In the

Supreme Court of the United States

G. M. Leasing Corp., et al,

Petitioners,

v.

United States Of America, et al.,

Respondents.

No. 75-235

Washington, D. C.
October 4, 1976

Pages 1 thru 52

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Washington, D. C.

Monday, October 4, 1976

The above-entitled matter came on for argument at 10:03 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN P. STEVENS, Associate Justice

APPEARANCES:

RICHARD J. LEEDY, ESQ., 2795 Comanche Drive, Salt Lake City, Utah 84108, for the Petitioners.

ROBERT H. BORK, ESQ., Solicitor General, Department of Justice, Washington, D. C. 20530, for the Respondents.

I N D E X

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: The Court will hear arguments first this morning in No. 75-235, G. M. Leasing Corp., against the United States.

Mr. Leedy, you may proceed whenever you are ready.

ORAL ARGUMENT OF RICHARD J. LEEDY

ON BEHALF OF THE PETITIONERS

MR. LEEDY: Mr. Chief Justice, and may it please the Court: I am Richard Leedy, from Salt Lake City, Utah.

This case before the Court involves the Internal Revenue Service seizure of assets pursuant to a jeopardy assessment. The question upon which this Court has granted certiorari was whether or not such seizures violated the fourth amendment to the Federal Constitution.

The petitioner in this case, G. M. Leasing Corporation had all of its assets seized pursuant to such jeopardy tax assessment, and as a result it dealt the death knell to the corporation. Those assets consisted of several luxury automobiles, including four Stutz automobiles, two Rolls-Royces, and a Jaguar. Additionally a bank account was seized from G. M. Leasing Corporation, together with all of its books and records.

The petitioner was a family-owned corporation and was a new or start-up corporation that was incorporated for the purpose of leasing luxury automobiles. At the time of the

seizure, petitioner had not yet engaged in the business of leasing. However, it had taken many prerequisite steps in order so to do.

QUESTION: Is there a considerable demand for Stutzes out in Salt Lake?

MR. LEEDY: No, your Honor, I don't believe so. They cost approximately $40,000 apiece.

QUESTION: But the contemplation was nonetheless these were going to be leased?

MR. LEEDY: Yes. I think it was going to be world-wide, your Honor. In fact, two of the Stutzes were seized from Los Angeles, California.

QUESTION: Didn't the local State records show they hadn't made a sale, or a lease?

MR. LEEDY: I didn't hear.

QUESTION: Didn't the Utah records show they hadn't made any business at all?

MR. LEEDY: They had not yet leased the cars, your Honor.

QUESTION: Or anything else.

MR. LEEDY: Well, they had obtained the lease forms. They were preparing the cars for lease. They had not yet had them for that amount of time. And they had negotiated to acquire a showroom. They had obtained lease forms. They had contacted prospective lessees. They had contacted other

dealerships to see if they could obtain cars at a discount price for leasing. But your Honor is correct, they had not yet leased any cars.

QUESTION: And had they any employees?

MR. LEEDY: The record shows they had no employees.

QUESTION: How recently had the company been incorporated?

MR. LEEDY: My recollection, your Honor, and I'm not positive, but I think it was within the year.

There is no question that the petitioner, G. M. Leasing Corporation, was a family corporation and primarily controlled by an individual by the name of George I. Norman, Jr. Mr. Norman was a businessman in Salt Lake City, Utah, and he had substantial income and substantial wealth.

Throughout the briefs in this case Mr. Norman is referred to as the taxpayer, and a taxpayer he was. In 1970, one of the years under consideration in this case, he paid estimated taxes of $290,000. Because of his income and high expenses, Mr. Norman was in a state of constantly undergoing IRS audits. In fact, he had undergone an audit from the years 1963 through 1968, and the IRS auditor was one particular agent by the name of Phil Clayton. The evidence at the trial showed that an animosity had developed between Mr. Norman and Mr. Clayton.

QUESTION: Is Mr. Norman a fugitive now?

MR. LEEDY: Yes, your Honor.

QUESTION: Does this bring into play possibly the ... Molinaro doctrine? Do you know the Molinaro case?

MR. LEEDY: I am not certain of that doctrine, your Honor.

Mr. Clayton was the IRS auditor who prepared the assessments in the instant case.

In March of '73, the taxpayer, George I. Norman, Jr. became a fugitive from justice. Several years prior to becoming a fugitive, he was convicted of the Federal crime of aiding and abetting the willful misapplication of bank funds. He was sentenced to two years in prison, and through the course of several years he had appealed his conviction. In March of '73 his appeals were exhausted and he was required to surrender himself to begin serving his prison term.

He did surrender himself to the marshals in Denver, Colorado, and after surrendering himself he asked for permission to make a telephone call. The marshal released him to go down the hall to a pay phone, and he never returned.

He left his family and his home -- and incidentally, he left his assets behind him. Mr. Phil Clayton, the evidence shows, had been working on Mr. Norman's '70 and '71 taxes since October prior to his fugitive status in March. Several weeks after Mr. Norman became a fugitive, Mr. Clayton prepared a statutory notice of deficiency for Mr. Norman's 1970 and '71

taxes. He then recommended that this assessment be a jeopardy assessment, and he finally recommended that the petitioner, G. M. Leasing Corporation, be considered the alter ego, nominee, or transferee of George I. Norman.

In accordance with those recommendations the IRS issued a jeopardy assessment and made demand upon Mrs. Norman, the taxpayer's wife, for the payment of approximately $1 million in taxes, penalties, and interest.

Mrs. Norman, who is not accustomed to her husband's business but was merely a housewife, suggested that the IRS agents see her husband's attorney. Rather than so doing, the IRS agents' next step was to start seizing assets. Their first move was against a bungalow in Salt Lake City, Utah, which is known throughout the briefs in the trial as the "Cottage." The Cottage was the office of petitioner, it was also the office of George I Norman, and it was also the residence of George Norman's son, the intervenor in this action.

QUESTION: Mr. Leedy, you are referring to Mr. Norman and petitioner as if they were two separate entities. Do you take issue with the Tenth Circuit finding that one was the alter ego of the other?

MR. LEEDY: I certainly do. I would rather adopt the trial court's finding that they were not alter ego or nominee status.

The Internal Revenue Service broke the locks on the

building known as the Cottage, and entered, and began searching. Upon their entry, one of their group chiefs realized that it was a residence as well as an office and, based upon his own testimony, he said he was fearful of violating someone's constitutional rights and therefore he replaced the locks and left the premises.

