

ACLU

Minnesota

Criminalization of Homelessness Under the 8th
Amendment – McGee Moot Court Competition

BY Clare Diegel

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8th Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th Amendment

...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.

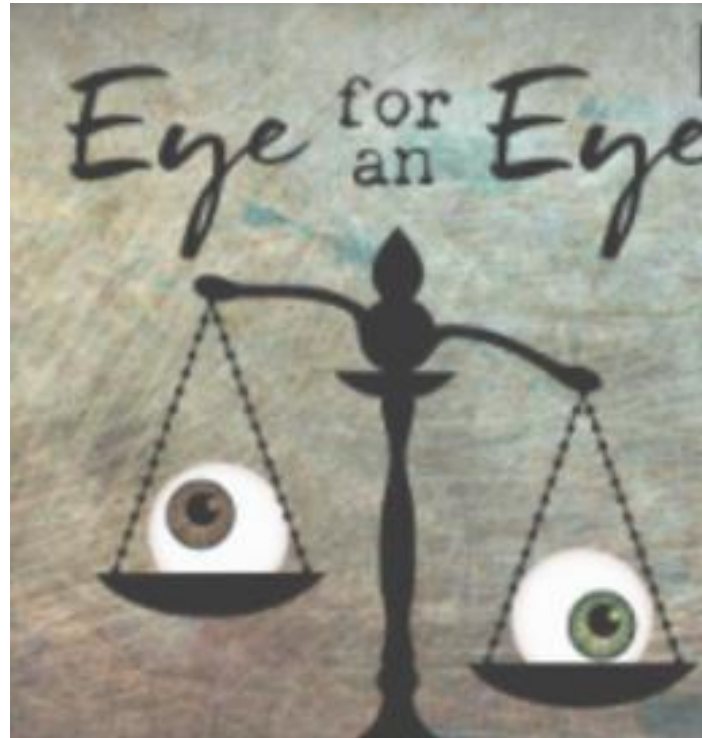
No Cruel & Unusual Punishment Allowed

Limits *type* of punishment



No Cruel & Unusual Punishment Allowed

Prohibits 'grossly disproportionate' punishment



No Cruel & Unusual Punishment Allowed

Limits type of punishment &
Prohibits 'grossly disproportionate' punishment



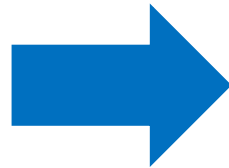
No Cruel & Unusual Punishment Allowed

Limits *what* the government may criminalize



***Robinson v. California*, 370 U.S. 660 (1962)**

Facts



Needle
marks/
scabs
on arms



Admits
to prior
drug
use

Misdemeanor conviction for
being “addicted to the use of narcotics,” with
penalty: 90 days in jail and 2 years probation

Under CA Law: “Addicted to” was a “status” or a
“chronic condition and not an act.”

Robinson v. California, 370 U.S. 660 (1962)

Law

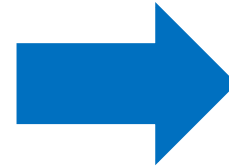
Holding: Criminalizing narcotic addiction is an unconstitutional infliction of cruel & unusual punishment

Key Findings:

- “In the light of **contemporary human knowledge**,” a law which made a **criminal offense of mental illness**, leprosy, or a venereal disease “would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. ”
- “[N]arcotic addiction is an **illness** . . . which may be contracted **innocently or involuntarily**”

Powell v. Texas, 392 U.S. 514 (1968)

Facts



Public
Intoxication



Arrested and fined
\$20 after conviction
for being “found in
a state of public
intoxication”

Trial judge: chronic alcoholism *not*
a defense, though court seemed to
accept that “**chronic alcoholism**”
was a “**disease**” that lead Powell to
be drunk in public “**involuntarily**”

Powell v. Texas, 392 U.S. 514 (1968)

Law

- Plurality opinion of 4-1-4 ➡ conviction **AFFIRMED**
 - Can't criminalize **STATUS** (addiction per *Robinson*)
 - Can criminalize **ACTS/CONDUCT**, even if “involuntary” (appearing in public drunk)
- Dissent: no criminalization for involuntary condition
 - Being drunk in public is **CONDITION**, not “**ACT**”
 - Per *Robinson*: behavior was **INVOLUNTARY**

Powell v. Texas, 392 U.S. 514 (1968)

STATUS v. ACT/CONDUCT =
distinctions w/o a difference

Per *Robinson*: “the chronic alcoholic with an **irresistible urge** to consume alcohol should not be punishable for drinking or being drunk”



Specific to Powell: No 8A violation
No evidence of compulsion to be in *public*.

