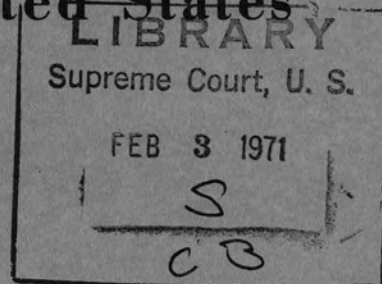


Supreme Court of the United States



OCTOBER TERM, 1970

In the Matter of:

Docket No. 144

----- X
EUGENE GRIFFIN, ETC., ET AL.

Petitioners

VS.

LAVON BRICKENRIDGE, ET AL.,

Respondents
----- X

pt. 2

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Place Washington, D. C.

Date January 14, 1971

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C O N T E N T S

ARGUMENT OF:	PAGE:
LAWRENCE G. WALLACE, ESQ. As amicus curiae	4
W. D. MOORE, ESQ. On behalf of Respondents	23

1 IN THE SUPREME COURT OF THE UNITED STATES
2 OCTOBER TERM, 1970
3

4 -----
5 EUGENE GRIFFIN, ETC. ET AL. :

6 Petitioners :

7
8 vs. :

No. 144

9
10 LAVON BRICKENRIDGE, ET AL., :

11 Respondents :
12 -----

13
14 Washington, D.C.

15 Thursday, January 14, 1970

16 The above entitled matter came on for argu-
17 ment at 10:00 o'clock, am.
18

19
20 BEFORE:

21 WARREN E. BURGER, Chief Justice
22 HUGO L. BLACK, Associate Justice
23 WILLIAM O. DOUGLAS, Associate Justice
24 JOHN M. HARLAN, Associate Justice
25 WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

1 pendix, in paragraph 12. There's an allegation that by this
2 conspiracy the Defendants "have willfully and maliciously in-
3 timidated and prevented the Plaintiffs from enjoying and
4 exercising," going down to the bottom of this paragraph, "their
5 rights to travel the public highways without restraint in the
6 same terms that white citizens in Kemper County, Mississippi."

7 Now I believe this similarity has some relevance
8 because of the threat of continuity that runs through the adop-
9 tion of all three of these amendments to the Constitution, and
10 through the whole series of legislation, through the 1866, 1870
11 and 1871 Acts, and even the 1875 Act, which is not involved
12 here.

13 The overriding purpose behind all of these provisions,
14 and it colors the way they should be read and interpreted, as
15 this Court has said many times, was to achieve a meaningful
16 emancipation, for the former slaves, in various aspects of com-
17 munity life.

18 This was certainly a purpose to be achieved in the
19 1870 legislation, and when Congress was made aware that the
20 activities of the Ku Klux Klan and other private conspirators,
21 were interfering with the achievement of this objective, Congress
22 went on, in 1871, to enact the legislation that is now before us,
23 that this Court is asked to interpret in this case.

24 The first section of that legislation is now Section
25 1983 of Title 42, and that is quoted on page 10 of our brief,

1 ourgrey covered brief, in this case. That provided that every
2 person, who under color of any statute, ordinance, regulation,
3 custom, or usage of any State or Territory, under color of
4 law, subjects, or causes to be subjected, any citizen of the
5 United States, or other person within the jurisdiction thereof,
6 to the deprivation of any rights, priveledges, or immunities
7 secured by the Constitution and laws, is liable to a suit for
8 damages.

9 Now that covered liability by public officials, who
10 were acting under color of law, have deprived deplainants of
11 rights under the Constitution, including Fourteenth Amendment
12 rights. This Court has several times held that this statute
13 applies to Fourteenth Amendment rights, as well as to other
14 rights, in Screws against the United States, Monroe against
15 Pape, and so forth.

16 That was not, as this Court noted last term in its
17 opinion in Adickes against Kress & Co., that was not the most
18 controversial provision of the 1871 legislation. It was Section
19 II in which Congress went on to reach, at least in turns, actions
20 that are not taken under color of law, that provoked the con-
21 troversy.