Two days later the Internal Revenue Service agents again broke into the Cottage, and they seized the entire Cottage, including the real estate and including the contents of the Cottage, which included the books and records of the petitioner. The IRS at that time also seized all of the assets of the petitioner, which consisted of the luxury automobiles as well as the bank account, its books and records.

The petitioner brought suit in the United States District Court for the District of Utah for wrongful levy pursuant to statute 26, United States Code, section 7426. The district court found in petitioner's favor, that it was not an alter ego, nominee, or transferee of George I. Norman, Jr., but the Tenth Circuit Court of Appeals reversed.

The second aspect of the petitioner's claims in the district court was that the assessment was arbitrary and capricious. The petitioner sought an injunction against the collection of tax and the seizure of assets. The Court may wish to note that last term it decided the Shapiro case, which I believe had almost identical factual connotations as the

instant case. In the instant case the petitioner attempted to discover the basis underlying the tax assessment, which was done in Shapiro. In so doing, we took the deposition of the District Director of the Internal Revenue Service in Salt Lake City. In the Shapiro case rather than by deposition, the taxpayer proceeded by way of written interrogatories.

Under advice of Justice Department counsel, the District Director refused to answer any questions concerning the tax assessments. Two reasons were given for the refusal. The first was rather ironic, because they refused to give us information about the tax assessment because we did not have the taxpayer's consent; yet they had seized all of our assets to pay for the taxpayer's taxes.

The second reason for refusing to answer the questions was the same reason given in Shapiro, that the Anti-Injunction Act applied and there was no jurisdiction in the district court to restrain the collection of taxes.

QUESTION: In your view, counsel, who was before the court in that proceeding if the taxpayer was a fugitive?

MR. LEEDY: The petitioner, whose assets had been seized, your Honor. He was seeking to obtain the return of the assets.

QUESTION: You say "the petitioner" and "he." Will you clarify precisely whom you mean?

MR. LEEDY: I am sorry.

QUESTION: Will you designate the name of the person you are referring to?

MR. LEEDY: I am not certain --

QUESTION: Are you referring to the corporation now?

MR. LEEDY: I was referring to the District Director refusing to answer the questions, your Honor.

QUESTION: I am asking you who was in court on behalf of the taxpayer?

MR. LEEDY: Myself.

QUESTION: Did you have --

MR. LEEDY: I was on behalf of the petitioner, who is not the taxpayer.

QUESTION: I think that's what gives rise to some of the problem perhaps.

MR. LEEDY: I understand.

QUESTION: You do not claim that you have contemporary authority from your client, who is a fugitive, do you, Mr. Norman?

MR. LEEDY: I have his power of attorney, your Honor, and I do represent him in Tax Court. But in this particular case there is no appearance for him and he is not involved in the case.

QUESTION: In his absence who is running the corporation?

MR. LEEDY: His son, your Honor.

QUESTION: Is he a party to this?

MR. LEEDY: He became an intervenor when they seized certain assets of his own.

QUESTION: Why did he have to intervene if he represented the corporation?

MR. LEEDY: The corporation brought suit in its own name, your Honor, for the assets that were seized from the corporation.

QUESTION: And if that was his corporation, he wouldn't have to intervene, would he?

MR. LEEDY: It is my belief that the corporation had standing on its own to bring its own lawsuit for the loss of its assets.

QUESTION: This is a one-man corporation. Is the corporation a fugitive, too?

MR. LEEDY: No, your Honor.

QUESTION: Suppose you were going to levy on the corporation. How would you levy?

MR. LEEDY: You would give notice to its officers and directors, I believe.

QUESTION: And they are?

MR. LEEDY: They were at that time -- it's in the record, there is a --

QUESTION: I said they are who?

MR. LEEDY: There were three individuals, your Honor.

QUESTION: You keep saying "were." Are, I am asking. Who are the officers as of today?

MR. LEEDY: Oh. Uh --

QUESTION: You don't really know, do you?

MR. LEEDY: Yes, I do.

QUESTION: Has the corporation had a meeting?

MR. LEEDY: Yes, it has, your Honor.

QUESTION: Without the president.

MR. LEEDY: He is no longer -- the fugitive, you are talking about? He is no longer the president, your Honor.

QUESTION: Is that in this record any place?

MR. LEEDY: I believe it is. Yes, it is, your Honor. His son took over and --

QUESTION: He is a fugitive is in the record.

MR. LEEDY: Yes, but I believe the evidence showed that the son testified at the district court level. He testified that he was one of the stockholders, together with his brothers. And my recollection is that a meeting was held after the disappearance of his father where his mother, himself, and his aunt were elected to the board of directors.

QUESTION: And what position does his mother have?

MR. LEEDY: I am not certain of the officer status. She is a director.

QUESTION: Isn't she the one that told the agents she had nothing to do with the corporation, she was just a

housewife?

MR. LEEDY: That is correct, your Honor.

QUESTION: Mr. Leedy, any claims of Norman III, the son, are not at issue here, are they?

MR. LEEDY: No, your Honor. He also prevailed in the district court and the Government did not appeal the decision in his favor.

QUESTION: One last question. Precisely where were the automobiles when they were seized?

MR. LEEDY: They were --

QUESTION: They were on the street or in a lot or where?

MR. LEEDY: There were two in a parking lot in Los Angeles. There were two in -- the remainder were in various garages,is my recollection, in Salt Lake City, Utah.

QUESTION: Were there some in the driveway?

MR. LEEDY: The evidence showed, your Honor, that when the IRS agents visited the house, there were some in the driveway. I don't believe the seizures of the automobiles were made while they were in the driveway.

QUESTION: Where were they made?

MR. LEEDY: They were made from various garages, your Honor, and two were in Los Angeles, California, in a parking lot.

QUESTION: Were all of them -- where were the others?

You say in various garages. Were there none in the street?

MR. LEEDY: I don't believe so, your Honor.

QUESTION: You don't believe so. Isn't it material to this case whether they were in the street or whether they were in a garage?

MR. LEEDY: Not as I view it, your Honor.

QUESTION: Why do you emphasize the fact that they took the door off the hinges?

MR. LEEDY: They did for those -- excuse me.

QUESTION: What about the others that they didn't take the door off for?

MR. LEEDY: No, your Honor.

QUESTION: There were no others?