Specific to chronic alcoholics who are homeless: 8A violation
resisting drunkenness is **impossible** and avoiding public places while intoxicated is **impossible**

In the end: White agreed with the plurality's result (affirming conviction) but was concerned about criminalizing involuntary conduct

***Powell v. Texas*, 392 U.S. 514 (1968)**

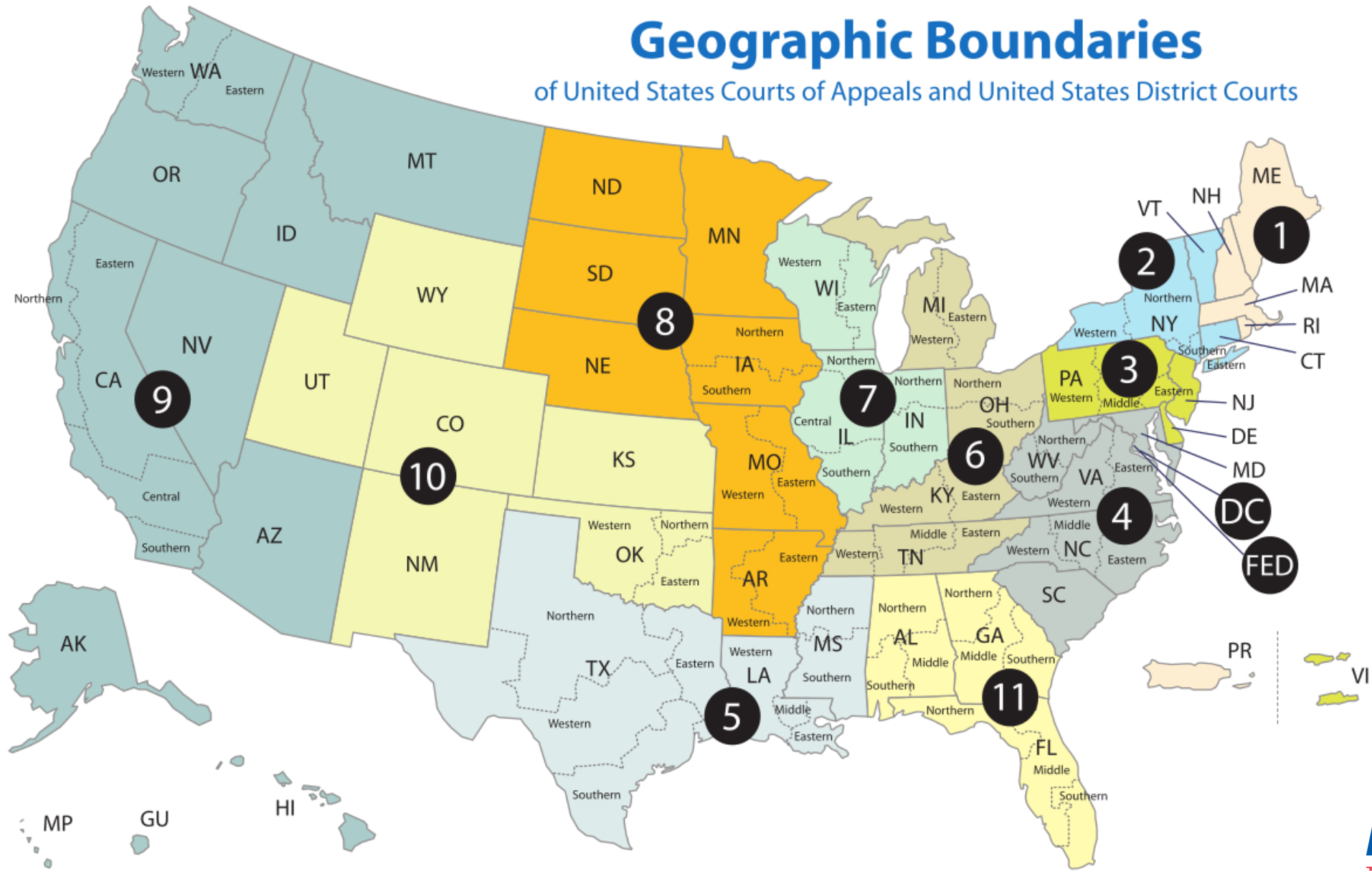
OH YES



I'M A MESS

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



Jones v. City of Los Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006),
vacated, 505 F.3d 1006 (9th Cir. 2007).

Facts



- Municipal law prohibited: sitting, sleeping, lying on public streets/sidewalks (except for viewing parades/using benches)
- Law applies at any time of day and in any place
- “Substantial shortage” of beds for largest homeless population in the U.S.

Jones v. City of Los Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006),
vacated, 505 F.3d 1006 (9th Cir. 2007).

Law

Holding: Eighth Amendment prohibits criminalizing the **unavoidable act** of sitting, lying, or sleeping at night while being **involuntarily homeless**.

Key Findings:

- Relied on *Robinson* and *Powell*:
 - whether sitting/lying/sleeping are acts or conditions, they are “universal and unavoidable consequences of being human”
 - Appellants/plaintiffs proved they were unable to stay off the street

Interesting Notes:

- Cites anti-camping ordinance that prohibits camping on public property...
- It was vacated!

Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019)

Facts



Very similar to ***Jones***:

- Challenge to TWO ordinances:
 - **Prohibited “camping”** at any time (camping = “the use of public property as a temporary or permanent place of dwelling/lodging/residence)
 - **Prohibited “occupying, lodging, sleeping in . . . public place”**
 - ****Amendments: not enforceable when shelters are full**
- Not sufficient space in shelters for homeless population

Martin v. City of Boise, 902 F.3d 1031(9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019)