22 And before proceeding to Section II I want to say
23 one other thing about Section 1983. Not only did it reach ac-
24 tions by public officials, and make them subject to suit for
25 damages, it also extended, it has been held a number of times,

1 to actions by private persons taken in concert with public of-
2 ficials, those, too, are actions taken under color of law, as
3 this Court held with respect to the comparable criminal provision
4 in United States against Price. And a number of Court of Appeals
5 cases have held the same thing with respect to 1983 and a foot-
6 note in the Price opinion indicates that this is an accurate
7 analysis.

8 So with this in mind, as well as accomplished in Sec-
9 tion one of the legislation, I think we can turn to an analysis
10 of what did Section Two of the same law add. Now Section two is
11 insofar as we're concerned with it, the civil part of Section
12 two is now the provision before us. Section 1985 - 3 of Title
13 42. It's set forth in full on page 2 of our brief, but I think
14 for purposes of our discussion, it will be more convenient to
15 refer to page 7 of our brief, in which we have quoted from the
16 Collins opinion, this Courts' adambation of the various pro-
17 visions with numbering added to it, that are covered in 1985-3.

18 Here is where the Congress gave attention to the ac-
19 tivities of private conspitators, it attempted to provide re-
20 dress in order, to, as I said at the outset, achieve the mean-
21 ingful emancipation that was the overriding objective.

22 One of the things that Congress provided redress for
23 were conspiracies by two or more persons, in the part numbered
24 two here, on page 7, to prevent or hinder the constítuted auth-
25 orities from giving or securing to all persons the equal pro-

1 tection of the laws interference with public officials even
2 though it might not be conspiratorial, not be taken in concert,
3 that is conspitorial with the public officials, even though
4 it not be taken in concert with the public officials, interfer-
5 ence with their providing equal protection is covered by that
6 part of 1985-3.

7 Interference in concert is already covered in Section
8 1 of the Act, as I said. And then the parts numbered three and
9 four provide specific protections against conspiracies to int-
10 erfere with voting in federal elections and campaigning in fed-
11 eral elections.

12 Now the question remaining, and the key question in
13 this case, is what does the first part add to these pro-
14 visions? What further meaning is there in the first part of 1985-
15 3? Our approach to any statute is that each part must mean
16 something, and not be merely redundant of what is enacted right
17 along with it.

18 How can two or more private persons conspire without
19 in some way acting under color of law in concert with public
20 officials so as to deprive any person or class of persons of
21 equal protection of the laws or of equal priveledges and im-
22 munities under the laws? They don't have the authority to do
23 that.

24 That is the concepetual difficulty with trying to
25 attuibute a meaning to this part of the statute that goes beyond

1 what Congress had already done.

2 In some ways it's very similar to the difficulty
3 that the three justices of the Court in *Screws* against the
4 United States, and Mr. Justice Frankfurter in *Monroe* against
5 Pape had with the question of how can a state official acting
6 contrary to state law be depriving an individual of rights
7 that the state guarantees him.

8 It's a rather similar conceptual difficulty and indeed,
9 the answer which this Court gave in the *Collins* opinion is very
10 similar to the answer to that other question which was given in
11 the dissenting opinion in *Screws* against the United States
12 and in the dissenting opinion in *Monroe* against Pape.

13 The answer, the key language of the answer, can be
14 found on page 8 of our brief, the very next page, in the middle
15 of the page, in the paragraph set forth in the middle of the
16 page, the second sentence of that paragraph points out that
17 "the negative answer of the *Collins* opinion said that unless
18 the law or its agencies were to give sanction or sanctuary
19 to the private conduct, the victims' rights," this is quoting
20 from *Collins*, "The victims rights under the laws, and the pro-
21 tection of the laws remain untouched and equal to the rights
22 of every other person within the State", and that is why the
23 *Collins* opinion, in effect, reads this part of 1985-3 as merely
24 redundant of 1983, as really accomplishing the same thing.

25 But if we look back at the language of the statute

1 again, the statute doesn't say that the wrong is to deprive
2 someone as Collins said of the rights to equal protection under
3 the laws, that's not what the statute says.

4 The statute says conspiracy to deprive them of the
5 equal protection of the reality, not the right, as Mr. Justice
6 Brennan pointed out in his opinion in Adickes, the only way
7 to deprive someone of the equal protection of the laws would
8 be to repeal the Fourteenth Amendment.

