O'Neil v. Vermont (1892). John O'Neil was charged with making 307 sales of intoxicating liquor without authority. He was sentenced to pay a fine of $9,140 plus costs of $472.96 plus a month in prison at hard labor and, if not paid within that month, in accordance with the **Vermont** criminal statute, he was sentenced to hard labor in prison for **28,836 days** (**3 days per dollar**). The Supreme Court of Vermont held that the punishment imposed was not excessive...and reasoned: "If he has subjected himself to a severe penalty, it is simply because he has committed a great many such offences. It would scarcely be competent for a person to assail the constitutionality of the statute prescribing a punishment for burglary, on the ground that he had committed so many burglaries that, if punishment for each were inflicted on him, he might be kept in prison for life. The mere fact that cumulative punishments may be imposed for distinct offences in the same prosecution is not material...If the penalty were unreasonably severe for a single offence, the constitutional question might be urged; but here the unreasonableness is only in the number of offences which the respondent has committed."

[The United States Supreme Court refused to hear the appeal because (1) O'Neil did not raise the 8th Amendment as a ground for appeal and that is the only Federal question that would have been within its jurisdiction and (2) the 8th Amendment does not apply to the States.]

The case is most noted for the **Dissent** Justice Field authored when certiorari was refused: "...**28,836 days is 79 years!** Had he been found guilty of burglary or highway robbery, he would have received less punishment than for the offences of which he was convicted. It was six times as great as any court in Vermont could have imposed for manslaughter, forgery or perjury. It was one which, in its severity, considering the offences of which he was convicted, may justly be termed **both unusual and cruel**. **The Eighth Amendment is directed, not only against torture, but against all punishments which by their excessive length or severity are greatly disproportionate to the offences charged.** The State may, indeed, make the drinking of one drop of liquor an offence to be punished by imprisonment, but it would be an unheard-of cruelty if it should **count the drops in a single glass** and make thereby a thousand offences, and thus extend the punishment for drinking the single glass of liquor to an imprisonment of almost indefinite duration. The State has the power to inflict personal chastisement, by directing whipping for petty offences -- repulsive as such mode of punishment is -- and should it, for each offence, inflict twenty stripes it might not be considered, as applied to a single offence, a severe punishment, but yet, if there had been 307 offences committed, the number of which the defendant was convicted in this case, and 6,140 stripes were to be inflicted for these accumulated offences, the judgment of mankind would be that the punishment was not only

an unusual but a cruel one, and a cry of horror would rise from every civilized and Christian community of the country against it. It does not alter its character as cruel and unusual, that for each distinct offence there is a small punishment, if, when they are brought together and one punishment for the whole is inflicted, it becomes one of excessive severity." [Justice Field would have applied the 8th Amendment to the States.]