MR. LEEDY: No. The door that they removed the lock from, your Honor, had to do with the office building where they went in and took the records of the --

QUESTION: You say there were none seized on the public streets.

MR. LEEDY: I didn't say that. I said I didn't know, your Honor. I didn't believe so.

QUESTION: Don't you know the record?

OK, I will check the record.

QUESTION: Mr. Leedy, one last question and then I will stop bothering you.

Do you concede that the documents have been returned

and the copies destroyed as the Government charges here?

MR. LEEDY: Yes, your Honor.

QUESTION: You do.

MR. LEEDY: Yes.

QUESTION: Were they the documents of the petitioner here, the corporation, or of Mr. Norman?

MR. LEEDY: My understanding is every document that was seized was returned, including those of petitioner.

QUESTION: And do you think a corporation has the same rights under the fourth amendment as an individual does?

MR. LEEDY: I believe the previous cases of this Court held that, your Honor. My recollection is the Silverthorne Lumber Co. case.

QUESTION: And you rely on Silverthorne?

MR. LEEDY: I rely on it for the proposition that a corporation has a fourth amendment right to privacy.

QUESTION: And yet the Solicitor General has not cited it in his brief. Maybe we will ask him why.

MR. LEEDY: If it please the Court, at the trial we attempted to attack the assessment that had been given because the Government had counterclaims for foreclosure upon the assets. We had showed that the auditor had failed to include in his computations the fact that the taxpayer had paid $290,000, that he had included in the assessment some $115,000 in income that really wasn't income, and that through his

prior audits of the taxpayer, he knew that the taxpayer had high business expenses, but yet he took no steps to find out what the business expenses were.

Again, the trial court ruled in favor of the petitioner under the theory that there is a presumption of correctness as to an assessment, but that the evidence that we had brought forth had rebutted that presumption of correctness and that shifted the burden to the Government to show if there were any taxes due and owing at all.

The Government's evidence was in somewhat disarray. They could not lay a foundation for their exhibit. They didn't have the necessary witnesses to testify. After several attempts the Government rested.

The trial court ruled in favor of the petitioner, and the Tenth Circuit again reversed saying that we had to show more error than we had to overcome the presumption of correctness.

The final proposition sought by the petitioner in the trial court was that the seizure of its books and records and the seizure of its assets violated its fourth amendment rights to the Federal Constitution. That is the question on which this Court granted certiorari.

Again,the trial court ruled in favor of the petitioner and allowed as how the damages were permissible but set a hearing date later for the determination of damages.

The Tenth Circuit again reversed that, and there was a finding that the one agent had acted with malice. The Tenth Circuit indicated that it could find no malice in the record, and it held that the taxpayers had acted pursuant to statute, the levy and distraint statute, and that therefore there was no illegal search.

It is petitioner's position that the levy and distraint statute and the jeopardy assessment statute taken together which allows the seizure of property immediately upon assessment without any notice to the taxpayer and without any predetermination of probable cause is a violation of the fourth amendment.

QUESTION: Is your claim that even if there had been no entry into the corporate premises?

MR. LEEDY: Yes, your Honor, that the seizure of assets itself is protected by the fourth amendment to the Federal Constitution.

QUESTION: You think you need a warrant to seize those automobiles, for example?

MR. LEEDY: That is what we are arguing and urging this Court to adopt.

QUESTION: Do you have another claim that even if that is not so, the entry into the premises --

MR. LEEDY: Yes, your Honor.

QUESTION: Is that a separate matter?

MR. LEEDY: They are inextricably intertwined, but I would argue that entry into the Cottage was a search and that by virtue of the fact that there were intelligence agents of the Internal Revenue Service participating, that by virtue of the fact that the documents seized were turned over to the Federal Bureau of Investigation, that they were doing more than merely levying and collecting taxes, that they were in fact searching.

QUESTION: Suppose they found two cars on the public street and two cars sitting in a driveway on private property. Would you make the same argument about all those cars?

MR. LEEDY: Yes, sir, I certainly would.

QUESTION: You don't think the prior cases of this Court warrant the seizure of those four cars that I just described?

MR. LEEDY: If the Court is referring to the Phillips v. Commissioner case, no, I don't believe so. If I may distinguish that case, that case involved not a jeopardy assessment, but a situation where there had been a determination with both sides participating in the determination of the amount of taxes due and owing, and --

QUESTION: What do you think Shapiro held? You referred to that case.

MR. LEEDY: I think Shapiro held, to confine it to the, I guess, precise holding, is that the Anti-Injunction Act

does not apply to such an extent that the taxpayer cannot challenge the basis for the assessment. And if in fact there is no factual basis underlying the assessment, then he is entitled to an injunction to prevent the collection of taxes.

QUESTION: You think Shapiro recognized that there can be a seizure first and a hearing later?

MR. LEEDY: That was the precise factual situation in Shapiro, yes, your Honor.

QUESTION: And you say the court there shouldn't have proceeded on the assumption that the seizure was valid in the first place without a warrant.

MR.LEEDY: Yes, your Honor, I believe that.

I believe --

QUESTION: Was anything that was seized from the house not returned -- or office?

MR. LEEDY: Yes.

QUESTION: What were the items seized from the house or office, the combination, that have not been returned?

MR. LEEDY: If it please the Court, there were many items which were not the property of petitioner which were seized and not returned. All petitioner's property had been returned with the exception of the automobiles. But there was furnishings and furniture and other items that belonged to the taxpayer that were seized having value, and they have not been returned.

QUESTION: And when you use the term "taxpayer," you are referring to Mr. Norman, the fugitive, always, I take it.

MR. LEEDY: Yes, your Honor.

QUESTION: Mr. Leedy, what remains to be adjudicated in this case? The property has all been returned. It's just a question of damages?

MR. LEEDY: I believe so, your Honor, and the remedy for violation of the petitioner's rights.

QUESTION: If the damages remain to be determined, is the judgment below final?

MR. LEEDY: Well, the Tenth Circuit reversed that judgment, your Honor.

QUESTION: And sent it back for trial on the issue of damages?

MR. LEEDY: No, it just reversed it outright and said that there is no liability.

QUESTION: No liability. I see.

MR. LEEDY: If it please the Court, I believe, in determining whether or not a warrant is applicable to a tax collector's seizure, one might look at the legislative history surrounding the adoption of the fourth amendment, which I think clearly shows that the tax collector's seizure of property was in the contemplation of the framers of the fourth amendment, and most of that legislative history is gone into in my opening brief, and I would, rather than being reptitious, just simply

state that I believe the legislative history supports the proposition that a seizure of assets by a tax collector is within the meaning of the word "seizure" of the fourth amendment.