9 That couldn't be what Congress had in mind, no private
10 persons could accomplish that. So the question in our mind
11 becomes what is it that private persons conspiring together
12 can do that would deprive someone of the meaningful enjoyment
13 of these guarantees that the Constitution had added as against
14 the states? Besides interfering with the conduct of public of-
15 ficials which is covered in the second part here?

16 What is it besides that that private persons could
17 do that would interfere with the enjoyment of these rights?

18 Well, one fairly obvious thing, to refer to a problem
19 that is again before this Court, this term, would be if there
20 were a school desegregation order, and private persons conspired
21 together to prevent children because of their race from attending
22 a particular school. Intercepted them, prevented them from
23 getting there.

24 That would not be action taken under color of law,
25 it would bot be action taken in concert with public officials.

1 Yet it seems to us that it would be a deprivation of
2 enjoyment of the right to equal protection of the laws that---

3 Q There are many ways of getting at that, aren't
4 there? Many other ways than relying on a statute of this kind
5 to reach the hypothetical you just suggested.

6 A There undoubtedly are, but Congress was concerned
7 in enacting this very statute that other ways that might be
8 available, other legal remedies, such as remedies in the states,
9 might not prove effective to protect the rights that they
10 were trying to confer.

11 Q Well, I'm speaking of Federal. Aren't there many
12 other federal remedies for this hypothetical?

13 A Well, there would be remedies connected with a
14 Court Order, if the desegregation were being accomplished under
15 a Court Order.

16 Q Aren't there Federal Statutes about obstructing
17 justice?

18 A There would be the possibility of a federal
19 statute. I'm not sure, however, that if all that were involved
20 were a plan voluntarily adopted by a school board to comply
21 with the law of the land, a school board not under court order,
22 that any federal statute about obstructing justice would be
23 applicable.

24 Q Well, your hypothetical is altered a little bit
25 now.

1 A Well, in response to your question. But it seems
2 to me that it would still be within the outreach of this pro-
3 vision. The concern of Congress was with the possibility that
4 the rights would not be enjoyed because private persons would
5 prevent their enjoyment.

6 As a matter of fact, there is a very specific refer-
7 ence to this in the legislative history of the amendment adding
8 the word "equal" which Mr. Pollack spoke about yesterday.

9 I'd like to refer the Court to that history, these
10 are remarks by Representative Garfield, later the President
11 of the United States, in support of this amendment, and in
12 support of the provision that was then enacted. The consequence
13 of this amendment, and this is not quoted in the brief, un-
14 fortunately, it appears on page 153 of the Congressional Globe,
15 42nd Congress, first session.

16 These remarks, incidentally, were cited, although these
17 particular ones were not quoted in Mr. Justice Brennans' opinion
18 in Adickes.

19 Representative Garfield said there, in support of the
20 amendment, I quote now, "To state the case in the most moderate
21 terms, it appears that in some of the Southern States, there
22 exists a widespread secret organization, whose members are
23 bound together by solemn oath to prevent certain classes of
24 citizens, of the United States, from enjoying their new rights,
25 these new rights conferred upon them by the Constitution and the

1 laws, and they are putting into execution their design of pre-
2 venting such citizens from enjoying the free light of the bal-
3 lot box and other priveledges and immunities of citizens, and
4 from enjoying the equal protection of the laws."

5 Q ---statutory view that you take, what do you con-
6 ceed to be the constitutional source of power to sustain that
7 kind of a statute?

8 A Well, we argue in our brief that as applied here,
9 the Thirteenth Amendment is applicable to this application, and
10 that the Fourteenth Amendment, the enforcement provisions of
11 both of those amendments would be the relevant provisions.

12 If I may, Mr. Justice, I'd like to get to that in
13 just a moment---

14 Q Yes.

15 A After I finish the statutory analysis and its
16 applicability to this case ---

17 Q Yes.

18 A As we see it. Given that much meaning of the
19 statute, we say that even that applies here, because the
20 allegation is of a terroristin, coercive interference with the
21 use of public highways. That's exactly what happened here, in
22 fact it's not terzibly different from some of the activities of
23 the Klan during the period in which Congress was enacting this
24 legislation.

