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Early Jail and Prison Conditions Litigation in the Middle District Court

by William J. Sheppard

Today, jails and prisons throughout the Middle District of Florida (Middle District) are hardly places a person would want to spend the night. However, those currently incarcerated in the Middle District have had many rights secured for them which did not exist prior to the existence of that Court. The story of prison reform in the Middle District illustrates the power hardworking, courageous *pro se* plaintiffs, attorneys, and judges can wield to ensure all inmates receive the constitutional liberties and protections to which they are entitled.

Prior to the existence of the Middle District, inmates had few civil rights because state and local government entities could operate their jail and prison systems in virtually any manner they chose. This "hands-off" approach was a product of cases prior to the 1960s that denied inmates legal standing to interfere in the operations of state prisons. Prisoners themselves were unable to challenge the conditions of their confinement until the Supreme Court decisions in *Jones v. Cunningham*,[1] which granted inmates the right to challenge the legality and conditions of their imprisonment, and *Cooper v. Pate*,[2] which granted inmates standing to sue in federal court under the Civil Rights Act of 1871 (§1983). Before *Jones* and *Cooper*, almost any claim a prisoner could raise

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1 *Jones v. Cunningham*, 371 U.S. 236 (1963).

2 *Cooper v. Pate*, 378 U.S. 546 (1964).

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today relating to the conditions of his or her confinement would be dismissed for failure to state a claim.

Many of the cases in the Middle District before 1970 follow this pattern, because the federal courts seldom could intervene in matters regarding the self-regulation of prisons and jails. Even after the decisions in *Cooper* and *Jones*, the jails and prisons in the Middle District[3] and various other centers for incarceration throughout Florida remained in disarray for years. Cells were often packed with inmates upwards of four times their living capacity, adequate medical care was scarce, vermin ran rampant through the halls, and fights, rapes, murders, and suicides were commonplace.

Following the landmark decision in *Holt v. Sarver*,[4] courts throughout the Middle District received unprecedented numbers of complaints from prisoners alleging that they, too, were being deprived of their constitutional right to be free from cruel and unusual punishment. Many of the allegations related to overcrowded living conditions—a ballooning problem in the nation's jails and prisons during the 1960s and 1970s. Usually filed and argued *pro se*, most petitions were dismissed at the outset. Given the number of suits being filed, and with greater judicial scrutiny, it became apparent that many of these petitions had merit.

Judge William A. McRae presided over one of the earliest successful claims by a prison in the Middle District, *Coonts v. Wainwright*.[5] Coonts was a prisoner at the Doctors Inlet Road Prison in Florida in April and May of 1966. During that time, he helped other inmates, many of whom could neither read nor write in English, prepare petitions to state and federal courts. In May 1966, his prison posted a regulation which prohibited prisoners from assisting other inmates in the preparation of legal documents. In accordance with the new regulation, Coonts ceased aiding his fellow inmates with their legal filings and filed for injunctive relief, only to be placed in solitary confinement. He was then transferred to another prison

3 Jails in the State of Florida are used as places for pretrial detention as well as service of sentences less than one year. They are operated by the counties and municipalities in the State of Florida. State prisons are operated by the Florida Department of Corrections and house inmates who have been sentenced to serve a sentence of one year or more.

4 *Holt v. Sarver*, 300 F. Supp. 825 (E.D. Ark. 1969), held that the conditions within large portions of the Arkansas prison system constituted cruel and unusual punishment of inmates.

5 *Coonts v. Wainwright*, 282 F. Supp. 893 (M.D. Fla. 1968).

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and, yet again, placed in solitary confinement for more than eighteen months, until his court hearing in February 1968.

Finding no justification for the actions taken towards Coonts by both prisons, Judge McRae held that prohibiting inmates from assisting other inmates in the preparation of legal documents effectively denied those individuals access to state and federal courts, in violation of the Due Process Clause of the Fourteenth Amendment. Thereafter, the Department of Corrections was prohibited from enforcing the contested regulation. The Fifth Circuit Court of Appeals affirmed Judge McRae's decision, rejecting the state's argument that the regulation's purpose was to combat the unauthorized practice of law and manage discipline within the prison.[6] *Coonts* was an important early victory in the Middle District for the fight against unconstitutional conditions of confinement, but it was by no means the end of litigation.

