

Supreme Court Case Study 7



Evidence from Tapped Phone Lines

Olmstead v. United States, 1928

***** Background of the Case *****

Roy Olmstead and his partners imported and supplied alcoholic beverages. They were prosecuted, tried, and convicted in federal court for conspiracy to violate the National Prohibition Act. Much of the evidence presented at their trials was gathered by wiretapping three telephone lines used by Olmstead's office. None of the taps had been placed as a result of physical trespass on any defendant's property.

The Eighteenth Amendment, or Prohibition Amendment, effective from 1919 to 1933, was widely violated by ordinary citizens and so-called bootleggers, who supplied illegal liquor, yet these people were rarely prosecuted. Violations of the liquor law were so extensive that the government was unable to prosecute more than a small percentage of the bootleggers; securing evidence that would hold up in court was extremely difficult. One way of obtaining evidence against bootleggers was by wiretapping their telephones.

Constitutional Issue *****

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." The Fifth Amendment protects a person charged with a criminal offense from being a witness against himself or herself. The question before the Court in *Olmstead v. United States* was whether either of these amendments prohibited evidence obtained from telephone wiretaps.

***** The Supreme Court's Decision *****

The Court ruled 6 to 3 against Olmstead. Chief Justice William Howard Taft delivered the opinion of the Court.

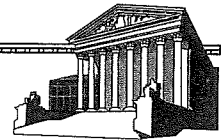
Olmstead had argued that because the prosecution's evidence came entirely from the wiretaps, it could not be used against him. He claimed he was protected by the Fourth Amendment against improper search and seizure, and by the Fifth Amendment against self-incrimination.

The Court confined its examination to Fourth Amendment questions. If the Fourth Amendment had not been violated, then neither had the Fifth Amendment since no one had compelled the defendants to speak over the telephone lines.

Justice Taft's decision turned on the issue of whether or not a wiretap was the constitutional equivalent of forcible entry. If so, the evidence obtained would be inadmissible in federal courts in accordance with previous decisions, such as in *Weeks v. United States*, 1914.

Taft held that the Fourth Amendment "shows that the search is to be of material things—the person, the house, his papers or his effects. The description of the warrant necessary to make the proceedings lawful is that it must specify the place to be searched and the person or things to be seized."

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Supreme Court Case Study 7 *(continued)*

Taft rejected any analogy to sealed letters, which the Court had held to be protected by the Fourth Amendment. Taft explained, “The United States takes no such care of telegraph or telephone messages as of mailed, sealed letters. The Amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants.” He insisted that it was an unwarranted expansion of the Fourth Amendment to apply it to hearing or sight.

The Court held further that telephone lines were not protected by the Fourth Amendment, since they “are not part of his house or office any more than are highways along which they are stretched. . . . The reasonable view is that one who installs . . . a telephone with connecting wires intends to project his voice to those outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment.”

Finally, Taft ruled that this holding was in accord with the generally accepted common rule that “if the tendered evidence was pertinent, the method of obtaining it was unimportant.” He concluded that “a standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore.”

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Justice Louis Brandeis disagreed with the Court's narrow view of the Fourth Amendment. He wrote, "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

The decision of the Court was harshly criticized, but it stood until the 1967 *Katz* case when it was overruled on the grounds that a trespass was unnecessary for a violation of the Fourth Amendment and that the Amendment protected intangibles, including conversations.



Questions

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. Why did the Supreme Court hold that the Fourth Amendment did not apply to wiretaps?
2. What did the Court say about the means by which evidence is obtained?
3. Suppose you had broken a law, and the police found evidence of your crime by breaking into your home. Under the *Olmstead* ruling, would the evidence be admissible in a trial?
4. What did Justice Brandeis mean when he said that in the Court's decision, the end justified the means?
5. Do you agree with the decision of the Court? Explain your answer.