25 We think, really, that the right should probably be

1 formulated in more basic terms than that.

2 We don't think it would really make a difference in
3 this case, if the interception had occurred in a private drive-
4 way rather than on a public road, as this Court noted in Jones
5 against Mayer Co., one of the rights that Congress was concerned
6 to accomplish through the adoption of the Thirteenth Amendment
7 and the 1866 legislation, and we say there's a threat of con-
8 tinuity running through here, was to see to it that the newly
9 emancipated Negroes would have, in Senator Trumbull's words that
10 were there quoted, freedom to go and come at pleasure.

11 And certainly the kind of freedom to go and come for
12 this class of persons that would be upheld for white persons
13 and ordinary persons in the community is of the essence of
14 accomplishing a meaningful emancipation.

15 Of changing people's status from a subjugated status
16 to a free status, and this is why it seems to us that what
17 Congress was trying to do was to protect persons from private
18 conspiracies directed against them because of their membership
19 in a class, because of their race or other comparable membership
20 in a class, directed toward keeping them in an inferior status,
21 preventing them from enjoying these rights in the public sec-
22 tor, as we say in our brief, that others in the community have
23 the right, Under the Thirteenth and Fourteenth Amendments against
24 the State to enjoy.

25 Now it seems to us that the Court's opinion in Jones

1 practically points the way to the application of the Thirteenth
2 Amendment to sustain the statute, to get back to Mr. Justice
3 Harlans question.

4 Q As a source of Congressional power---

5 A As a source of Congressional power.

6 Q The -- is that in Jones there was an explicit
7 language about buying and selling property, real and personal,

8 A Well, that's why I thought our real problem here
9 was---

10 Q With the statute.

11 A With the statute, and I think this is what the
12 statute must have meant, and then this kind of application, it
13 seems to us, is sustained there by the constitutional analysis
14 in Jones. And we see no problem with upholding this application
15 without reaching the question of other possible applications.

16 After all, this is not a criminal statute where we
17 need worry as much about notice from a restrictive pleading of
18 it and it seems to me that the principles of United States
19 against Raines apply a sort of a fortiori to a civil statute
20 of this kind.

21 Q My only difficulty, well not my only difficulty
22 because I have many in this case, but with the statutory lang-
23 uage it's certainly difficult for me at first blush to see how
24 it covers this case, where the facts were that two brothers who
25 were of the white race, crashed their car into another car and

1 beat up the five occupants of the other car. Period. And with
2 the mistake that one of the five was a civil rights worker.

3 A With purpose is alleged here, with purpose is
4 alleged. It's not an allegation of a mere assault. It's an
5 allegation that the assault was to prevent these persons because
6 of their race, from enjoying the same right to use the public
7 highway, to go and come as they pleased, as white citizens of
8 this county.

9 That that was the reason for the assault, coercion
10 was being applied to them, to keep them to that extent a sub-
11 jugated status.

12 That, it seems to us,---

13 Q Whenever two white men beat up a Negro man, a
14 suit under this statute could be drawn? If they beat him up
15 because he was Negro.

16 A Well, we do say in our brief that this purpose
17 to keep in an inferior status probably can be inferred in most
18 such instances where that's the intent, but here, where there's
19 no more intent than that shown, but here there is more intent
20 than that shown---

21 Q Alledged, alleged.

22 A Alleged. Yes, well that's the allegation---

23 Q Well, that's what we're talking about.

24 A that---to be accepted.

25 Q And what is the more? What's the more?

1 A The more is that they were not to have the
2 rights that white persons have---

3 Q Well, this is true---

4 A ---to go and come.

5 Q Well, this is true, when two or more white men
6 beat up one or more Negro men, because they're Negroes.

7 A If there's no---

8 Q And to say to them, obviously, that they're not
9 going to be able to walk down the street.

10 A If there's no personal reason for what is done,
11 if it's done only---

12 Q Becuase they're Negroes.

13 A ---because they're fair game, because they're
14 inferior human beings, then it seems to me that that's what
15 Congress was trying---

16 Q You think that's covered by the language of the
17 statute, do you? You obviously do or you wouldn't ---

18 A We do. Now it's diffimult for us to see what
19 else this language means---

20 Q Well, I---

21 A In the context, as I built it.

22 Q You gave us one good example of what it might
23 mean, that is, keeping Negro children away from a desegregated
24 public school.