Judge Charles R. Scott's imprint on jail and prison reform in the Middle District began with *Hooks v. Wainwright*,[7] in which he required the state to furnish law libraries and professional legal help to inmates. *Hooks* proved contentious because it went directly contrary to the "hands-off" approach employed at the time by the federal courts, but Judge Scott was by no means a stranger to controversy. Only two years earlier, the Governor of Florida, Claude R. Kirk Jr., appeared on television to denounce an order by Judge Scott which desegregated Volusia County School System buses, going so far as to call for his impeachment.

Why would a judge who had already incurred the ire of the highest ranking official in Florida get involved in the business of securing and protecting rights for those on the lowest rung of the social pecking order? The sentiment of many privy to the history of jail and prison litigation throughout the Middle District is that Judge Scott had genuine empathy for inmates and their circumstances. A theory proposed by others is that he used court appointment and encouraged class action suits to facilitate the resolution of the massive volume of jail and prison condition litigation during the 1960s and 1970s. This theory is exemplified in the similar and linked decisions of *Costello v. Wainwright* and

6 409 F.2d 1337 (1969).
7 *Hooks v. Wainwright*, 352 F. Supp. 163 (M.D. Fla. 1971).

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Miller v. Carson.[8] The two cases concurrently brought about the greatest changes to date regarding the conditions inside the Middle District's litigation.[9] These cases are widely seen as a hallmark of his time on the bench.

Costello was groundbreaking from its inception. Tobias Simon, one of the nation's most respected civil rights litigators, agreed to handle the case on behalf of the inmate plaintiffs. Representation by competent counsel helped the massive, complex class action—the docket alone was 250 pages—proceed more effectively and efficiently than the *pro se* litigation that had come before it. The complaints in *Costello* assailed the rampant overcrowding within Florida's prison system, alleging prisoners were denied adequate medical care as a result of overcrowding.

Judge Scott agreed with the plaintiffs. In his opinion, he observed that, at the time of the original filing in *Costello*, "the normal capacity for the existing institutions of the Division of Corrections was seven thousand (7,000) persons with a 'emergency' (as described by the defendants themselves) capacity of eighty-three hundred (8,300) inmates. The actual inmate population on February 8, 1973, was approximately ten thousand three hundred (10,300)."[10] Judge Scott enforced settlement agreements between the parties regarding the prison population, medical care, sanitation, and food service. The overcrowding settlement agreement, which finally codified the prison system's maximum capacity, mandated the population of the prison system could never exceed its maximum capacity. Ultimately, *Costello* would involve the Middle District of Florida, as well as the Fifth Circuit Court of Appeals, at least six additional times before being closed in 1992.

Years after litigation commenced regarding Florida's prison system, the state's jails—and the Duval county Jail in particular—remained epicenters of constitutional infringement. On June 11, 1974, the filing of a handwritten notice unleashed a flurry of reformations in jails throughout the Middle District. The note was written, not by a lawyer, city council member, or a prison official,

8 *Costello v. Wainwright*, 397 F.Sup. 20 (M.D. Fla. 1975) and *Miller v. Carson*, 401 F.Supp. 835 (M.D. Fla. 1975).

9 Judge Scott took senior status in 1976, but still kept review of these cases until his death in 1983.

10 *Costello*, 397 F.Supp. at 20. As of September 30,2012, the population in the Department of Corrections was in excess of 100,000 people.

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but by a lone inmate. Richard Franklin Miller, a federal detainee who was being temporarily housed in the Duval County Jail, filed a *prose* "Petition for Injunction" with the court. Judge Scott, who was privy to the legal issues because of his concurrent involvement in *Costello*, presided over the case. Within eight days, the court had ordered a complaint to be served on Sheriff Dale Carson, the sole defendant at the time, and had appointed an attorney well-known for his work regarding civil rights and constitutional law, William J. Sheppard, as counsel for the *pro se* plaintiff. With the court's grant of Miller's Motion to Proceed as a Class Action, ac case involving an individual temporary detainee quickly turned into another class action lawsuit.

