

ROY OLMSTEAD'S STORY

The Background Story of *United States v. Olmstead*

Burt Johnson

Roy Olmstead was a Seattle police lieutenant in 1920, but was dismissed after being caught smuggling liquor. Olmstead's next legal trouble came in the Fall of 1924 when federal Prohibition agents closed their investigation of Olmstead's illegal liquor smuggling and distribution operation. By the time the agents arrested him, they had discovered that he ran the largest liquor smuggling operation in Western Washington. Olmstead employed 50 people to run his operation and paid off numerous police officers and city officials. Evidence indicated that Olmstead even influenced the mayor. He delivered liquor to some of Seattle's most prominent citizens and its best hotels and restaurants.¹

Seattle was somewhat typical of the cities of the Prohibition era. As much of the American public demanded liquor whether it was illegal or not, Seattle's thirsty citizens did the same. Enterprising businessmen like Roy Olmstead took advantage of the strong public demand in Seattle. Paying off politicians and police was an important part of any large liquor operation in a city. The mob violence sensationalized in cities in the Midwest and East, Olmstead found, was not a necessity to bootlegging. By importing alcohol from England, Olmstead avoided the low quality, and sometimes poisonous moonshine liquor that pervaded in other areas of the U.S. Aside from protection payoffs and some stealthy precautions, it operated like a legitimate importing business. Olmstead chartered three ocean freighters to transport English liquor to Vancouver. From Vancouver, Olmstead used three speedboats to deliver the liquor to Washington. The contraband was then stored at a country ranch and brought to distribution sites in Seattle by three trucks. Finally, four cars delivered the liquor to customers in the various neighborhoods of Seattle. Use of the telephone was crucial to Olmstead as it was to many bootleggers. The customers placed their orders from Olmstead via telephone. Olmstead contacted bribed officials, smugglers, and distributors via telephone. The telephone enabled Olmstead to run a streamlined and quiet operation from behind a desk.²

Such a large and complex operation still drew a lot of law enforcement attention, but Olmstead had the local police wrapped around his finger. They not only generally ignored his operation, but they raided and arrested his competitors. However, Olmstead did not escape the suspicion of federal Prohibition agents, who had uncovered volumes of evidence of illegal liquor smuggling and distribution. Their main investigative tool was the use of electronic surveillance equipment to monitor Olmstead's telephone calls. They tapped Olmstead's phone line and listened to his conversations. The agents then crossed Olmstead's phone line with another line to cause problems with his phone. This forced

¹ Walter F. Murphy, *Wiretapping on Trial* (New York: Random House, 1965), 16.

² Murphy, 17-18.

Olmstead to tell the operator aloud the number he wished to dial. Then, the agents used a reverse directory to know what locations Olmstead was calling. This method produced the probable cause necessary for judges to grant the agents search warrants for Olmstead's distribution sites. The agents raided the sites and seized the illegal liquor. Thus, all of the evidence the agents obtained was seized through the use of wiretapping.³

On the evening of November 17, 1924, following these raids, the Prohibition agents entered Olmstead's home and arrested him. They had hoped to find liquor stored there that would serve as the smoking gun at his trial. To the agents dismay, they found no liquor so an agent and his wife made a series of phone calls pretending to be Mr. and Mrs. Olmstead in which they asked Olmstead's bootleggers to bring liquor to his house. When the bootleggers arrived, they were arrested and their cargo was seized. The agents seized Olmstead's private papers and records despite the specification on the search warrant that only liquor was to be seized. This raised a Constitutional issue because the Fourth Amendment states that a warrant must particularly describe "the place to be searched, and the persons or things to be seized." Another Constitutional issue that would come up at trial was the fact that the agents had monitored private phone conversations between Olmstead and his lawyer, Jeremiah Finch.⁴