25 A Well, that would be a possibility. But there is

1 a use of the state facilities here. They have a right to equal
2 use of the state highways.

3 It's not on these facts, really, a different case,
4 in our view.

5 Q Well, that's vis a vis the state under the
6 Fourteenth Amendment. The Fourteenth Amendment upholding to
7 these only---

8 A Well, of course.

9 Q ---upon the state. You would agree with that,
10 wouldn't you?

11 A Well, of course. That's the right to attend the
12 public schools.

13 Q Yes, as against the State.

14 A That's right. To us, it really is the same
15 case.

16 Q Except that you have a Court Order, which you
17 hypothesized.

18 A But I would hypothesize the case where there is
19 no Court Order. The school board has voluntarily adopted a de-
20 segregation plan, and conspirators keep the children from at-
21 tending.---

22 Q No, but I say we might agree that that might be
23 covered by this statute. We're talking about your case.

24 A I don't see the distinction.

25 Q I---

1 A The rights are against the state in both cases.

2 In both cases the use of the state facilities are be-
3 ing interfered with by the conspiracy and it is because of a
4 class discrimination. It is because of a desire to keep the
5 former slave race in a subjugated state.

6 Q Well, this is just hypothetical, but it takes
7 us away from the immediate context for a minute, and let's see
8 if it sheds any light for me on the problems.

9 Let's suppose in some community a new church was
10 started. A church that was found offensive to a great many of
11 the people living there, and they, in one way or another, by
12 picketing, by threats, intimidation, banded together, more
13 than three of them, to prevent the worshippers of that group,
14 having nothing to do with Negro and white problems, to prevent
15 the worshippers of that new, unpopular sect, from exercising
16 their right to free exercise of religion.

17 Would you think that would be covered by this stat-
18 ute?

19 A Well, that hypothetical, Mr. Chief Justice, is
20 indistinguishable from the facts in Collins against Hardyman.
21 which also involved a First Amendment right, assembly in order
22 to oppose the Marshall Plan, a political group, and there, I
23 think the statutory language, as we read it, would be applicable
24 but we would no longer be able to draw on the Thirteenth Amend-
25 ment, as a source of Congressional authority.

1 It would have to rely exclusively on the Fourteenth
2 Amendment. Now I think the Fourteenth Amendment does provide as-
3 sistance in this case, and is the basis for authority. Six
4 justices in the Goss case said, that the Fourteenth Amendment
5 will support federal legislation punishing all conspiracy with
6 or without state action that interfere with Fourteenth Amend-
7 ment rights, that interfere with Fourteenth Amendment rights.

8 And I don't think that that principle means that
9 Congress thereby is empowered to reach every possible tort of
10 crime under state law.

11 The formulation itself indicates a limitation on its
12 applicability, its interference with the rights of the Fourteenth
13 Amendment, protects against the states. We're not dealing here
14 in an area where a state has, pursuant to some new principle,
15 relegated decision making to private persons, which is the kind
16 of thing that the court was concerned with in the civil rights
17 cases.

18 This is not that kind of area. It's not freedom to
19 come and go in somebody else's place. It's freedom to come and
20 go on the public thoroughfares. And we are dealing with class
21 discriminations, with the new right that was established in the
22 Fourteenth Amendment, the right to equality that the sponsors
23 of the Amendment and the sponsors of the legislation thought
24 because of its newness would need special federal nurture and
25 federal protection.

1 Q Would you agree, Mr. Wallace, that had this case
2 gone to trial, or one like it, that there is a threshold oblig-
3 ation on the Plaintiff to prove the existence of conspiracy?
4 It isn't just the conduct---

5 A That's right.

6 Q Now, presumably, if the litigation took the
7 course of most conspiracy-based cases, they would have to call
8 on the Defendants for testimony.

