



# Supreme Court

OF THE OKLAHOMA INTERCOLLEGIATE LEGISLATURE

CHIEF JUSTICE: Caden Hayes  
VICE CHIEF JUSTICE: Sydney Adkins  
ASSOCIATE JUSTICES, By Seniority:  
Caleb Dorsten  
Caroline Kizziar  
Savannah Valgora  
Sam Hunt  
Ryan Francione  
Elijah Nicholson



# MOOT COURT CASE

1st Session of the 56th Oklahoma Intercollegiate Legislature

**Oklahoma Intercollegiate Legislature  
Fall 2024**

**Tom Cromwell, Petitioner**

**V.**

**The State of Olympus, Respondent**

On writ of certiorari to the Supreme Court of the State of Olympus

ORDER OF THE COURT ON SUBMISSION

**IT IS THEREFORE ORDERED that counsel appear before the Supreme Court to present oral arguments on the following issues:**

1. Was viewing Tom Cromwell's internet history an impermissible search under the Fourth Amendment protection of activities where the individual possesses a reasonable expectation of privacy?
2. Does the English-Speaking Jurors Act violate Tom Cromwell's Sixth Amendment right to an impartial jury?

### *Overview of the Case*

The city of Olympia is a small-sized city of approximately 200,000 people. It is the capital and largest city in the State of Olympus and is notable for its diversity and multiculturalism. From the period of April 15th to July 7th, 2019 there have been a string of arson attacks in the city with seven local businesses destroyed during the night. There have been no deaths; however, each business that has been targeted has been completely destroyed and nine passersby have been injured with two hospitalizations since the arsons. Crime scene investigators have determined that the seven arsons were likely committed by the same person because each crime scene features a characteristic burn pattern in the shape of an X with a circle around it covering the floor of each room and there were traces of an ignition mixture made of kerosene and paint thinner in a signature 2 to 1 ratio found at all crime scenes.

When the Olympia Police Department was unable to solve this string of arsons, the Olympus State Police, the chief law enforcement body of the State of Olympus, took over the case. The Olympus State Police uncovered a blog called “Communism Global,” which has existed since February 13th, 2019. “Communism Global” is hosted by the popular blog platform LetterMill, which allows anyone to create a customized blog. In the blog’s description, it describes itself as a “manifesto for a communist world state.” The logo for the blog is a red X with a circle around it. On the blog, there are numerous posts decrying the capitalist world order and restrictive immigration policies. The blog has a recurring column titled “Accountability Time: Businesses That Thrive on Oppression,” which describes a local Olympia business who the author believes has taken advantage of racism for personal economic benefit. The Olympus State Police noted that each of the seven columns in the “Accountability Time” series corresponded to one of the seven businesses that were targeted by the arson attacks. The owner of the blog was suspected to have carried out these attacks.

Unable to determine the ownership of the blog, the Olympus State Police began investigating the records of individuals convicted of property crimes, including Tom Cromwell, who had previously spent one year in prison for felony vandalism. Cromwell is a free spirit and noted his occupation as “SoundCloud rapper” on his most recent tax return. Tom Cromwell is a lifelong citizen of Olympia and has no criminal record except for the past conviction of vandalism. The Olympus State Police began this investigation by viewing the internet history of these property crime convicts since January 2019, one month before the first publication on the “Global Communism” blog. The internet history of the former property crime convicts was provided through their internet services providers, including home Wi-Fi networks and cell service providers, acquired under a court order.

In Tom Cromwell's internet search history, the Olympus State Police Department found specific searches flagged as suspicious, that were conducted over a 6-days shortly before the string of arsons began. On April 3, 2019, Cromwell searched on SearchPlex, a popular search engine, for "how to burn down a building" and visited 6 separate pages of Query, a user-generated question-and-answer website, that explained various forms of pyrotechnics and arson. On April 5, 2019, Cromwell searched the following: "how to make homemade lighter fluid," "paint thinner flammability," "kerosene and paint thinner combination burning temperature," and "ratio kerosene paint thinner highest burning temperature," visiting several more Query web pages, as well as multiple independently hosted websites centered around grilling and pyrotechnics. One of these web pages specifically recommended a 2 to 1 ratio of kerosene and paint thinner. On April 6, 2019, Cromwell looked up "arson laws Olympus state." On April 9, 2019, Cromwell searched "where to buy paint thinner Olympia." In the months from April to July, 2019, when the Olympus State Police began their investigation, he searched the addresses of 11 local businesses, including all 7 of the businesses attacked, using SearchPlex. SearchPlex offers a feature called "street-level view" where a user can select a location on a map and view a 360° image of any location. Cromwell entered a street-level view of these 7 businesses but did not do so for the other 4 businesses that he searched.

