rights. These Supreme Court decisions are fundamental to understanding inmates' rights and the lower courts' decisions.

III. LEADING CASES AT THE INTERSECTION OF MENTAL HEALTH AND CRIMINAL LAW

A. The Early Cases—*Ford*, *Harper*, and *Riggins*

1. *Ford v. Wainwright*

In *Ford v. Wainwright*,²² the United States Supreme Court upheld what had already been the practice in many states for some time²³—the

example to others, offended humanity, disallowed the offender the chance to become "ready" religiously, and because the insanity served as its own punishment. *Ford*, 477 U.S. at 406-07.

21. Mossman, *supra* note 11, at 6.

22. 477 U.S. 399 (1986).

23. See *id.* at 401. The Court noted that it was "keep[ing] faith with our common-law heritage" by formally prohibiting execution of the insane. *Id.* Each of the fifty states proscribes execution of the insane. See Kniskern, *supra* note 19, at 179. Arkansas Code Annotated section 16-90-506(d)(1) outlines Arkansas's procedure for dealing with a death row inmate suspected to be incompetent:

When the Director of the Department of Correction is satisfied that there are reasonable grounds for believing that an individual under sentence of death is not competent, due to mental illness, to understand the nature and reasons for that punishment, the director shall notify the Deputy Director of the Division of Mental Health Services of the Department of Human Services. The Director of the Department of Correction shall also notify the Governor of this action. The Division of Mental Health Services shall cause an inquiry to be made into the mental condition of the individual within thirty (30) days

prohibition of executing prisoners suffering from insanity.²⁴ In support of its conclusion that the Eighth Amendment prohibits execution of an insane prisoner, the Court noted the historical underpinnings of its position, particularly that such an execution violates the Eighth Amendment protection against cruel and unusual punishment.²⁵ For

of receipt of notification. The attorney of record of the individual shall also be notified of this action, and reasonable allowance will be made for an independent mental health evaluation to be made. A copy of the report of the evaluation by the Division of Mental Health Services shall be furnished to the Division of Mental Health Services of the Department of Correction, along with any recommendations for treatment of the individual. All responsibility for implementation of treatment remains with the Division of Mental Health Services of the Department of Correction.

(A) If the individual is found competent to understand the nature of and reason for the punishment, the Governor shall be so notified and shall order the execution to be carried out according to law.

(B) If the individual is found incompetent due to mental illness, the Governor shall order that appropriate mental health treatment be provided. The director may order a reevaluation of the competency of the individual as circumstances may warrant.

ARK. CODE ANN. § 16-90-506(d)(1) (Michie Supp. 2000).

24. Although the courts in their opinions regarding the death penalty frequently use the terms interchangeably, there is, in fact, a substantial difference between the legal terms "competency" and "insanity." Arkansas Code Annotated section 5-2-302 addresses incompetency at the time of trial, also known as lack of fitness to proceed: "No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or to assist effectively in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures." ARK. CODE ANN. § 5-2-302 (Michie Repl. 1997). Insanity at the time of the crime, or lack of capacity, is set forth in Arkansas Code Annotated section 5-2-312:

(a) It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged, he lacked capacity, as a result of mental disease or defect, to conform his conduct to the requirements of law or to appreciate the criminality of his conduct.

(b) As used in this code the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) When a defendant is acquitted on grounds of mental disease or defect the verdict and judgment shall so state.

ARK. CODE ANN. § 5-2-312 (Michie Repl. 1997). Consequently, one could be insane when he committed the offense, but competent to understand the proceedings at trial. As it applies to the context at hand, *Ford* dictates that the insane person cannot be executed because he cannot understand the punishment, completely co-mingling the two concepts of insanity and incompetence. For an excellent review of the terms and their meanings and application to Arkansas law, see J. Thomas Sullivan, *Psychiatric Defenses in Arkansas Criminal Trials*, 48 ARK. L. REV. 439 (1995).

25. The Eighth Amendment provides in its entirety: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

instance, the Court stated that Blackstone deemed the practice of executing the insane "savage and inhuman."²⁶ In discussing various commentators' suggestions on the subject, the Court noted Sir Edward Coke's opinion that execution of a "mad man" is a "miserable spectacle," violative of law, "of extream [sic] inhumanity and cruelty," and serves no example to mankind.²⁷ The Court concluded that a prisoner petitioning a state court under habeas corpus must be afforded a factfinding procedure "adequate to afford a full and fair hearing"²⁸ to

U.S. CONST. amend. VIII.

26. *Ford*, 477 U.S. at 406 (citing 4 W. BLACKSTONE, COMMENTARIES *24-*25).