9 Suppose these Defendants just declined to testify on
10 the grounds of the Fifth Amendment, and no other testimony about
11 a conspiracy was forthcoming except such as the Plaintiffs
12 might offer by way of their own conclusions.

13 Would you agree that that would lead directly to a
14 verdict, very likely?

15 A Well, I think---

16 Q In favor of the Defendants?

17 A ---that a conspiracy can be proved, by proof
18 of concerted conduct and the inferences that should be drawn
19 from the conduct, and---

20 Q Well would you think that when two men attack
21 two other men, or one other, that conduct alone would establish
22 a conspiracy?

23 A Well, this wasn't a mere attack, Mr. Chief Jus-
24 tice. This was an interception of the car. They cut off this
25 car on a public highway, and proceeded at gun point to remove

1 these people from the car and attack them.

2 Q Well, that evidence would be equally directed
3 toward establishing some criminal conduct, wouldn't it? State
4 criminal conduct.

5 A Well, there may be more reason to read a con-
6 spiracy law more narrowly when criminal sanctions are involved.

7 Here we have an effort by Congress to provide civil
8 redress for interference with the enjoyment of rights that
9 Congress was trying to confer on these people and it's apparent
10 that damage was done, through a concerted action which at least
11 the trier of that could infer involved some conspiratorial de-
12 sign between the actors.

13 I don't see why a civil statute should be read more
14 strictly than that. The object was to provide redress for
15 damages, and damages were done, here.

16 Q Well, what I was getting at in part, at least,
17 was that you probably could have cases where enormous damages
18 could be shown, but the case might fail because of want of evi-
19 dence of a conspiracy.

20 A Well, perhaps so, Mr. Chief Justice, that isn't
21 this case.

22 Q That might be either by the action of the triers,
23 or it might be by action of the Court. I just wanted to separate
24 proof of conspiracy from proof of the damages.

25 A That's proper, Your Honor.

1 Q Very well.

2 A Thank you.

3 Q Thank you, Mr. Wallace. Mr. Moore?

4 ARGUMENT OF W. D. MOORE, ESQ.

5 ON BEHALF OF RESPONDENTS

6 MR. W. D. MOORE: Mr. Chief Justice, and may it please
7 the court.

8 It is alleged that on July 2, 1966, which happened
9 to be a Sunday afternoon, the Claimants in this cause were trav-
10 elling down a public road. That they were intercepted by the
11 Respondents, in this cause, and that a confrontation occurred,
12 whereby it is alleged that assault was made and physical dam-
13 ages done to the Petitioners.

14 And as a result from that, the Petitioners filed a
15 suit in the State Court in Kemper County, Mississippi. that
16 case is still pending, it hasn't be tried, but anyway it's on
17 the docket, it's still pending.

18 They also filed a complaint in the Eastern Division
19 of the Southern District of Mississippi, federal jurisdiction,
20 and the cause came on to be heard upon the motion of the Re-
21 spondents to dismiss the case, because the declaration had
22 wholly failed to state a cause of action in that it did not
23 allege an action under color of law.

24 The decision of the District Judge was appealed to
25 the Fifth Circuit, for the Fifth District, and the Circuit Court

1 affirmed the ruling of the District Judge holding that there had
2 been no action, no alleged damages committed under color of law.

3 Then the case was appealed to this Body. And we're
4 here today for that.

5 Q Keep your voice up a little please.

6 A Thank you, Mr. Justice. The only issue, as I
7 see it to be determined by this Court is whether the lower
8 court was correct in affirming, in dismissing the cause of action
9 because it failed to state that the alleged acts were committed
10 under color of law.

11 Now this Court has settled the matter, in my opinion,
12 and in Collins vs. Hardyman, and some of the members of this
13 Court were here when the case was decided.

14 What we have, allegedly, is that these people were
15 grievously treated, if the allegations of the complaint are
16 correct. And that their rights would be violated, but it is the
17 opinion of the Court in Collins vs. Hardyman---

18 Q When you say their rights would be violated,
19 you mean their rights under the statute?

20 A Their individual rights, not their rights under
21 the law.

22 Q Well in order to have rights, it seems to me, it
23 has to be under the law, that's what rights and obligations
24 are all about.

