

by make the payment of the funeral expenses of the said Luella Tome and of this Testatrix a charge upon my homestead premises.

I nominate, constitute, and appoint my said son, Harry Tome, to be Executor of this my Last Will and Testament.

IN WITNESS WHEREOF, I, BESSIE M. TOME, the Testatrix above-named, have hereunto subscribed my name and affixed my seal this Third day of May, A.D. 1950.

Bessie M Tome. (SEAL)

Signed, sealed, published and declared by the above-named Testatrix as and for her Last Will and Testament, in the presence of us who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Harold S. Hampson

Florence O. Lund

Bessie M Tome. (SEAL)



Donald R. LORD et al.

v.

Alvin M. KELLEY et al.

Civ. A. No. 63-932.

United States District Court  
D. Massachusetts.

April 13, 1965.

Petition for attachment for civil contempt and punishment for criminal contempt by Internal Revenue agent. The District Court, Wyzanski, J., held that the evidence established that the Internal Revenue agent defied a court order in using part of records which had been acquired by unlawful search and seizure but the agent's conduct did not quite rise to level of criminal contempt and that no evidence was offered that the complaining party had sustained any

damage which would give rise to a justified claim for economic compensation insofar as civil contempt was concerned.

Motions for contempt denied.

See also D.C., 223 F.Supp. 684.

#### 1. Courts ⇐87

Law is not primarily artificial reason; it is a combination of precedent, pressure and principle.

#### 2. Contempt ⇐60(3)

Evidence established that Internal Revenue agent defied a court order in using part of records which had been acquired by unlawful search and seizure but Internal Revenue agent's conduct did not quite rise to level of criminal contempt.

#### 3. Contempt ⇐60(3)

Criminal contempt is a matter in which complaining party has burden of proving his case beyond a reasonable doubt.

#### 4. Contempt ⇐65

Civil contempt proceeding against Internal Revenue agent would be dismissed in absence of evidence that complaining party had sustained any damage which would give rise to justified claim for economic compensation resulting from Internal Revenue agent's defiance of court order in using part of records which had been acquired by unlawful search and seizure.

Lawrence F. O'Donnell and John Warren McGarry, Boston, Mass., for plaintiffs.

Murray Falk, Asst. U. S. Atty., W. Arthur Garrity, Jr., U. S. Atty., for defendants.

WYZANSKI, District Judge.

I.

This is a case that presents in microcosm the fascination, challenge, and risk of arbitrariness of proceedings in a District Court.

Believing, on what basis, of course, I need not state, that McGarry is a wilful evader of federal income taxes, the Internal Revenue Service has been checking up on him and looking into available information about his gross receipts. The matter has hardly been as open to inspection as a goldfish bowl. The taxpayer has barricaded himself within the home that is his castle—as no doubt he had a right to do. The Government, with more doubtful propriety, has sat in surveillance on him with binoculars and other watchful devices even more reflective of current technological development. In effect, what has been going on are the preliminaries to what both sides recognize to be a probable all-out war.

The Government took the first step over the boundary of peaceful activity by making what this Court and the Court of Appeals have found to be an unlawful search and seizure of records kept within the house.

Their blood up from the first fray, the agents of the Internal Revenue Service were none too pleased to be brought into Court and held to account. I trust I shall not be misunderstood when I say that the Internal Revenue agents select cases on the theory that they have not merely the general capacity to know when tax evasions are serious, but also the special competence to single out what kinds of offenders ought to be punished. After all, we all know that the Internal Revenue Service must choose its targets among thousands of tax violators and, in fact, does choose in the light of what is current policy in administrative circles.

When this Court found that the Internal Revenue agents had violated the law and directed that the improperly seized records were to be returned, the agents were, to say the least, not happy. The original appearance in this Court by counsel for the Government was, if not insolent, at least none too respectful. The brief filed following the Court's adverse decision and asking for reconsideration thereof, showed more than hurt feelings and came close to being worthy of a rebuke.

More than once the judges of a court have been indirectly reminded that they personally are taxpayers. No sophisticated person is unaware that even in this very Commonwealth the Internal Revenue Service has been in possession of facts with respect to public officials which it has presented or shelved in order to serve what can only be called political ends, be they high or low. And a judge who knows the score is aware that every time his decisions offend the Internal Revenue Service he is inviting a close inspection of his own returns. But I suppose that no one familiar with this Court believes that intimidation, direct or indirect, is effective.

In any event, this Court, having adhered to its own decision that the Internal Revenue agents had denied Lord's constitutional rights, and having been affirmed by the Court of Appeals, the Internal Revenue Service returned, or purported to return, to the taxpayer those documents which under the Order the authorities were bound to restore.

As permitted by the Court's Order, the Government then proceeded to carry out its tax investigation of McGarry using material which allegedly had not been acquired by the unlawful search and seizure and which allegedly had not been derived from clues consequent upon that unlawful search and seizure.

It is plain enough from what has been testified in this Court that McGarry's counsel and the counsel for the Internal Revenue Service were not congenial. Acrimony was translated into acerbity.

Curiously, and in a way that no one has bothered to explain to this Court, a former Internal Revenue Service agent, Young, disclosed to McGarry's lawyer that some of the material being used by the Government represented the results of the unlawful search and seizure which had been condemned by this Court. The record before me does not reveal whether Young left the Service voluntarily. However, there is no indication that anything could have been said against his character or his Governmental service.