The second question revolved around is once you determine that the tax collector's seizure is within the meaning of the fourth amendment, the next question is whether or not a warrant should be required before that seizure, or whether or not there are exigent circumstances present which would dispense with the requirement of the warrant.

It is the petitioner's position that there are no such exigent circumstances, and it is the Government's position that there are. The Government cites for support the fact that the taxpayer was a fugitive, the fact that he had not assisted or cooperated in the preparation of his assessment or tax returns, and the final reason that certain properties had disappeared, and therefore they felt there were exigent circumstances which justified the dispensation of the warrant.

I would submit the fact that the taxpayer is a fugitive has no bearing on whether or not the collection of taxes is in jeopardy, because all the assets were left behind, that he had no control over those assets, but even more importantly, he had been a fugitive for approximately two to three weeks before the issuance of the jeopardy assessment and there would certainly be time to obtain a warrant within that period of time.

The second question, of whether or not he cooperated in the preparation of his taxes, I again don't have any understanding how that bears upon whether the collection is in jeopardy or not, but I would submit that the record is devoid of any request on the part of the IRS to obtain his cooperation, that in fact the agent himself preferred to go to third-party sources to obtain his information about the taxpayer.

The final argument, your Honor, pertaining to this question is the disappearance of property. If you recall, the IRS agent entered into the Cottage on one particular day and then they left shortly after that. At that time they left men keeping surveillance on the Cottage, and they observed that evening certain boxes of material being taken by unknown persons. A day and a half later they then decided to make the seizures.

I would submit, number one, that they had already made the determination of jeopardy prior to that occurrence so that could not have been a relevant factor, and, number two, that within the day and a half period they could have certainly had time to obtain the detached neutral magistrate's decision as to whether or not the man owed any taxes and whether or not those taxes were in jeopardy.

The final argument the petitioners use is the argument which is often stated in tax cases, and that is that the Government has a compelling and urgent need to collect its taxes, and therefore there are exigent circumstances which do away

with the requirement of obtaining the magistrate's decision.

I would submit to the Court that while I have heard that statement made in many tax cases, I do not know what is so urgent and compelling about the collection of this man's taxes. And, finally, I believe in this day and age of budget deficits and deficit spendings, that while it may have once been an urgent need of the Government, it is no longer such an urgent need, at least no more urgent than the Government's need to obtain evidence against criminal suspects.

Therefore, in conclusion, your Honors, we believe that the entry into the Cottage for the purpose of seizing books and records was a search. We believe that the seizure of assets is also a seizure within the meaning of the fourth amendment, that therefore the general requirements of the fourth amendment should apply that a warrant be obtained and that there were no exigent circumstances in this case which would dispense with the requirement of a warrant.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Leedy.

Mr. Solicitor General.

ORAL ARGUMENT OF ROBERT H. BORK ON BEHALF OF THE DEFENDANTS

MR. BORK: Mr. Chief Justice, and may it please the Court: I would like to return the case somewhat to the issue before us, which is the validity of these seizures under the

fourth amendment. The propriety of a jeopardy assessment in this case is not in issue. Indeed, at trial Mr. Leedy had a witness who would testify about the jeopardy assessment excluded on the grounds that he was not contesting the propriety of a jeopardy assessment, but he was contesting the amount of it. So I don't think we need to discuss whether the jeopardy assessment was in itself proper.

I would like to help focus consideration of the case if I discuss separately the three acts that are complained of: First, the seizure of seven luxury automobiles registered to G. M. Leasing; second, the entry upon the premises of the office bungalow; third, the seizure of the records along with the other assets remaining in the office.

Considerations affecting the legality of these three acts done without a warrant vary, so I think it is best to discuss them separately. What I want to say is background that I think it's clear from the record that the IRS had very good reason for what it did in this case, as the facts show. The taxpayer, Mr. Norman, had filed a return for 1970 that gave no information whatever from which his correct tax could be computed. The check he gave in payment of his 1971 tax was dishonored by the bank, and Mr. Norman never filed any return for that year. Not unreasonably, the Internal Revenue Service became concerned about the collection of Mr. Norman's taxes.

Now, it began to investigate, but the investigation

though formally opened had not moved ahead until in early March of 1973 Mr. Norman became a fugitive from justice after being convicted for the misapplication of bank funds. That caused the Service to fear they would never recover any of the taxes owed by Mr. Norman, and they moved rapidly ahead with their audit.

Now, our brief states, and I want to correct any wrong implication if there is one, that they received no cooperation from Mr. Norman. It is quite correct that Mr. Norman was a fugitive from justice and nobody had asked him prior to that time for cooperation. After he became a fugitive from justice, they went to third-party sources to develop their information.

But the Service's sense of urgency was no doubt increased by the fact that, as Agent Applegate testified in the Appendix at page 85, he said that there had been in this case missing stocks and bonds, shuffling of records, of bank accounts cleaned out, safety deposit boxes cleaned out and cars stolen. So they were quite concerned about preserving the assets they could still find.

QUESTION: Well, now, all of this goes, doesn't it, to the reasonableness and validity of the jeopardy assessment which I thought you began by saying was not in issue.

MR. BORK: I think, Mr. Justice Stewart, it goes somewhat at least to the --

QUESTION: I thought in this case we proceeded upon the premise that there was a jeopardy assessment and the validity of that assessment is not in issue here.

MR. BORK: That is quite correct, Mr. Justice Stewart. I was putting this background in my think because it explains the reasonableness of some of the actions that the IRS took in trying to get the property --

QUESTION: Are you saying, then, are you suggesting there are different gradations of jeopardy assessment?

MR. BORK: No, no, I am not discussing the jeopardy assessment, Mr. Justice Stewart. I am discussing the entries, and so forth, the background of that.

QUESTION: That's right. And we begin then with a jeopardy assessment as a given, upon that premise.

MR. BORK: Right.

QUESTION: And you are not going to suggest that this kind of an entry is valid in some kinds of cases where there has been a jeopardy assessment but not in others?

MR. BORK: I am going to suggest, I think, that the reasonableness of an entry in certain kinds of cases could be drawn into question. If there were an outrageous entry into a private residence, for example, it might be a different kind of case. I am just trying to describe the kind of case this is.