25 A That's right with regard to law and justice, but

1 I'm speaking of equality of rights under the law.

2 Q I thought you were talking about rights under
3 tort law in Mississippi.

4 A No, sir. I just didn't express myself correctly.
5 I was trying to read from Collins vs. Hardyman.

6 Q Well, Mr. Moore, assuming for the moment that
7 the allegations of this complaint were in a complaint in an ac-
8 tion in the State Court, with all other jurisdiction unquestioned
9 would there be any doubt that they had asserted a tort action
10 against the Defendants? If the allegations are correct, and
11 they can support---

12 A Under the State, I believe, Mr. Chief Justice
13 that it would state a tort action.

14 Q There couldn't be much question about that, could
15 there?

16 A No, sir.

17 Well, as a matter of fact, as I said before, they
18 have done that. There is a case arising out of the alleged facts
19 in this, in the state court.

20 Q Has it been tried?

21 A No, sir.

22 It was filed shortly after the alleged incident occurred
23 and for various reasons, I don't know why, it hasn't been tried,
24 but they have it still on the docket.

25 Now in the case in the state court, I think they state

1 a cause of action.

2 But what this Court is concerned with, and what my
3 understanding is, that if the acts were taken to be true, their
4 rights were certainly invaded. Disregarded and lawlessly vio-
5 lated.

6 But neither their rights nor their equality of rights
7 under the law, have been or were or intended to be denied or
8 impaired. That's the position of the Respondents in this mat-
9 ter.

10 Now reference has been made to the Guestcase and the
11 Price case. Well they were criminal cases, and indictment was
12 obtained, and among other things, in the indictment it was
13 charged that they committed these acts under color of law. I
14 don't think that that would be applicable to our case here.

15 Q The Guestcase, I think it had two branches, I'm
16 talking now about the opinion of the Court, not the concurring
17 opinion, one branch of it was that there was an official state
18 action, but quite a separate and distinct branch of the case
19 was that there was private action interfering with a right that
20 Congress had the constitutional power to protect, that was the
21 right of interstate travel.

22 Do you remember, have you read the Guest opinion?

23 A Yes, sir. That would be correct.

24 Q And as to that second branch it explicitly, per-
25 haps not clearly, held that there need not be state involvement

1 when the federal right interfered with is the right of inter-
2 state travel, because that is a right that does not derive, ne-
3 cessarily, from the Fourteenth Amendment, that's a right that
4 Congress can protect against interference by private action.

5 A Yes, sir.

6 Q So, to that extent, the opinion of the court in
7 Guest doesn't require color of law or state involvement in any
8 way, when the federal right interfered with is the right of
9 interstate travel.

10 Am I correct?

11 A That's as I understand it, yes, sir.

12 s Q Well, there's an allegation here about traveling
13 freely down an interstate highway, isn't there?

14 A I don't know whether it used the word "interstate"
15 or not. It said on the local---

16 Q Well, it's on page 6, paragraph 12. "The right to
17 travel the public highways". It's on page 6 of the Appendix.

18 A Yes, sir. I don't have that before me right now.

19 Q Of, course the Guest case, which perhaps for the
20 first time made it explicit that the right of interstate tra-
21 vel was a right that Congress had the power to protect not only
22 against state interference but also against private interference
23 that holding, that was in the Guest case, which came after
24 Collins against Hardyman, didn't it?

25 A Yes, sir.

1 Q I wonder if you think that has any significance,
2 or that that, since that was a right that had not been chrystal-
3 lized, or made clear at the time of the decision in Collins
4 against Hardyman.

5 A Well, I just don't, to be frank with you, Mr.
6 Justice Brennan, I mean Justice Stewart, I don't know.

7 But we have placed our defense on the case of Collins
8 and we believe that it's a landmark case, that the issue has
9 been tried and settled by this Court, unless there's some
10 further questions, Mr. Chief Justice, we rest our case on Collins
11 vs. Hardyman.

12 Thank You.

13 Q Thank you Mr. Moore, thank you Mr. Wallace, the
14 case is submitted.

15 (Whereupon at 11:05 a.m. argument in the above-
16 entitled matter was concluded.)

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