

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: MICHAEL A. HADDLE, Petitioner v. JEANETTE G.

GARRISON, ET AL.

CASE NO: 97-1472 *C. 2*

PLACE: Washington, D.C.

DATE: Tuesday, November 10, 1998

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL A. HADDLE, :
Petitioner :
v. : No. 97-1472
JEANETTE G. GARRISON, ET AL. :

- - - - -X
Washington, D.C.

Tuesday, November 10, 1998

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:07 a.m.

APPEARANCES:

CHARLES C. STEBBINS, III, ESQ., Augusta, Georgia; on
behalf of the Petitioner.

MATTHEW D. ROBERTS, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; for
the United States, as amicus curiae, supporting the
Petitioner.

PHILLIP A. BRADLEY, ESQ., Atlanta, Georgia; on behalf of
the Respondents.

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1 P R O C E E D I N G S

2 (11:07 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 97-1472, the Michael A. Haddle v. Jeanette
5 Garrison.

6 We're going to have to move along. We have
7 another case here, Counsel.

8 Mr. Stebbins.

9 ORAL ARGUMENT OF CHARLES C. STEBBINS, III

10 ON BEHALF OF THE PETITIONER

11 MR. STEBBINS: Mr. Chief Justice, and may it
12 please the Court:

13 This case is about whether there is any Federal
14 civil remedy for a Federal witness in the position of my
15 client who was fired from his job of 10 years' standing
16 because he responded to a Federal subpoena, appeared at a
17 Federal grand jury proceeding, prepared to testify as to
18 facts involving a Federal health care fraud investigation.

19 QUESTION: Would you clarify for us what the
20 status of Georgia law is on the subject of recoverability
21 for at-will employment discharge?

22 MR. STEBBINS: Yes, Your Honor. Under Georgia
23 law, as stated in the leading Supreme Court case of
24 Georgia Power Company v. Busbin, which is cited in the
25 brief, there is a cause of action for tortious

1 interference with at-will employment which can be brought
2 by the at-will employee for damages against any person
3 other than his employer and those who share the immunity
4 of the employer under State law.

5 QUESTION: Now, there was a supplemental brief
6 calling the Court's attention to some new case.

7 MR. STEBBINS: Yes, Your Honor. It's my view
8 that that case doesn't illuminate anything about this case
9 whatsoever. I'm surprised that it was cited.

10 In that case, the Robbins decision -- Georgia
11 has a strong at-will policy that the employer can never be
12 liable for discharging his at-will employee. In the
13 Robbins case, the employee contended that because he was
14 an employee of a Federal credit union, he had a Federal
15 statutory right to notice and hearing before he was
16 discharged. The Georgia Supreme Court found that an
17 employee of a Federal credit union is not an employee of a
18 Federal agency and has no statutory Federal right to
19 anything more than any other at-will employee. The case
20 does not change Georgia law in any respect as to that
21 issue.

22 QUESTION: Could -- could this be considered,
23 the loss of job, an injury to the person under Georgia law
24 as opposed to property?

25 MR. STEBBINS: Your Honor, under -- under

1 Georgia law, the action is characterized as an injury to
2 property. However, in general common law among the
3 jurisdictions, as I pointed out in the brief, some
4 jurisdictions characterize this as an injury to the
5 person, others as an injury to property. What is the case
6 is that all jurisdictions characterize it as either an
7 injury to person or property, thereby falling within the
8 language that Congress used when it gave a -- a Federal
9 recovery under this Federal tort that Congress created for
10 anyone who was injured in his person or property.

11 QUESTION: So, if the injury were purely an
12 emotional injury as a result of what happened, would that
13 be recoverable in your view?

14 MR. STEBBINS: Under the Federal statute, Your
15 Honor, I'm not sure whether it would be or not. I believe
16 the answer to that question would be the same answer that
17 would be given if this were a case premised on Title 7 or
18 section 1981 or section 1982 or any other Federal law that
19 provides for liability for discrimination in employment of
20 some kind. Congress is legislating, as the Court has
21 often recognized, against the background of general tort
22 law. I think the issue would be whether the emotional
23 damage rose to the level that it would be compensated
24 under ordinary tort law principles.