QUESTION: Well, if the jeopardy assessment were less clearly valid, would this be a different kind of case?

MR. BORK: No, sir.

QUESTION: That was my question.

MR. BORK: I am merely describing the urgency which they began to feel about this case.

QUESTION: I suppose if it were decided that you needed probable cause to enter these premises, you are probably suggesting there is probable cause.

MR. BORK: I am suggesting that, Mr. Justice White.

QUESTION: Do you think that the Government needed probable cause to enter these premises?

MR. BORK: If it needed probable cause, the form of probable cause it needed, I believe, was an assessment --

QUESTION: I know, but may I ask you whether you needed probable cause?

MR. BORK: No, I don't think so, Mr. Justice White, unless it needed an assessment.

QUESTION: Let's assume there is an assessment and there is a jeopardy assessment, and you say it's valid. Assume that. The Government is then authorized to enter any private premises of the taxpayer, whether or not it believes there is property in the premises that they --

MR. BORK: No. I think they have to have a good faith belief that there is property in the premises.

QUESTION: Assets of the taxpayer.

MR. BORK: Assets of the taxpayer. And I should point

out that the Service as a matter of policy does not enter private residences if there is any objection, unless consent is given.

QUESTION: That policy must be motivated by something.

MR. BORK: I think it's motivated by --

QUESTION: By the Constitution?

MR. BORK: I think it is motivated by their concern that private residences have a much greater privacy interest.

QUESTION: Under the Constitution of the United States.

MR. BORK: I would think so. I cannot speak as to the reason why they do the regulations that way. I know they were concerned about a privacy interest. Whether they were concerned about a fourth amendment issue, I do not know.

QUESTION: Your position still is, though, that there was no probable cause requirement to enter the premises the Government entered?

MR. BORK: Probable cause varies, Mr. Justice White, from case to case, and I think that --

QUESTION: Well, whatever it was, you say you could forget about it.

MR. BORK: I don't know if we are talking about the same thing. What I am saying is you can't forget about certain prerequisites which may call for probable cause. One is that there is an assessment, and the other is that there

is reason to believe there is property on the premises of the taxpayer that can be used to satisfy the obligation of the tax.

QUESTION: That much was necessary in any event, you think, to enter the premises?

MR. BORK: Yes. If they had no idea whether these premises were the taxpayer's or whether there was any property anywhere around, I think it would be --

QUESTION: But, surely, even so your position certainly is that there was no necessity for any warrant.

MR. BORK: Certainly, that is our position.

QUESTION: And the probable cause, I take it, focuses on whether or not there were assets -- whether there was probable cause that assets could be discovered on the premises that would satisfy the jeopardy assessment?

MR. BORK: Yes. But I think, Mr. Justice Rehnquist, in a case where it is the taxpayer's property, there would almost always be probable cause to think that -- this building was seized as well. And there would almost always be probable cause to suppose that there were assets in an office building.

QUESTION: What if there were probable cause only to believe that there was evidence but no probable cause to believe that there were assets, would your position be any different?

MR. BORK: Evidence, Mr. Justice Rehnquist, of what?

QUESTION: Of criminal tax liability.

QUESTION: The books. The books of the company.

MR. BORK: No, I don't think one could use this kind of entry to secure evidence of a crime or of tax --

QUESTION: No, but the books of the corporation. Suppose all you thought was in the house or in the premises were the books, the corporate books.

MR. BORK: I think those could be seized for the purposes that --

QUESTION: Even though they weren't worth anything and wouldn't pay any taxes, it would be the source of information where you could determine the amount of the assessment accurately and where some assets might be.

MR. BORK: Let me say two things about that. There was a later increase in the income for one of these years, but that information, that is the increase in the assessment, the deficiency, that information did not come from these books or records. The IRS went in to gather assets. There were books and records. It took them for two reasons: One reason was they thought the records might themselves contain assets, such as stock certificates. The other is they thought the records might indicate the location of other property of the taxpayer. That is not an investigatory reason such as you would have in a criminal case; that is simply a means of tracking down property. And all that is at stake in that kind of a seizure of records, it seems to me, is a property

interest, not a privacy interest.

QUESTION: How did you find out that some of the cars were located down in Los Angeles? From these records?

MR. BORK: I do not know the answer to that, Mr. Chief Justice. I do not believe they did find it from these records.

QUESTION: At what stage did the agents observe the apparent surreptitious removal of boxes of material of some kind from the Cottage?

MR. BORK: They made the first entry into the bungalow office on the 21st of March. They backed out when they saw a stove and refrigerator, because they thought it might be a private residence. They then that night saw people carrying boxes of things out of the building, and in the morning they discovered that the Stutz automobile, which had been in the garage and which they had not seized, had disappeared. They later recovered that. It turned out that it had been removed by the younger Norman, and they later recovered it.

But I suppose the automobiles in this case are the most important issue to the Internal Revenue Service because it's seizing assets of that type every day, and it's terribly important to the collection of taxes, and I think it would be utterly impracticable, given the dispersion of property that taxpayers mostly have, to impose a warrant requirement on that kind of seizure. For one thing, the fourth amendment requires

that the places and so forth be described with particularity, which means that you would have to search for the property then post a guard and go back and get a warrant, and you would have multiple applications in many cases as they kept locating new property, which would also thrust the courts, I must say, into the day-to-day administration of the Internal Revenue Service.

Now, the core value of the fourth amendment I take it to be the protection of privacy. And it seems to me that that value is not even implicated in the process of levying upon automobiles. The petitioner here makes no point that there was any entry upon any private premises to seize the automobiles. Indeed, they were found on parking lots and public garages, and I think one of them was found on the street, although I am not entirely sure. But there is no privacy interest.

The only thing that is at stake here is a seizure for a property interest, and the United States had a property interest superior to that of George Norman or his alter ego, the petitioner here. And that is shown, I think, by the fact that anything that was seized which should ultimately be held to have been improperly seized is fully compensable by damages which an invasion of a privacy interest never is.

And I should note that a full deficiency notice listing each of the items of deficiency has been served upon

the taxpayer and that Mr. Norman is now in the tax court through his attorney contesting the amount of the deficiency.

I think that's sufficient. I think the automobile seizure is covered by Murray's Lessee case we discuss in our brief, and I think it's sufficient to dispose of that issue in favor of the United States.