27. *Id.* at 407 (quoting 3 H. COKE, INSTITUTES (6th ed. 1680)). The Court continued: Other commentators postulate religious underpinnings: that it is uncharitable to dispatch an offender "into another world when he is not of a capacity to fit himself for it." Hawles 477. It is also said that execution serves no purpose in these cases because madness is its own punishment: *furiosus solo furore punitor*. Blackstone *395. More recent commentators opine that the community's quest for "retribution"—the need to offset a criminal act by a punishment of equivalent "moral quality"—is not served by execution of an insane person, which has a "lesser value" than that of the crime for which he is to be punished. Hazard & Louisell, *Death, the State, and the Insane: Stay of Execution*, 9 UCLA L. Rev. 381, 387 (1962). Unanimity of rationale, therefore, we do not find. "But whatever the reason of the law is, it is plain the law is so." Hawles 477. We know of virtually no authority condoning the execution of the insane at English common law.

Ford, 477 U.S. at 407-08 (footnote omitted).

Justice Powell, in his concurring opinion in *Ford*, provided additional commentary regarding the differing theories behind the prohibition of executing the insane. *See id.* at 418 (Powell, J., concurring). First, Justice Powell discussed the theory that such a prohibition was necessary to preserve a defendant's ability to defend himself. *See id.* at 419 (Powell, J., concurring) (citing 1 M. HALE, PLEAS OF THE CROWN 35 (1736) and 4 W. BLACKSTONE, COMMENTARIES *388-*389). Justice Powell dismissed this first theory as having little merit today because of the modern protections afforded defendants, such as the right to effective assistance of counsel at trial and upon appeal, as well as the right to trial itself, and the notion that a defendant must be competent before being tried. *See id.* at 420-21 (Powell, J., concurring). The second theory behind the prohibition was one supported by "humanitarian concerns." *Id.* at 419 (Powell, J., concurring). Justice Powell suggested that this second theory is the sustaining reason behind the prohibition today. *See id.* at 421 (Powell, J., concurring). Justice Powell noted that one of the standards behind the state's goal in execution is that the prisoner know and understand why the execution is occurring. *See id.* at 422 (Powell, J., concurring). Hence Justice Powell would have held that "the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it." *Id.* (Powell, J., concurring).

28. *See Ford*, 477 U.S. at 418. Doctor David Shapiro suggests that a psychologist's participation in a *Ford* hearing could violate the American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct*. David L. Shapiro, *Ethical Dilemmas for the Mental Health Professional: Issues Raised by Recent Supreme Court Decisions*, 34 CAL. W. L. REV. 177, 192-93 (1997). Specifically, Shapiro notes that Standard 1.14 calls on psychologists to "avoid harm". . . . If one believes that

determine the question of competence to be executed.²⁹ Additionally, the Court stated that any hearing not providing the defendant or his counsel with an opportunity to present relevant information regarding his sanity, or precluding the consideration of such information, would violate due process.³⁰

2. *Washington v. Harper*

In a case extremely pertinent to *Singleton v. Norris*, the United States Supreme Court addressed the issue of forcing medication upon prisoners in *Washington v. Harper*.³¹ In *Harper*, the Court found that the inmate has "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment."³²

executing another human being is harm, then participating in such evaluations at all could be seen as a violation of Standard 1.14." *Id.* Standard 1.14 states: "Psychologists take reasonable steps to avoid harming their patients or clients, research participants, students, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable." AMERICAN PSYCHOLOGICAL ASSOCIATION, ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT § 1.14, at 5 (1992).

29. *Ford*, 477 U.S. at 418. The Court held that Florida's statute did not provide such an "adequate" determination. *See id.*

30. *See id.* at 414. For Arkansas's provisions, see *supra* note 23.

31. 494 U.S. 210 (1990).

32. *Id.* at 221-22. The Fourteenth Amendment provides in part:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

The Court noted that forced medication substantially interferes with a prisoner's liberty:

The purpose of the drugs is to alter the chemical balance in a patient's brain, leading to changes, intended to be beneficial, in his or her cognitive processes. While the therapeutic benefits of antipsychotic drugs are well documented, it is also true that the drugs can have serious, even fatal, side effects. One such side effect identified by the trial court is acute dystonia, a severe involuntary spasm of the upper body, tongue, throat, or eyes. . . . Other side effects include akathisia (motor restlessness, often characterized by an inability to sit still); neuroleptic malignant syndrome (a relatively rare condition which can lead to death from cardiac dysfunction); and tardive dyskinesia, perhaps the most discussed side effect of antipsychotic drugs. Tardive dyskinesia is a neurological disorder, irreversible in some cases, that is characterized by involuntary, uncontrollable movements of various muscles, especially around the face.