In the six months that the Olympus State Police viewed, Cromwell also regularly visited LetterMill. In particular, the URLs that he visited included the ones to edit the seven articles in the "Accountability Time" series, indicating that he was able to edit the articles. Using the evidence from his search and blog history, Tom Cromwell was arrested and taken to trial.

At trial, Tom Cromwell exercised his fifth amendment right to remain silent on the allegations. The only evidence provided at trial was the internet use history collected by the Olympus State Police. He objected to the use of his internet history, including his search history on SearchPlex and Query and his history on LetterMill on the grounds that it violated his 4th amendment right to be free from unreasonable search and seizure. During an exclusionary hearing to resolve the merits of Cromwell's 4th Amendment claim, Cromwell testified that he searched the relevant terms using private browsing mode on the web browser Quest exclusively on his home desktop. Quest features a private browsing mode where users can browse without their internet search history being saved by the browser. Upon launch, Quest browser private mode has a message to users in the center of the screen in large font that says, "Welcome to private mode, where we won't keep track of your internet history so you can browse securely." At the bottom of the welcome page, in a much smaller font, there is a link that says, "click here to learn more about what is and isn't tracked using private mode." When you click on this link, a pop-up window with more detailed information about private browsing mode appears. On this page, a line reads "Although Quest does not track your internet search history, this information may still be available to others including your internet service provider or the administrator of your Wi-Fi network." Tom Cromwell claims that he has never clicked this link or viewed this

pop-up window and thus retained a reasonable expectation of privacy. The trial court found Cromwell's proffered explanations to be credible, but nevertheless declined to exclude the evidence.

Cromwell was tried in the Olympus First Circuit Court, whose jurisdiction covers the entirety of the city of Olympia and no other territory in Olympus. Separate to his 4th Amendment claims, and prior to the empanelment of the jury in his case, Cromwell raised a 6th amendment fair cross section complaint against the English-Speaking Jurors Act, which he contended violated his right to be tried before a jury that was composed of a fair cross-section of the community. Cromwell self-identifies as a white, non-Latino, non-Hispanic man, and has consistently identified himself as such on every decennial census.

The English-Speaking Jurors Act is a state statute in the State of Olympus that was passed in order to, as noted in the preamble of the statute, "ensure that Olympus jurors were capable of understanding and communicating the full details of the case and the law." The act requires all jurors in the State of Olympus to be conversant in English. If a person is not conversant in English when they are called to jury service, then they are not selected for the jury panel. Furthermore, they are permanently struck from the jury pool with no chance of reinstatement. There is no law in the state of Olympus requiring that juries represent a fair cross-section of the community nor any provision in the Olympus State Constitution that does so, meaning any claim rests entirely on the Sixth Amendment to the U.S. Constitution.

The State of Olympus uses the Department of Motor Vehicles (DMV) records to create a list of potential jurors. All citizens 18 or older who live within the jurisdiction of the court hearing the case are qualified for jury service unless barred by another law such as the English-Speaking Jurors Act, or an act exempting active-duty military members or those currently serving a sentence for a felony. The juror list only receives new registrants from the DMV from the time of the last list creation, as opposed to receiving a list of all currently registered motorists in the Olympia area. The State of Olympus also sends a form to all citizens that allows them to request exemption from jury service for an undue hardship, which may include the need to care for a sick family member, a personal disability, a need to care for an infant, or a similar emergency. This form is sent in both English and Spanish.

In order to provide a sufficient number of potential jurors to each courtroom, each day the clerk's office of the Olympus First Circuit Court randomly selects a set of people from the court's maintained list of potential jurors and orders them to appear at the clerk's office. Once a potential juror arrives at the clerk's office, they are asked a series of screening questions, including if they can understand the English language. If they answer this question in the negative, they are thanked and excused from jury service, and their name is permanently deleted from the Court's list of potential jurors, per the English-Speaking Jurors Act. After those deemed

ineligible for jury service are removed in this manner, those sent to each court room for a panel to be selected from each day known as a venire.

Each venire sits before the attorneys in the case, who put the jurors through a process known as voir dire, where they ask questions of the jurors. These questions are designed to show if the juror is suitable for the case. A juror may be removed for reasons such as prior information on the case, knowing a party to the case, or any prior experiences or beliefs that would make a juror biased. If at any point a juror is unable to respond to a question due to a language barrier, that juror is removed from the jury pool per the English-Speaking Jurors Act. After removing these jurors for cause, attorneys may then remove a limited quantity of jurors without cause until 12 jurors are selected. Cromwell did not raise a 14th amendment claim, and does not argue that the prosecutor exercised any of their peremptory strikes on any impermissible basis.