There is only a property interest at stake, and I think the interest of the United States and the flexibility in collecting it, and efficiency in collecting the amount due it by delinquent taxpayers --

QUESTION: Mr. Solicitor General, would it have made any difference if the automobiles had been on the private property of the taxpayer?

MR. BORK: Well, Mr. Justice Powell, I think if they had seized the automobile in the garage, I think that would still have been reasonable. And that, I think, brings me to the question of the entry into the office, because they had to remove -- they removed a lock on the garage and were about to seize the automobile when the younger Norman protested. So they didn't seize it. But had they seized it, I take it there would have been less of a privacy interest in the garage entry than there would have been, if there was any, in the office entry. But I don't think it made any difference.

QUESTION: Wouldn't Murray's Lessee have covered a seizure in a driveway on private property?

MR. BORK: I think it would, Mr. Justice White.

QUESTION: But not in the garage?

MR. BORK: I don't know that I am willing to say it would not in the garage. That is quite a different case.

QUESTION: Those weren't the facts.

MR. BORK: No, that is quite right.

Now, I think I have discussed the automobiles sufficiently. The sheer number of them, the dispersion of them, the fact that they are easily movable, the fact that they were in public places, and so forth, I think sufficiently establishes the reasonableness of that seizure.

I want to talk about the second entry into the office. It's helpful to place those events in context. I think our brief does so adequately, and I will not go over the facts about how they discovered that there was such an office, and so forth. I have mentioned that they entered once, saw the stove and the refrigerator, and backed out. Now, at that point --

QUESTION. Mr. Solicitor General, you mentioned entry into the office. Should we not for the purpose of the case assume it's a residence?

MR. BORK: I don't think so, Mr. Justice Stevens.

QUESTION: It was the residence of the son, was it not?

MR. BORK: The record shows George Norman III, the son, who was 19 years old at the time, testified at page 34

of the appendix that he had moved in for security purposes because there had been some break-ins. It was not as if it was an established residence. He moved in to protect the office and was living there. So I don't think that is quite the same or anywhere near the same as a private interest. And when the office was seized, he went back to his father's and mother's house.

QUESTION: Does your argument in this case depend on assuming that it was not a residence?

MR. BORK: I think if it were a residence, it would be a more difficult case.

QUESTION: I know, but what are you asking us to hold? Are you asking us to decide a case of a nonresidence, or decide a rule that will apply to residences as well?

MR. BORK: I am asking you to decide a case that would apply to a nonresidence, Mr. Justice Stevens. I think the degree of residence that was involved here, which they could not have known, that is, that George Norman III, who was 19, had moved in here for security purposes, does not change this into a classic residential dwelling.

QUESTION: If they didn't think it was a residence, why did not they continue their total search the first time they entered? Wasn't it the policy not to search residences?

MR. BORK: That is correct. But they went in and saw the stove and refrigerator, and out of an abundance of

caution went out. Then two things happened. One was that they talked to Mr. Ridd, a contractor, who said that he had worked in there and it was an office. The other was that they began to see materials taken out at night.

Now, the record, unfortunately, although we refer to an entrance on the 21st, when they backed out, and an entrance on the 23rd, if you look at the Appendix, Mr. Justice Stevens, it turns out on pages 34, 59, and 77, some people testified that the entrance took place the next day, right after -- on the 22nd right after they saw the property being removed, but other people testified that, no, it was the 23rd, and the record is in a very unsatisfactory state about that and nobody apparently focused on that issue at the trial level.

They went back into the building, but I would place in addition to the circumstances surrounding this, in addition to the fact that a property interest is at stake and not really a privacy interest, I think we ought to point out that what was done here follows about 700 years of Anglo-American legal history, that at least since the 13th century this kind of thing has been regularly done. English common law is quite clear it was done, as our brief describes, in the colonies of the United States. It is quite clear that the States such as Pennsylvania and Massachusetts and others which had prohibitions on unreasonable searches and seizures, after adopting those prohibitions, adopted statutes

that allowed what was done here and much more than what was done here.

So I think it is quite clear that the fourth amendment was written against a background of English and American legal history and of State constitutional law, which shows that it was not intended to apply to entries to seize property of the taxpayer who was delinquent in order to satisfy his tax obligations. And I think that entrance --

QUESTION: It was adopted, however, against a background of revulsion against writs of assistance and general warrants and specifically against the background of the use of those devices to search to see whether or not a person owed taxes, isn't that correct?

MR. BORK: To search to see whether or not a person owed taxes, that is quite correct.

QUESTION: That was its specific background, wasn't it?

MR. BORK: That is quite correct, Mr. Justice Stewart. But a writ of assistance, a general writ of assistance was an authority to search almost at random to see whether there was property in the houses, and it often had no foundation --

QUESTION: That is right. ... excise tax should have been paid, or some similar tax.

MR. BORK: Whereas this is quite different. This is a case in which it has been determined that taxes are owing by

a specific person and that there is reason to believe he has property on business premises.

QUESTION: It has been determined unilaterally.

MR. BORK: Well, it has been determined in this case, for example, after consultation with revenue counsel and all the agents. It was quite a thorough investigation here.

QUESTION: It hasn't been determined after any adjudication; it has just been determined unilaterally by the collector.

MR. BORK: That is correct, but that is precisely what has happened throughout our history from the adoption of the Constitution on. The First Congress, which proposed the adoption of the fourth amendment, along with the rest of the bill of rights, of course, also passed a statute allowing the collection of taxes to be levied by distress and sale, and that contemplated the procedure that was used here. So I think it's clear that the original understanding of the fourth amendment is that this kind of entry was lawful and does not require a warrant under the fourth amendment.

QUESTION: Your position is never.

MR. BORK: Pardon me?

QUESTION: Never. You never need a warrant.

MR. BORK: Mr. Justice Marshall --

QUESTION: If the IRS is involved, you never need a warrant.

MR. BORK: I do not advance a position that broad here today, Mr. Justice Marshall. There may be circumstances --

QUESTION: I think you are pretty close, because you had weeks, you had three weeks here, didn't you?

MR. BORK: We had three weeks? Oh, I see, Mr. Justice Marshall. In this kind of a case, in an entry upon business premises, I think the IRS did not need a warrant. I would not go so far as to make that statement as to a private residence, and the IRS does not go so far as to do that kind of thing with a private residence. But I would say that in addition to the practice of the IRS, there is much more at stake here.

QUESTION: You see, I have trouble with the practical point, because it is just as easy to go and get a warrant. There is no urgency here.