After determining that the "reasonable relation" test was the proper standard to apply in evaluating the state's interest,³³ the Court held that "the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others *and* the treatment is in the inmate's medical interest."³⁴ The Court went on to hold that decisions regarding the medical interests of the prisoner, such as the decision to medicate, are best decided by members of the medical profession, rather than the judiciary.³⁵

3. *Riggins v. Nevada*

Finally, in *Riggins v. Nevada*,³⁶ the United States Supreme Court examined whether "forced administration of antipsychotic medication during trial violated rights guaranteed by the Sixth and Fourteenth Amendments."³⁷ In its analysis, the Court reiterated its earlier holding in *Harper* that forced medication interferes with an individual's liberty, with the result that due process permits forcing medication onto inmates only upon a showing of dangerousness to self or others and medical

Harper, 494 U.S. at 229-30 (internal citations omitted).

33. See *Harper*, 494 U.S. at 223. Namely, the regulation must be "reasonably related to legitimate penological interests." *Id.* (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). The Court noted that in *Turner* it deemed this standard applicable to any case in which the "needs of prison administration implicate constitutional rights." *Id.* at 224. To determine whether the challenged regulation was reasonable, the Court outlined three factors defined in *Turner*: (1) whether there is a rational connection between the regulation and the governmental interest, (2) what impact the constitutional right will have on prison officials and other inmates, and (3) the lack of other alternatives. See *id.* at 224-25. In *Harper*, the Court stressed that the state's interest in prison safety must be considered. See *id.* at 223.

34. *Id.* at 227 (emphasis added). In his concurrence, Justice Blackmun offered an interesting solution—he suggested that in appropriate cases the mentally ill prisoner be committed, presumably to a state mental institution, to better protect the prisoner and the prison staff and population, as well as the state and its physician. See *id.* at 236-37 (Blackmun, J., concurring).

35. See *id.* at 231. Indeed, two doctors profess that the opposite is occurring. Doctors Alfred M. Freedman and Abraham L. Halpern suggest that psychiatrists are being torn professionally between their traditional ethical principles and pressure from "certain segments of the legal profession." Alfred M. Freedman, M.D. & Abraham L. Halpern, M.D., *The Erosion of Ethics and Morality in Medicine: Physician Participation in Legal Executions in the United States*, 41 N.Y.L. SCH. L. REV. 169, 181-82, 186 (1996) (citing Barbara A. Ward, *Competency for Execution: Problems in the Law and Psychiatry*, 14 FLA. ST. U. L. REV. 35, 68-99 (1986)).

36. 504 U.S. 127 (1992).

37. *Id.* at 132-33.

appropriateness.³⁸ Relying on these requirements, the Court stated that once Riggins requested that his medication be terminated, the state was then obligated to make the *Harper* showings before continuing forcible medication.³⁹ Because the State had failed to make such a showing, the Court reversed Riggins's case and remanded it.⁴⁰ The Court based its decision on the fact that the side effects⁴¹ of the forced medication⁴² may have impacted Riggins's appearance, his testimony, his "ability to follow the proceedings," or his interactions with his counsel.⁴³ Such effects, the Court noted, could impair Riggins's constitutionally protected trial rights.⁴⁴

This trilogy of cases left open a pressing issue which the United States Supreme Court has yet to address: whether a state may medicate a prisoner to competency thereby facilitating his execution. To date,

38. See *id.* at 134-35 (citing *Harper*, 494 U.S. at 227, 229).

39. See *id.* at 135. The necessary but undemonstrated showings were that (1) "antipsychotic medication was medically appropriate" and (2) "essential" for Riggins's and others' safety. See *id.*

40. See *id.* at 138.

41. The Court's record included information that the dosage of Mellaril given to Riggins could make him "uptight," might cause drowsiness or confusion, and possibly akinesia, which affects thought processes in extreme cases. See *Riggins*, 504 U.S. at 137.

42. In Riggins's case, Mellaril was the forced medication used. See *id.* at 129. PDR.net specifies that Mellaril is used to treat psychotic disorder symptoms, as well as adult depression and anxiety. Its side effects may include:

[a]bnormal and excessive secretion of milk, agitation, anemia, asthma, blurred vision, body spasm, breast development in males, changed mental state, changes in sex drive, chewing movements, confusion (especially at night), constipation, diarrhea, discolored eyes, drowsiness, dry mouth, excitement, eyeball rotation, fever, fluid accumulation and swelling, headache, inability to hold urine, inability to urinate, inhibition of ejaculation, intestinal blockage, involuntary movements, irregular blood pressure, pulse, and heartbeat, irregular or missed menstrual periods, jaw spasm, loss of appetite, loss of muscle movement, mouth puckering, muscle rigidity, nasal congestion, nausea, overactivity, painful muscle spasm, paleness, pinpoint pupils, protruding tongue, psychotic reactions, puffing of cheeks, rapid heartbeat, redness of the skin, restlessness, rigid and masklike face, sensitivity to light, skin pigmentation and rash, sluggishness, stiff, twisted neck, strange dreams, sweating, swelling in the throat, swelling or filling of breasts, swollen glands, tremors, vomiting, weight gain, [and] yellowing of the skin and whites of eyes[.]