In all, 46 other people were charged in the case including Mrs. Olmstead and Olmstead's lawyer, Finch. Presiding over Olmstead's trial at the Federal District Court was Judge Jeremiah Neterer. Controversy arose immediately after the grand jury indicted the 46, because the defendants alleged that Prohibition agent Whitney had told the jury foreman that he had to return an indictment or he would face indictment himself. This threat was substantiated by the allegation that the jury foreman was a former customer of Olmstead. Judge Neterer ruled that since there was no evidence that the foreman had influenced other jurors, the indictment would stand. Judge Neterer ruled that Olmstead's papers could not be held against him since the warrant did not allow the agents to seize them. But then the judge denied several of Olmstead's pretrial motions including his assertion that attorney-client privilege had been infringed upon and that wiretapping was an unconstitutional search. Judge Neterer opined that wiretapping did not violate Olmstead's rights because he understood the definition of a search to be an act infringing on a person or his/her property. He also stated that wiretapping was not a federal or state offense, which was incorrect—Washington did have a law making the actions of the agents criminal.⁵

The constitutionality of the wiretapping was the issue that came up in Olmstead's appeals all the way to the Supreme Court. Although this issue was very controversial, the manner of the wiretapping used against Olmstead complicated matters. The practice of wiretapping in the 1920s did not include recording the conversations, so the Prohibition agents took written notes of the conversations that they monitored. From these notes, they dictated statements to agent Whitney's wife, who typed them. The Prohibition agents and the U.S. District Attorney's office then compiled Mrs. Whitney's transcript into a single volume that was later rearranged and rebound. They destroyed the original notes. The prosecution wanted to use the "Black Book," as it came to be called, because they claimed the agents needed it to refresh their memory of what they heard over Olmstead's

³ Murphy, 18.

⁴ Murphy, 20.

⁵ Murphy, 26, 29-30.

phone lines. The defense objected to its use for several reasons. First, it would have been quite easy for the agents and DA's office to fabricate evidence in the Black Book, misinterpret shorthand notes, or otherwise include false information cited as evidence. Angering the defense, Judge Neterer allowed the prosecutor to use a copy of the book while questioning witnesses and he allowed the agents to use the book to refresh their memory on the stand. When cross-examined without use of the Black Book some of the agents could not recall major aspects of the investigation. Perhaps most aggravating to Olmstead's defense was Neterer's ruling that defense counsel could only view the passages of the book referenced by witnesses.⁶

Despite these objections, the case went to the jury. Judge Neterer told the jury that he believed the prosecution had proven Olmstead and some of the other defendants to be guilty, although he said his opinion was not supposed to influence them. He also instructed them that they were not allowed to consider the constitutionality of wiretapping and they had to weigh all of the evidence before them. They were also told that a prosecution witness was a polluted source because he could have been granted a lighter sentence or no sentence at all in exchange for his cooperation. The jury returned a guilty verdict in less than 24 hours. Judge Neterer sentenced Olmstead to 2 years hard labor and an \$8000 fine with court costs. Olmstead's lawyer, Finch and 19 others were given similar sentences while Mrs. Olmstead and the remaining defendants were found not guilty.⁷

Olmstead appealed to the Ninth Circuit Court of Appeals and lost. Then he appealed to the Supreme Court and lost. Olmstead's served out his sentence and returned to the Seattle community to live a respectable life. He was later given a presidential pardon.

As for the issue of government wiretapping, debates heated up across the country and within federal agencies. J. Edgar Hoover denounced the practice and swore he would not abuse that power in his Bureau of Investigation (later called the Federal Bureau of Investigation). But, Prohibition agents continued to use wiretapping regularly. Compounding their controversial reputation for wiretapping, the Prohibition agents faced charges of incompetence and a lack of qualification after almost 75% of them failed the first professional examination they were required to take in 1927. But, the variety of crimes for which wiretapping was used to investigate grew. For the next 30 years, Federal wiretapping policy was debated and adjusted. It was the *Olmstead* case that brought the issue to prominence.⁸

⁶ Murphy, 37-39.

⁷ Murphy, 42-43.

⁸ Murphy, 137, 11.