MR. BORK: Oh, I think there was an urgency once the --

QUESTION: I can't recognize an urgency that extends for three weeks. I have great difficulty.

MR. BORK: Well, Mr. Justice Marshall, the assessment was actually made, I believe, on the 19th. On the next day, on the 20th, they went to Mrs. Norman and demanded payment. On the 21st, the seizure of assets began. Once the assessment was made --

QUESTION: It was three days -- one day.

MR. BORK: I have been arguing that in this case, as

in a case like Biswell, the operation of the program would be brought to a standstill if you had to locate property and then go get a warrant for each item of property, particularly describing it, it becomes --

QUESTION: I didn't say that.

MR. BORK: Pardon me?

QUESTION: I said that when they knew about these six cars -- was it six?

MR. BORK: I believe it was seven, but --

QUESTION: Seven. When they knew about those, couldn't they have gotten a warrant to seize those?

MR. BORK: They would have had to go, for example, find them -- they couldn't describe where they were until they found them.

QUESTION: They could describe the cars.

MR. BORK: Yes. But if you regard this as a fourth amendment search and seizure warrant, I would suppose you would have to describe their location, and so forth.

QUESTION: I just recognize that the fourth amendment is there, that's my trouble. And I can understand why on certain occasions IRS has a great emergency; the guy is at the airport with a bundle of money in his bag and is ready to take off. I wouldn't require IRS to go any place.

MR. BORK: Well, Mr. Justice --

QUESTION: If the man is on his way walking for a

three-day walk, I think you would have time to get a warrant. That's all I am talking about.

MR. BORK: I think in this case you would have had to locate the automobiles, post guards on each one of them, then go back to the court and get the warrant for the seizure. And since they --

QUESTION: How many cars did they see in the driveway the first day they went there?

MR. BORK: The record only says several, but they didn't try --

QUESTION: Several.

MR. BORK: They didn't try to seize them that day.

QUESTION: They could have gotten a warrant that day.

MR. BORK: They didn't know who the cars belonged to. They went back then, Mr. Justice Marshall, and checked the registration of those cars and found out they belonged to the petitioner.

QUESTION: Then they could have gotten a warrant.

MR. BORK: They could have gotten a warrant. I am suggesting to you, Mr. Justice Marshall, that if that requirement were applied across the operations of the IRS, which seizes assets every day --

QUESTION: I am just applying it to this case, which is the case that is before me.

MR. BORK: I would also suggest that in addition to

the constitutional history, there has been an unvarying practice under the Constitution for almost 200 years, and that any rule applied in this case that would require a warrant in circumstances like this would also put into jeopardy, put into peril, the operation of all of the States in their enforcement of judgments, in their execution on judgments. For example --

QUESTION: I also think, Mr. Solicitor General, that on the other side of that coin, I don't think I would give IRS three years to act. And I don't want to say that -- you don't want a broad rule one way; I don't want a broad rule the other way.

QUESTION: Mr. Solicitor General --

QUESTION: How do you get in the middle?

QUESTION: -- you wouldn't distinguish this case of a jeopardy assessment from any other situation in which the Commissioner is entitled to levy and distraint --

MR. BORK: No, no, Mr. Justice White. The fact that it was a jeopardy assessment does not -- it could have been just a plain assessment.

QUESTION: Exactly.

MR. BORK: But, also, I think it's useful to recognize that this is indistinguishable from what happens in the execution of judgments all over the country. And in fact in the very jurisdiction in which this arose, Utah, the rule of civil procedure there, 64(b), says that if a sheriff

is executing a judgment, he makes a public demand for property in a building, and if the demand is refused, the statute says he must cause the building to be broken open and take the property into his possession, and if necessary, he may call to his aid the power of the county.

QUESTION: Does that include a private residence?

MR. BORK: So far as the rule appears on its face, Mr. Justice Stewart, it does. I do not know what the practice is.

QUESTION: Has the historic practice of which you have advised us, this three- or four- or five-century practice, included warrantless breaking into private residences to find property of a taxpayer who has been judged to owe taxes?

MR. BORK: It certainly does, Mr. Justice Stewart.

QUESTION: Why has the Internal Revenue Service been so leary about that?

MR. BORK: I think they live in this society, as the rest of us do, and they recognize that there is a privacy interest in a public home which they do not wish to invade. Now, what they do with a private home is they are likely to padlock it, and then negotiate.

QUESTION: Is do what?

MR. BORK: They may padlock a home, and then negotiate.

QUESTION: In this case, you equate this so-called

bungalow with the taxpayer's business office, is that correct?

MR. BORK: I do, indeed. And I think the evidence shows that.

QUESTION: And surely you are not submitting to us that there is no privacy interest of the taxpayer, or of anybody, in his private business office?

MR. BORK: There is much less, I think, Mr. Justice Stewart, than there is in his home. See v. Seattle says specifically that the court does not mean to imply that the privacy interest in this kind of a governmental regulation case is not less in an office than it is in a private residence. I think practically that is quite true, it is. And, secondly, the entry here was not for the purpose of an investigatory search; it was here just to seize property, and what's at stake really is -- it has very little to do with the privacy interest; it is mainly a property interest that's at stake.

QUESTION: Well, I would think that if somebody broke into my office in this building and looked for property, that would also invade a good deal of privacy, wouldn't it?

MR. BORK: Indeed, it would. But there is a much lower privacy interest, I think, in business premises. And you have on the other side the kinds of factors that are recognized in Colonnade Catering and Biswell, and so forth, about the urgent Government need. And you have here a congressional statute which recognizes this kind of practice

and has since the First Congress of the United States. So that I don't expect a 20th century court to be bound absolutely by history and by long usage, but I do think those things count heavily, and I think --

QUESTION: It's the levy and distraint statute, isn't it?

MR. BORK: Yes.

QUESTION: Mr. Solicitor General, you attach significance to the fact that it's an office rather than a residence, but the trial court found in finding No. 3 that it was the residence of Mr. Norman, Jr., and their finding was not set aside, as I understand it. So aren't we bound to regard it as a residence?

MR. BORK: Well, I think one is bound to regard it as a residence in the sense that Mr. Norman, Jr., testified it was.

QUESTION: Or in the sense that the trial court found it to be a residence.

MR. BORK: Well --

QUESTION: Are you asking us to reexamine the finding and look at the record and make an independent determination on the point?