PDR.net, *PDR Family Guide to Prescription Drugs* (visited Mar. 28, 2000) <[http://www.pdr.net/consumer/psrecord.htm?NS_doc_offset=0+NS_doc_returned=12&NS_adv_search=0+NS_search_set=lva0PXdTZe1022b809aaf\)2&NS_template_dir=&NS_initial_frm=1](http://www.pdr.net/consumer/psrecord.htm?NS_doc_offset=0+NS_doc_returned=12&NS_adv_search=0+NS_search_set=lva0PXdTZe1022b809aaf)2&NS_template_dir=&NS_initial_frm=1)>.

43. *Riggins*, 504 U.S. at 137.

44. See *id.* The Court noted that an essential state interest could justify trial prejudice, but that in the case at hand, there was no basis. See *id.* at 138.

three states have confronted this issue: Louisiana, South Carolina, and Arkansas.

B. Forced Medication Solely to Facilitate Execution—*Perry* and *Singleton*

1. *Louisiana v. Perry*

The Supreme Court of Louisiana was the first state supreme court to address whether the state could force medication upon a prisoner against his will to attain his competency in order to execute him.⁴⁵ Specifically, the court examined whether the state could “circumvent” the “prohibition against execution of the insane” in order to execute Michael Owen Perry.⁴⁶ Perry had been diagnosed with schizophrenia at the age of sixteen and had been committed to mental institutions on several occasions due to psychotic symptoms.⁴⁷ Following his commitment and treatment pursuant to a sanity commission’s recommendation, Perry was found competent to stand trial, withdrew his insanity plea, pled not guilty, and was convicted of five counts of murder.⁴⁸ He was later found competent to be executed only if medicated.⁴⁹

45. See *State v. Perry*, 610 So. 2d 746 (La. 1992). The United States Supreme Court had vacated the trial court’s original order and remanded the case for reconsideration in light of *Harper*. See *id.* at 748. After the trial court reinstated the forcible medication order, the Louisiana Supreme Court granted certiorari and rendered its decision. See *id.* The Court noted that Perry was unquestionably insane and incompetent for execution absent antipsychotic drugs. See *id.* at 749.

46. *Id.* at 747. The Louisiana Constitution provides for a right to privacy in Article 1, section 5:

Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

LA. CONST. art I, § 5. The state’s prohibition against cruel and unusual punishment can be found in Article 1, section 20: “No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.” LA. CONST. art. I, § 20.

47. See *Perry*, 610 So. 2d at 748.

48. See *id.*

49. See *id.*

The Supreme Court of Louisiana stated that any circumvention of the prohibition would violate a prisoner's rights under the state's constitution by violating the right to privacy and by constituting cruel and unusual punishment as it "fails to measurably contribute to the social goals of capital punishment."⁵⁰ The court discussed *Ford*, noting that "the practice of executing the insane is thrice barred in [this] state, i.e., by the state and federal constitutions and by the decisions of this court."⁵¹ Next the court distinguished *Harper* on the grounds that forcibly medicating to facilitate execution is not medical treatment, "but [that it] is antithetical to the basic principles of the healing arts."⁵² The Louisiana Supreme Court also noted that the state had failed to make the necessary showings dictated by *Harper*,⁵³ and that *Harper* itself implied that forcible medication could not be used for punishment.⁵⁴

In examining the medical ethics of "drugging for execution,"⁵⁵ the court found that any actions by the state solely for that purpose could not be construed as medical treatment.⁵⁶ For a doctor to administer medication solely to facilitate a prisoner's competency for the purpose of execution would be unethical and "contrary to the goals of medical treatment."⁵⁷ As a result, these unethical actions actually prevent the

50. See *id.* at 747.

51. *Id.* at 750.

52. *Id.* at 751.

53. See *Perry*, 610 So.2d at 751. Specifically, the court noted that *Harper* requires a state to show that its regulation "rationally seeks to further both the best medical interest of the prisoner and the state's own interest in prison safety before it may inject a prisoner with antipsychotic drugs against his will," and that the state in this case had failed to show either. *Id.*

54. See *id.* at 751-52. In contrasting the goal of the state in *Harper* (to forcibly medicate a prisoner in his own best interest) with that of the state in *Perry* (to medicate in order to implement execution), the Louisiana Supreme Court remarked "in the present case, the state's involuntary use of drugs on *Perry* must be vindicated if at all as a procedure that legitimately forms part of his capital punishment. It cannot be justified under *Harper* because forcible administration of drugs to implement execution is not medically appropriate." *Id.* at 754.

