

Olmstead Transcript

In this episode, Dr. Artello and Nia get in a DeLoren to Prohibition era and discuss a case on wiretapping, Fourth Amendment and privacy rights.

Nia: Hi Dr. Artello

Dr. Artello: Hi Nia.

Nia: I heard something interesting yesterday. That Supreme Court had allowed police to wiretap phone calls without a warrant. Is that true?

Dr. Artello: Nia, that is a great question. Whoever told you that is right.

Nia: How are they right?

Dr. Artello: In 1928, the Supreme Court decided the Olmstead case, which allowed warrantless wiretaps.

Nia: How did they make that decision? Sounds stupid to me.

Dr. Artello: I can understand that feeling but you also need to remember that it was 1928 when the decision was made. We were in the middle of Prohibition and the federal government was struggling to enforce the alcohol ban.

Nia: Are you talking Capone times?

Dr. Artello: Yes, we are. We are also talking about new technology as well. Telephones were still relatively new. The rotary phone was invented in 1892 and the first cross country line was in 1915.

Nia: Wow. I didn't realize it was so new.

Dr. Artello: Yes, it was and criminal enterprises were using telephones, which is what brings up back to Olmstead case. After Olmstead lost his job on the Seattle police department, he ran a group of bootleggers from Canada to Seattle area. He coordinated with others by telephone from his office and his home.

Nia: So the west coast Al Capone?

Dr. Artello: Olmstead did not appear to be as ruthless as Capone but rather a businessman. In a bad month, the business brought in about 176,000 in 1920s—that would be over 2 million in today's money. So the federal law enforcement was looking into his dealings and tapped his line without a search warrant.

Nia: So how did it end up in the Supreme Court?

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Dr. Artello: At trial, his attorney asked to keep the wire taps out of evidence because Olmstead's fourth and fifth amendments were violated by this unwarranted recording.

Nia: So the Supreme Court said it was ok?

Dr. Artello: In a 5 to 4 decision, they held that his fourth and fifth Amendments were not violated.

Nia: How can they say that when they recorded his calls without a warrant? I thought that is basic Fourth Amendment stuff.

Dr. Artello: That is a great point, but the Court held that historically the Fourth Amendment protects material things -- the person, the house, his papers, or his effects. The description of the warrant necessary to make the proceeding lawful is that it must specify the place to be searched and the person or things to be seized.

Nia: So the Court did not update the Fourth Amendment to new technology.

Dr. Artello: Exactly. They stated that the wire strung from the house to carry one's voice is the same as one sending one's voice outside of the home. So law enforcement did not have to trespass on Olmstead's property to hear the conversation and Olmstead should have known that people could listen to the conversation.

Nia: Ok, so I get how the Court ruled against Olmstead but then how did we get to a place where police do need search warrants to listen to telephone conversations?

Dr. Artello: Actually, that great question leads me to one of the most important things about Supreme Court. Sometimes, the best comes out of the dissenting opinion.

Nia: The dissent?

Dr. Artello: Yes, the dissent is when the justices disagree with the majority of other justices. In this case, Justice Louis Brandeis' dissent has been the foundation for many latter cases.

Nia: What did he say?

Dr. Artello: Justice Brandeis argued that the Founding Fathers "conferred against the government, the right to be let alone -- the most comprehensive of rights and the right most favored by civilized men."

Nia: WOW! That came from this decision.

Dr. Artello: Yes it did. But that is not all. He went on to set out the ethical underpinnings to suppress evidence when the government violates the law, extending the 'unclean hands' principle, which is the idea that courts should not aid a plaintiff who has acted unethically with

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regards to the subject of the case. In other words, the government should not violate the laws of states to gather evidence (wiretapping was illegal in many states, including Washington) and then use that evidence to prosecute people.

Nia: That is something we will talk about more in other cases, right?

Dr. Artello: yes we will.

Nia: So what happened to Dr. Artellotz?

Dr. Artello: He served 4 years and paid steep fines. He got out of jail and returned to Seattle. He sold furniture after prison. He had been one of the most successful bootleggers in the Pacific Northwest area.

Nia: was that the end?

Dr. Artello: Not quite. in 1935, FDR issued him a full presidential pardon and besides restoring his constitutional rights, the pardon remitted about 10,000 from the IRS claimed he owed.

Nia: So can you brief this case for us?

Dr. Artello: Olmstead ran a bootlegging operation with 11 other guys. Federal law enforcement tapped his phone from his office and his home. They intercepted many calls that set up illegal activities. Prosecutors used the phone calls as evidence in the trial where Olmstead was found guilty. Olmstead appealed. The issue was: Did the use of evidence disclosed in wiretapped private telephone conversations, violate the recorded party's Fourth and Fifth Amendments? The Supreme Court ruled that the conversations could be used because they were not protected under the Fourth and Fifth Amendments. The court reasoned that since the state did not trespass on Olmstead's property to listen to the conversation. The dissent set out how listening to a phone conversation is the same as opening a sealed letter and therefore, deserving of the same privacy. The dissent also set out that the government should not be excused from the unclean hands' doctrine. The state should not be able to use evidence gathered illegal in a prosecution, including items gathered without a warrant.