Olympia is a common destination for immigrants from Mexico, Central America, and South America. As a result, a large proportion of the population of the city is Hispanic, an immigrant, or a non-native English speaker. Table 1 displays the proportion of Hispanic citizens of Olympia, as designated by the United States Census, a naturalized immigrant, or a non-native English speaker, meaning someone who does not speak English as a first language. These statistics are for the year 2019; however, they are largely similar to the numbers in previous years. 95% of immigrants to Olympia come from countries with a predominantly Hispanic population, and because of this high level of immigration from Spanish-speaking countries, 90% of those who are non-native English speakers in Olympia speak Spanish as their first language. 75% of non-native English speakers are fully conversant in English and 80% of those who speak English only as a second language have learned it since moving to Olympia.

**Table 1: Demographics of Olympia**

Population	National Proportion	Proportion in Olympia	Proportion on Jury Venires in Olympia
Hispanic	18%	38%	29%
Naturalized Immigrant	7%	20%	9%
Non-Native English Speaker	18%	27%	8%

The court typically recognizes 3 methods to measure the extent to which a jury venire is unrepresentative. These are absolute disparity, which is the difference in the percentage of people from a group in the population from which the venire is drawn and the percentage of the people in jury venires from that group, comparative disparity, which is the absolute disparity divided by the percentage of the relevant population in the community at large, and standard deviation, a statistical measure of how far a measure is from the average based on how far apart different observations are expected to be. Typically, 99.7% of all observations are within 3 standard deviations, 95% of observations are within 2 standard deviations, and 68% of observations are within 1 standard deviation of the mean. These three measures for these three demographics in Olympia are displayed in Table 2<sup>1</sup>

**Table 2: Three Measures of Disparity**

Population	Absolute Disparity	Comparative Disparity	Standard Deviation
Hispanic	9%	24%	1.31
Naturalized Immigrant	11%	55%	1.94
Non-Native English Speaker	19%	70%	3.03

Tom Cromwell received an evidentiary hearing to challenge the jury composition. In his submissions through counsel, Tom Cromwell cited a study commissioned by the Olympia City Council on the effect of the English-Speaking Jurors Act on the Olympia Circuit Court, which estimates that 90% of jury summons call someone who is dismissed on account of their inadequate English ability and that 4% of those summoned to jury service are non-native English speakers, all of whom are removed permanently from the jury pool. Tom Cromwell argued that the permanent removal of Spanish speakers from the jury list systematically created an unrepresentative cross-section of the community and therefore violated his rights under the Sixth Amendment to the United States Constitution.

Contrary to his pleas, Cromwell was convicted of multiple counts of arson by the First Circuit Court of Olympus and was sentenced to 127 months in prison. Cromwell appealed his

---

<sup>1</sup> For the purposes of this case, the math behind these measures is not essential beyond what is included in this case description. Competitors only need to understand that all three measures offer different ways to quantify jury disparity and that a higher number indicates a stronger disparity within each measure.

decision to the Olympus State Supreme Court on two constitutional grounds. First, that the state violated his reasonable expectation of privacy by looking at his internet history without receiving a warrant, and second, that the English-Speaking Jurors Act constituted a violation of his Sixth Amendment right to a jury that represents a fair cross-section of the community. The Olympus State Supreme Court affirmed the decision of the circuit court on both issues, so Cromwell petitioned for a writ of certiorari, which the United States Supreme Court granted on the two issues today



Cases Cited:

**Fourth Amendment:**

1. [\*Katz v. United States\*, 389 U.S. 347 \(1967\)](#)
2. [\*United States v. Miller\*, 425 U.S. 435 \(1976\)](#)
3. [\*Smith v. Maryland\*, 442 U.S. 735 \(1979\)](#)
4. [\*Florida v. Riley\*, 488 U.S. 445 \(1989\)](#)
5. [\*Indianapolis v. Edmond\*, 531 U.S. 32 \(2000\)](#)
6. [\*Kyllo v. United States\*, 533 U.S. 27 \(2001\)](#)
7. [\*United States v. Jones\*, 132 S. Ct. 945, 964 \(2012\)](#)
8. [\*Carpenter v. United States\*, 585 U.S. \\_\\_\\_\\_ \(2018\)](#)
9. [\*United States v. Moore-Bush\*, CRIMINAL ACTION NO. 3:18-30001-WGY \(D. Mass. Jun. 4, 2019\)](#)

**Sixth Amendment**

1. [\*Carter v. Jury Commission of Greene County\*, 396 U.S. 320 \(1970\)](#)
2. [\*Taylor v. Louisiana\*, 419 U.S. 522 \(1975\)](#)
3. [\*Duren v. Missouri\*, 439 U.S. 357 \(1979\)](#)
4. [\*Lockhart v. McCree\*, 476 U.S. 162 \(1986\)](#)
5. [\*Batson v. Kentucky\*, 476 U.S. 79 \(1986\)](#)
6. [\*Holland v. Illinois\*, 493 U.S. 474 \(1990\)](#)
7. [\*Berghuis v. Smith\*, 559 U.S. 314 \(2010\)](#)