55. See *id.* at 752. Some suggest that the reason that physicians encounter the drugging-to-execute issue more frequently than in the past is because of recent pharmacological successes and the increased population of "condemned insane." Katz, *supra* note 12, at 712-13.

56. See *Perry*, 610 So.2d at 752.

57. *Id.* The court explained:

If any physician administers drugs forcibly and thereby enables the state to have the inmate declared competent for execution, the doctor knowingly handles the prisoner harmfully and contrary to his ultimate medical interest. The physician's abstention from dispensing the drugs, however, perpetuates suffering that ordinarily the physician is duty-bound to allay by treatment. If the drugs are forcibly administered by a person who is not a physician,

prisoner from obtaining appropriate medical treatment.⁵⁸ The court concluded that forced medication solely to facilitate competency to execute fails to be medical treatment, but instead becomes part of the state's capital punishment.⁵⁹

Additionally, the court noted that because *Harper* stood for the premise that "overriding justification and a determination of medical appropriateness" must be found in order to forcibly medicate, the *Harper*

what occurs is devoid of any pretense of medical treatment or compliance with the principles of medical ethics. Therefore, the forcible medication of a prisoner merely to improve his mental comprehension as a means of rendering him competent for execution actually prevents the prisoner from receiving adequate medical treatment for his mental illness.

Id. (internal citations omitted).

Doctor Robert T.M. Phillips points out that the Council on Ethical and Judicial Affairs of the American Medical Association issued the following guidance in a recent report regarding situations where a prisoner has been declared incompetent to be executed: "[P]hysicians should not treat the prisoner to restore competence unless a commutation order is issued. . . . [However, i]f the incompetent prisoner is undergoing extreme suffering as a result of psychosis[,] . . . medical intervention intended to mitigate the level of suffering is ethically permissible." Robert T.M. Phillips, *The Psychiatrist as Evaluator: Conflicts and Conscience*, 41 N.Y.L. SCH. L. REV. 189, 199 (1996) (quoting COUNCIL ON ETHICAL & JUDICIAL AFFAIRS, AMERICAN MED. ASS'N, *Physician Participation in Capital Punishment: Evaluations of Prisoner Competence to be Executed; Treatment to Restore Competence to be Executed*, CEJA Report 6-A-95, at 4 (1995)). For those interested, the 1998 movie *Dead Man Out*, starring Danny Glover and Ruben Blades, depicts the dilemma faced by a psychiatrist whose goal is to make a prisoner competent to execute.

58. See *Perry*, 610 So. 2d at 752.

59. See *id.* at 753. The court noted several effects of the "forcible medicate-to-execute structure:"

First, the patient's autonomy rights are violated because he is not permitted to weigh the benefits and risks of a proposed course of treatment in consultation with his physician as is required in seeking the patient's best medical interest. . . . Second, the forcible nature and lethal repercussions of the state's involuntary antipsychotic drug regimen preclude a trustful, communicative doctor-patient relationship that is essential to psychiatric therapy. . . . Third, since the physician cannot serve two masters, there is a substantial concern that the patient's well-being may be subordinated to the duty the doctor owes the state. . . . Fourth, for all of the foregoing reasons, and because of the incompatibility of the interests of the state and the prisoner, both of which the physician is required to further, the death penalty is apt to be implemented arbitrarily and capriciously. . . . Fifth, a psychiatrist's administration of involuntary medication may constitute being "a participant in a legally authorized execution" contrary to the ethical code of the American Medical Association, as adopted and interpreted by the American Psychiatric Association. . . . Sixth, blurring the distinction between healing and punishing denigrates the "deep-seated social interest in preserving medical care, in actuality and in perception, as an unambiguously beneficent healing art."

Id. at 752-53 (internal citations omitted).

holding was inapposite to *Perry*.⁶⁰ Inasmuch as Louisiana's purpose in medicating Perry was solely to facilitate his execution, the court found that it was different from Nevada's goal in *Harper* which was to medicate Harper in his medical interest.⁶¹ Consequently, the court deemed Louisiana's real goal in *Perry* to be his capital punishment rather than medical treatment and the state's objective of medicating to execute was not justifiable under *Harper* because it was not "medically appropriate."⁶²

2. *Singleton v. South Carolina*

The next case to examine the medicate-to-execute issue was *Singleton v. South Carolina*.⁶³ However, the South Carolina Supreme Court only examined the issue after considering the applicable standard for competency for execution.⁶⁴ Noting that *Ford* did not set forth the standard,⁶⁵ the court proceeded through a common law analysis and adopted a "slightly modified standard . . . which satisfies the mandates of federal due process, the common law, and the South Carolina Constitution."⁶⁶ Regarding forced medication to attain competency, the court examined and dismissed *Harper* and *Riggins* as being inapplicable because although they outlined the federal due process considerations, they failed to address South Carolina's constitutional question.⁶⁷ Instead, the South Carolina Supreme Court looked to *Perry* for guidance.⁶⁸ Noting the Louisiana court's reliance on its state constitu

60. *Id.* at 753-54.