Law

Holding: Under Eighth Amendment, **as long as there is no option of sleeping indoors**, the government cannot criminalize homeless people for involuntarily sleeping outdoors on in all public spaces

Key Findings:

- Relied heavily on *Jones* and the *Jones* court's reading of *Powell*: 5 justices found 8A bans punishment for involuntary act/condition that is unavoidable consequence of status
- Conduct and status here are inseparable

Interesting Notes:

- Cited 2000 11th Cir. case that upheld similar anti-camping ordinance under 8A when sufficient shelter existed (no 'involuntary behavior')
- En banc rehearing dissents: dispute about *Powell*

Other concerns at issue?

Joyce v. City & Cty. of San Francisco, 846 F. Supp. 843 (N.D. Cal. 1994)

(1) Is “homelessness” really a “status,” like drug addiction?

- Homeless is more of a “condition” than a “status” (like age, race, gender, national origin and illness)
- Social intervention can change the condition of those who are homeless (presumably unlike drug addiction?)
- Court didn’t want to weigh into “matters of social policy”

(2) *Powell’s Slippery Slope*: recognizing this status ➡ constitutional protection to any “involuntary” condition (pedophilia in *US v. Black* (7th Cir. 1997))

(3) **Federalism** (Black’s concurrence in *Powell & Joyce*): don’t want to limit State’s ability to deal with “societal problem” or “harmful conduct”

Food for Thought

- Is the distinction between status/act workable, or is it a legal fiction?
- If shelter was *not* available to Ms. Frocker (see 1st Am. argument), where is she supposed to sleep if not outside?
- Is *why* an individual may be homeless important in the assessment about whether their “status/conduct/condition” is involuntary? See *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992) (“[P]eople rarely choose to be homeless.”)
- Can the state prohibit defecating or urinating in public under *Martin* and *Jones*? (See *Joyce* & *Powell’s* slippery slope argument)



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