The allegations in *Miller* were shocking. The jail was so overcrowded that the inmates had to eat standing up. Cells had become cesspools of infectious disease because inmates were crammed into tiny quarters with little or no plumbing. Restrictions on visiting privileges, telephone use, outdoor recreation, and religious freedom were commonplace. There was a severe lack of personnel. Inmate-on-inmate assaults were rampant, frequent, and ignored. Inmates could not meaningfully contest their inhumane treatment, because it was nearly impossible to secure witnesses or competent counsel. Library and law books were virtually non-existent.

On January 31, 1975, Judge Scott ordered the defendants to cease the violation of the inmates' constitutional rights and awarded them attorneys' fees. The defendants moved for relief from the injunction, and the court modified the injunction with respect to compliance for fire codes, treatment of juveniles, and outdoor recreation.[11] However, just a few months later, Judge Scott went so far as to hold the defendants in contempt and ordered them to show cause why the jail should not be closed. Like *Costello*, *Miller* wound up back in court four more times before the Duval County Jail was finally released from contempt in 1994, more than twenty years after Miller's original handwritten letter was presented to the Court.

Judge Scott remained active in *Miller* and *Costello* long after the original filings. By the time of his death in 1983, he had overseen

11 *Miller v. Carson*, 392 F.Supp. 515 (M.D. Fla. 1975).

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each case for the better part of a decade.[12] Through failure after failure of the administrators of the Florida prison system and the Duval County Jail to implement his respective orders, Judges Scott, Howell W. Melton, and Susan H. Black remained committed to ensuring justice was served. Their guidance and sound decision making in cases containing allegations as contentious as those in *Miller* and *Costello* make them true pioneers in the fight towards realizing the Constitution's promise of fair treatment of prisoners.

This fight continues. In 1996, without serious debate, Congress passed the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e), in an attempt to inhibit prisoner civil rights claims. The law's proponents claimed it was necessary to curtail abuse of the judicial process by prisoners filing meritless claims, but, in reality, litigation rates among prisoners had declined seventeen percent between 1980 and 1996. The PLRA erects a variety of procedural and substantive hurdles to prison conditions litigation, which the Ninth Circuit characterized as evidence of Congress' intent to revive the "hands-off" doctrine—the same doctrine which allowed and even encouraged the notorious prisoner rights violations that occurred before the 1970s.[13] During the year before PLRA passed, 1.6 million prisoners filed roughly 40,000 federal civil rights actions, but by 2005, under 25,000 actions were filed.

Despite decreasing the rate of prisoner lawsuits being filed, the PLRA does not appear to have led to a higher proportion of meritorious suits. If it had, one would expect the reduced pool of litigation since 1996 to have succeeded in court more often. Instead, the opposite had occurred: defendants have won more cases pretrial and have settled few cases.

However, though the PLRA may have posed a setback to prison reform efforts since 1996, the history of prisoner rights litigation both nationally and in the Middle District provides reason for

12 Following Judge Scott's death, Judge Howell W. Melton and Special Monitor Dr. Jerome E. Miller presided over *Miller* until its conclusion, ten years later. Judge Susan H. Black, Special Master Joseph R. Julin, and Monitor Robert W. Cullen presided over *Costello* with the appointment of its companion case *Celestineo v. Singletary*, 147 F.R.D. 258 (M.D. Fla. 1993), for ten more years also until 1993. See *Celestineo v. Singletary*, 147 F.R.D. 258 (M.D. Fla. 1993). Dr. Miller wrote a book about his experiences as monitor of the Duval County Jail. Miller, *Search and Destroy: African American Males in the Criminal Justice System* (New York: Cambridge University Press, 2d edition, 2011).

13 See *Gilmore v. California*, 220 F.3d 987, 990-92 (9th Cir. 200).

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continued vigilance against the abuse of inmates. It would have been easy for potential reformers to dismiss wholesale change as impossible in 1963, just a year before the Supreme Court's landmark ruling in *Cooper*, or in 1969 prior to the Eastern District of Arkansas' holding in *Holt*, or during the few years before Judge McRae's courageous 1968 ruling in *Coonts* and Judge Scott's groundbreaking 1972 *Costello* decision. Thanks to the tireless, often thankless efforts of individuals like Judge Scott, as well as *pro se* litigants, Michael Costello and Richard Miller, correctional institutions were forced to grant inmates their most basic rights. The political climate and judicial opinion are constantly changing, but the Constitution's animating principles are not and, for that reason, the fight against inhumane conditions of confinement can and should continue.