61. *See id.* at 754.

62. *See id.*

63. 437 S.E.2d 53 (S.C. 1993).

64. *See id.* at 55.

65. *See id.* at 56.

66. *Id.* at 57-58. Specifically, the court adopted a two-prong analysis to determine competency for execution:

The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

Id. at 58. In the court's view, *Singleton* in no way met this standard for competency. *See id.*

67. *See id.* at 60 (citing *Riggins v. Nevada*, 504 U.S. 127 (1992) (examining the issue of forced medication at trial, discussed *supra* Part III.A.3)).

68. *See id.* South Carolina's right to privacy is defined as:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable

tion's protection of the right of privacy, the South Carolina court followed Louisiana's lead. The court held that the South Carolina constitution provision against invasions of privacy was "strikingly similar" to Louisiana's, and when weighed with *Harper's* due process inquiry, any sanction by the state to force medication "solely to facilitate execution" would violate the inmate's right to privacy.⁶⁹ The court continued in its opinion, quoting the Hippocratic Oath⁷⁰ and examining the "thorny issue" of the "medical profession's ethical standards."⁷¹ Specifically, the court remarked that both the American Medical Society and the American Psychiatric Associations oppose physician participation in the "legally-authorized execution of a prisoner."⁷² Finally, the court pronounced a strong statement: "[W]e find that justice can never

invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

S.C. CONST. art. 1, § 10.

69. *Singleton*, 437 S.E.2d at 61. The court did note that the inmate has a "very limited" privacy interest when considered in comparison to the state's prison safety interest; "however, the inmate must be free from unwarranted medical intrusions." *Id.*

70.

I swear by Apollo the physician, by Aesculapius, Hygeia, and Panacea, and I take to witness all the gods, all the goddesses, to keep according to my ability and my judgment the following Oath: . . . I will prescribe regimen for the good of my patients according to my ability and my judgment and never do harm to anyone. To please no one will I prescribe a deadly drug, nor give advice which may cause his death. . . . I will preserve the purity of my life and my art. . . . In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill-doing . . .

Hippocrates c. 460-400 B.C., *STEDMAN'S MEDICAL DICTIONARY* 647 (4th Unabridged Lawyer's Ed. 1976) (quoted in *State v. Perry*, 610 So.2d 746, 752 (La. 1992)). For the complete text of the Hippocratic Oath, see *Compton's Encyclopedia Online* (visited Mar. 28, 2000) <http://www.optonline.com/comptons/ceo/03090.028_X.html>. The Oath is "the central document, the most often-cited summary of the physician's own understanding of what is morally required to be a good medical doctor." Katz, *supra* note 12, at 714 (quoting R. VEATCH, *A THEORY OF MEDICAL ETHICS* 18-19 (1981)).

71. *Singleton*, 437 S.E.2d at 61.

72. *Id.* The court explained: "Their reasoning is the causal relationship between administering a drug which allows the inmate to be executed, and the execution itself. They opine that the administration of the drug is responsible for the inmate's ultimate death." *Id.* (citing AMA Opinion 2.06 (prohibiting a physician from participating in a legally authorized execution)); see generally Donald H. Wallace, *Incompetency for Execution: The Supreme Court Challenges the Ethical Standards of the Mental Health Professions*, 8 J. LEGAL MED. 265 (1987); AMERICAN PSYCHIATRIC ASSOCIATION, *The Principles of Medical Ethics: With Annotations Especially Applicable to Psychiatry* §1(4) (1985); *Capital Punishment*, Proc. House Delegate AMA 85 (1980)).

be served by forcing medication on an incompetent inmate for the sole purpose of getting him well enough to execute."⁷³

IV. *SINGLETON v. NORRIS*—THE ARKANSAS INTERPRETATION

In the most recent case to examine the issue of medication facilitating execution, *Singleton v. Norris*,⁷⁴ the Arkansas Supreme Court, in effect, ignored both the Louisiana and South Carolina decisions that had examined the forcible medication/execution issue. Instead, the Arkansas Supreme Court conducted its own analysis, seemingly ignoring an important prong in the two-part test set out in *Harper*.