MR. BORK: No, I think it is -- he was residing there. My point is simply that --

QUESTION: Not only are there differences between

offices and residences, but there are differences between different kinds of residences.

MR. BORK: If one sleeps in one's office overnight, Mr. Justice Stevens, or one sleeps in his office for a week to safeguard it, I don't think it attains quite the height of privacy that one has in one's regular residence and dwelling place.

QUESTION: The finding here was not only, as my brother Stevens has pointed out, that it was a residence, but it was a residence of someone other than the taxpayer. It was equivalent of John Smith's residence.

MR. BORK: It was the taxpayer's president's residence in this record.

QUESTION: I thought the taxpayer was Mr. Norman.

MR. BORK: I am sorry, the petitioner's.

QUESTION: And this was the residence of tertius, of Mr. Norman III --

MR. BORK: The president --

QUESTION: -- who constitutionally was the equivalent of just any John Smith. So they are breaking into a third person's residence according to the finding.

QUESTION: Is the young Norman, whose residence this was, a party here?

MR. BORK: He was below. He is no longer in the case, Mr. Justice White.

QUESTION: Has the taxpayer any standing to talk about the invasion of young Mr. Norman's residence?

MR. BORK: I wouldn't think so, Mr. Justice White. And in addition, it is true that the Court of Appeals set aside all the findings in this case on the grounds that the trial court merely adopted without a change all of the findings submitted by petitioner below.

QUESTION: Are you suggesting that we must take the case as though it wasn't a residence at all, because a corporation hasn't any standing to claim it is a residence, or to object to an invasion of a residence?

QUESTION: The corporation -- it was their office, wasn't it? They clearly had standing to --

QUESTION: Oh, yes, they have standing on the office, but have they got standing to object to the entry as an entry into a house?

MR. BORK: I never thought of that, Mr. Justice White, but I think they probably do not.

QUESTION: They don't have standing to object to the breaking into the door to the premises that were both an office and a residence, because they weren't the only resident?

QUESTION: They have standing to object to it as an entry into it as a business establishment.

QUESTION: They don't have standing to make this argument is what you say.

MR. BORK: That is correct, not as to tertius.

QUESTION: Doesn't Justice Jackson's opinion in Morton Salt say that corporations don't have the full protection of the fourth amendment that individuals do?

MR.BORK: I think it's quite true, Mr. Justice Rehnquist, that corporations do not. I think See v. Seattle suggests that business premises do not under the fifth amendment certainly where even if you have got a corporation which can be pierced for the purpose of attaching liability to a private individual, nevertheless that corporation has no privilege under the fifth amendment. And for that reason, I think there is really no occasion after in effect 700 years of history and almost 200 years under our Constitution to use this case to overturn practices that are common at every level of government, state, local, and federal, and not just for tax collection but also for execution of judgments.

QUESTION: In that connection, following through on Justice Rehnquist's question, do you have any comment about Silverthorne?

MR. BORK: I don't think I do, Mr. Justice Blackmun, unless --

QUESTION: So I take it you --

MR. BORK: It was a sweeping use of -- I have a comment, but I don't think it is relevant. My comment, I hope, is relevant. It was a sweeping seizure of records from a

corporation which were then to be used for investigatory purposes, and that is not true here. They were merely seizing documents as assets and as leads to assets.

QUESTION: To satisfy judgments, the ultimate --

MR. BORK: To satisfy the ultimate judgment.

QUESTION: Do you submit that the purpose of seizing the documents solely as leads to assets would be sufficient to justify a warrantless entry into the office?

MR. BORK: Yes, Mr. Justice Stevens, I would, although there was the additional purpose of --

QUESTION: I understand.

MR. BORK: To seize the records wasn't the reason they went in. They went in to seize all assets, as they did. And we ask that the judgment of the Court of Appeals, therefore, be affirmed.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Solicitor General.

Mr. Leedy, do you have anything further? You have about five minutes.

REBUTTAL ARGUMENT OF RICHARD J. LEEDY

ON BEHALF OF THE PETITIONERS

MR. LEEDY: As I was going to indicate, I believe my time is almost gone. Mr. Chief Justice, and may it please the Court: There is one issue I would like to take with the Solicitor General that appears in the brief and also appears in

the argument here, and that is that the seizure of the assets is not a seizure within the meaning of the fourth amendment and not entitled to its protection because in essence they are seizing a property interest and there is therefore no violation of a privacy interest.

I would take issue with that. As I understand the right to privacy, the right to be let alone from government interference, I think it's particularly acute when in fact a premises is entered into, but also when the property is seized and one is dispossessed of the ownership of the property, I think that that's just as much a violation of the privacy interest as it is a property interest. And I would cite this Court to its case in One 1958 Plymouth Sedan v. Pennsylvania, which is 380 U.S. 693, which is a forfeiture proceeding against an automobile wherein this Court held that the fourth amendment applied when seeking to deprive an owner of the ownership of his property. Consequently, I believe it's superficial to say that all we are doing is dispossessing a person of a property interest, therefore, no privacy interest is affected and therefore the fourth amendment doesn't apply. I believe the privacy interests are affected when a person's property is taken away from him.

QUESTION: Mr. Leedy, before you sit down, will you refresh my recollection on just exactly what the posture of Mr. Norman III, the son, is in the litigation now? Is he advancing

the arguments that you are making?

MR. LEEDY: No, your Honor. The original case was brought by the petitioner. Subsequent to the bringing of the original case, the IRS seized additional assets from the son. He then intervened in this action and won in the trial court and the IRS did not appeal the decision as to him. It returned the assets to him.

QUESTION: And he doesn't have any pending claim for damages or anything like that? The reason I ask --

MR. LEEDY: I think there would be, your Honor, because they returned the stock to him, but the value may have declined. Yes, I believe there would --

QUESTION: Is he still a litigant? The reason I ask is that are we concerned at all with the status of these premises as a residence,or are we not? Because a corporation may only argue the impact on itself of the entry.

MR. LEEDY: The only person before this Court is G. M. Leasing Corporation, the petitioner. The IRS conceded the correctness of the trial court's decision with respect to the son. That's the only way I know how to answer. But technically I presume he is entitled to a hearing on damages in the trial court.

QUESTION: But in any event, in this Court we are only concerned with the status of the G. M. Leasing Corporation and its interest in the premises.

MR.LEEDY: Yes, sir.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 11:03 a.m., the arguments in the above-entitled matter were concluded.]