Charles Singleton was convicted of murder in 1979 and sentenced to death.⁷⁵ After receiving psychiatric treatment for several years, Singleton voluntarily ceased taking his prescribed antipsychotic medication in 1997.⁷⁶ In July 1997, Doctor Oglesby, a psychiatrist with the Arkansas Department of Corrections, found that Singleton was again psychotic, suffering from delusions and paranoid schizophrenia.⁷⁷ Subsequently, a Medication Review Panel allowed his psychiatrist to forcibly medicate him with the drugs Prolixin and Cogentin.⁷⁸ During

73. *Id.* at 62.

74. 338 Ark. 135, 992 S.W.2d 768 (1999), *cert. denied*, 120 S. Ct. 808 (2000).

75. *See id.* at 136, 992 S.W.2d at 769. Singleton is one of thirty-nine inmates currently on death row in Arkansas. *See Arkansas Department of Corrections: Inmates on Deathrow* (visited Mar. 13, 2000) <<http://www.state.ar.us/doc/death.htm>>.

76. *See Singleton*, 338 Ark. at 136, 992 S.W.2d at 769.

77. *See* Petition for Writ of Habeas Corpus Under Authority of 28 U.S.C. § 2241 at 9, *Singleton v. Norris* (Feb. 11, 2000) (No. 5:00CV00043 GTE).

78. *See id.*; *Singleton*, 338 Ark. at 136, 992 S.W.2d at 769. Prolixin, also known as Fluphenazine, is used to treat disordered thoughts. Its side effects include:

[B]lurred vision, breast enlargement in men or women[;] breast milk in women who are not breast-feeding[;] chest pain, fast or irregular heartbeat[;] confusion[;] restlessness[;] dark yellow or brown urine[;] difficulty breathing or swallowing[;] dizziness or fainting spells[;] drooling[;] shaking[;] movement difficulty (shuffling walk) or rigidity[;] fever, chills, sore throat[;] hot, dry skin[;] unable to sweat[;] involuntary or uncontrollable movements of the eyes, mouth, head, arms, and legs[;] menstrual changes, puffing cheeks, smacking lips, or worm-like movements of the tongue[;] seizures (convulsions), slurred speech[;] stomach area pain[;] sweating, unusual weakness or tiredness[;] unusual bleeding or bruising[;] [and] yellowing of skin or eyes.

MSN Health Channel, *Fluphenazine* (visited Mar. 28, 2000) <http://content.health.msn.com/content/asset/cp_drug_803>. Cogentin, also known as Benzotropine, is used to treat movement-related side effects of psychotropic medications, such as tremor, rigid muscles and difficulties in walking, talking, balancing and swallowing. Its side effects include:

[A]gitation, nervousness[;] blurred vision, or other eye problems[;]

this time, Singleton lost his final round of appeals, and Governor Huckabee set the execution date of March 11, 1998.⁷⁹ Consequently, Singleton filed a complaint and petition for declaratory judgment and petition for issuance of all writs and orders necessary to enforce in the Jefferson County Circuit Court.⁸⁰ Singleton hoped to receive a stay of execution from the trial court.⁸¹ He also sought a stay in the Arkansas Supreme Court.⁸² Following the denial of Singleton's petition for declaratory judgment by the circuit court,⁸³ Singleton appealed the decision to the Arkansas Supreme Court, arguing that the trial court erred in finding that his involuntary medication was appropriate.⁸⁴ Specifically, Singleton claimed that he was "artificially" competent to be executed by way of the forced medication in violation of his state and federal due process rights, his right to be free from cruel and unusual punishment, his right to be free from unreasonable searches and seizures, and his right to privacy and autonomy.⁸⁵

The Arkansas Supreme Court rejected his argument and held that "regardless of whether an execution date was set," the state's actions were justified in light of *Harper*, for the good of both the prisoner and

confusion, memory, loss, slurred speech, hallucinations (seeing or hearing things that are not really there); decrease in sweating; difficulty breathing; difficulty swallowing; dizziness or fainting; fast, or irregular heartbeat (palpitations); pain or difficulty passing urine; vomiting; [and] weakness or tiredness.

MSN Health Channel, *Benzotropine* (visited Mar. 28, 2000) <http://content.health.msn.com/content/asset/cp_drug_265>.

79. See *Singleton*, 338 Ark. at 136-37, 992 S.W.2d at 769.

80. See *id.* at 137, 992 S.W.2d at 769.

81. See *id.*, 992 S.W.2d at 769.

82. See *id.* Singleton was granted a stay by the Arkansas Supreme Court in *Singleton v. Norris*, 332 Ark. 196, 964 S.W.2d 366 (1998).

83. The trial court found that Singleton was competent at the time of the hearing and that he had failed to "'conclusively' prove[] . . . that [he] is incompetent to be executed without his medication." *Singleton*, 338 Ark. at 138, 992 S.W.2d at 770 (no citation provided by the court).

84. See *id.* at 137, 992 S.W.2d at 769.

85. See *id.*, 992 S.W.2d at 769. Singleton asserted these rights under the Fourth Amendment, and Article 2, section 15 of the Arkansas Constitution, and Arkansas Code Annotated section 16-90-506. See *id.*, 992 S.W.2d at 769. Article 2, section 15 of the Arkansas Constitution provides:

The right of the people of this State to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

ARK. CONST. art. II, § 15. It is almost identical to the Fourth Amendment's provision.

the institution.⁸⁶ Notably, the court stated, "the involuntary administration of medication remains appropriate as long as appellant is alive and is either a potential danger to himself or others."⁸⁷ The court explicitly relied on the state's expressed intention for forcing the medication, for Singleton's "own good" and the institution's, as contrasted with any intention to make him competent to be executed.⁸⁸ The court also focused on the fact that Singleton had never challenged the appropriateness of the forced medication under *Harper*, i.e., that he was dangerous to himself or others and that the medication was in his medical interest.⁸⁹ Stating that Singleton had never requested a *Ford* hearing while off his medication, the court declared that Singleton had failed to prove his incompetence.⁹⁰

Because Singleton failed to challenge *Harper* and did not appeal the Medication Review Panel's decision to forcibly medicate him, the court held that the State had met its burden under *Harper* to prove the necessity of forced medication at the Panel hearing.⁹¹ Further, because Singleton never requested a *Ford* hearing and thus had no proof of his incompetence to be executed, *Harper* controlled the present case and the mere "collateral effect of the involuntary medication rendering him competent to understand the nature and reason for his execution is therefore no violation of any due process law."⁹² Justice Thornton disagreed with the majority's opinion, noting that under *Harper*, medication which renders a prisoner competent to be executed cannot be in the prisoner's medical interest.⁹³

V. CONCLUSION

Although it had seemed that mentally ill death row inmates were protected from being forcibly medicated solely for execution purposes, it is now clear that the Arkansas Supreme Court has found an "out" in *Singleton v. Norris*. In order to escape the rationales of the Louisiana and South Carolina cases, the State of Arkansas only needed to provide some other justification for the use of medication forced upon a death row inmate. In Singleton's case, the state argued that the safety of the

86. See *Singleton*, 338 Ark. at 138, 992 S.W.2d at 769.

87. *Id.*, 992 S.W.2d at 769.

88. See *id.*, 992 S.W.2d at 770.

89. See *id.*, 992 S.W.2d at 770.

90. See *id.* at 139, 992 S.W.2d at 770.

91. See *id.*, 992 S.W.2d at 770.

92. *Singleton*, 338 Ark. at 139, 992 S.W.2d at 770.

93. See *id.* at 139-40, 992 S.W.2d at 770-71 (Thornton, J., dissenting).

institution required him to be medicated; the Arkansas Supreme Court even stated that the medication was necessary for his "own good" and appropriate under *Washington v. Harper*. This statement by the court, however, allows the state to contradict the principle of *Washington v. Harper* and forcibly medicate an inmate contrary to his medical interest. Although the State of Arkansas maintains that its intent is to medicate Singleton because it is in his medical interest, the real effect of such medication is his execution. How, in light of the precedential caselaw surrounding this issue, can the state proceed with involuntarily medicating Singleton, knowing that it is facilitating his execution? How can the court accept that medication which ultimately results in a prisoner's death is in his medical interest and appropriate under *Harper*?⁹⁴ Is the State of Arkansas making the argument that the state's interest in prison safety overrides the prisoner's own medical interests? And if so, would it not be cruel and unusual punishment for a state to put its needs above the medical interests of the prisoner? These are the questions that the United States Supreme Court refused to answer when it denied certiorari. Hopefully, the Court will notice this contradiction of its mandates for forcible medication and examine the Arkansas Supreme Court's analysis or the reasoning of any other court which adopts the same position. The ultimate question should be what is in the prisoner's best interest: to allow him to remain mentally ill, or to medicate him, thereby temporarily curing his mental illness, but leading to his ultimate destruction?⁹⁵

Rebecca A. Miller-Rice*

94. Again, this is precisely the position that Justice Thornton takes in his dissenting opinion in *Singleton*.

95. Perhaps one way of solving this problem is that suggested by Doctors Freedman and Halpern: promote the Maryland way of dealing with incompetent death row inmates whereby any inmate requiring treatment has his sentence commuted to life without parole. See Freedman & Halpern, *supra* note 35, at 187 (citing MD. CODE ANN. [Crimes and Punishments] art. 27, § 75A (1987)).

* J.D., 2000, University of Arkansas at Little Rock School of Law; B.A., 1993, Rhodes College.