25 QUESTION: You say general tort law. So it is

1 important to you that not only would Georgia give relief
2 in this situation, but that, as you say, other States
3 would all give relief. Suppose Georgia alone would give
4 relief.

5 MR. STEBBINS: Well, I believe, Your Honor, that
6 a Federal tort created by Congress should be governed by a
7 uniform Federal rule of damages. It may borrow from State
8 law rules, but I believe when it does so, it should borrow
9 from the general common law tradition as embodied in the
10 laws and the decisions of all the States. I don't think
11 it would be appropriate. I think it would --

12 QUESTION: But under the Fourteenth Amendment,
13 generally we look to State law for the definition of
14 property.

15 MR. STEBBINS: Your Honor, I agree --

16 QUESTION: And why should we not do the same
17 here?

18 MR. STEBBINS: Because this section of 1985 is
19 not premised on the Fourteenth Amendment and, in fact, has
20 nothing to do with the Fourteenth Amendment. This is the
21 teaching of this Court in *Kush v. Rutledge*; was made
22 explicit in *United Brotherhood of Carpenters v.* --

23 QUESTION: Suppose the State of -- suppose
24 somebody is injured in -- in property which the State of
25 Georgia would not say was his property. Are we going to

1 adopt a Federal law of property?

2 MR. STEBBINS: No, Your Honor.

3 QUESTION: I mean, a particular property is
4 damaged by -- by the miscreant under this statute. And,
5 you know, the threshold question is, whose property is it?
6 You say we adopt a Federal rule?

7 MR. STEBBINS: No, Your Honor, I don't say that.
8 I would first point out that the chances of such a case
9 arising are very small and they don't arise here --

10 QUESTION: So, you acknowledge we look to the
11 State law for whose property it is, but then you want us
12 to create a general Federal law to -- as to whether there
13 has been a -- been a tort or not.

14 MR. STEBBINS: Well, again, Your Honor, I say
15 this, that when Congress uses the phrase, injured in his
16 person or property, when it used this phrase in 1871, to
17 create a tort, not in the context of the Fourteenth
18 Amendment where we're talking about the adjustment of
19 authority between the State and Federal Government, I
20 believe that the content that has to be given to the term,
21 injury to person or property, in the first instance has
22 got to be drawn from what you might say is the common
23 meaning of the terms.

24 Now, I hasten to add that in this case it's not
25 a significant distinction because the Georgia law clearly

1 recognizes that my client had a, quote, valuable property
2 right, end quote. That's the Georgia Court of Appeals in
3 Troy v. Interfinancial. He had a, quote, valuable
4 property right, end quote, in his at-will employment. So,
5 if you refer --

6 QUESTION: It's not important to you, but it's
7 important to us.

8 MR. STEBBINS: Yes, Your Honor, I understand
9 that.

10 And it would be my contention that although
11 there are difficulties with the idea that when Congress
12 says injured in his person or property, it is not
13 referring directly to State law for the meaning of
14 property. The difficulties that would be inherent in
15 taking the other position would be more serious for the
16 power of the Federal Government to operate within its own
17 sphere.

18 For instance, if a State should take it into its
19 head to declare that any number of things are not property
20 which the Congress intended to protect when it protected
21 its witness, the State might say that no contractual right
22 is property either, but nobody would buy that because
23 we --

24 QUESTION: Those people going to get reelected
25 when they --

1 MR. STEBBINS: Well, I don't know about that,
2 Your Honor. When the act --

3 QUESTION: Most unlikely. I mean, isn't there a
4 significant deterrent for the State to -- to modify its
5 -- its internal law just to spite the Federal Government?

6 MR. STEBBINS: Yes, Your Honor.

7 QUESTION: They're not going to do that.

8 MR. STEBBINS: That's true, but there's also a
9 very -- it's very unlikely in my opinion that the Federal
10 Government and the State government will disagree as to
11 what property means.

12 What's happened in this case is that the Federal
13 and State governments have disagreed as to who may have a
14 recovery -- rather, as to who may be liable for an
15 invasion of property.

16 QUESTION: Well, in -- in order to get to that
17 issue, why do you look to tort law as such as opposed to
18 going directly to the statute and saying the purpose of
19 the statute seems to have been to protect people from
20 getting hurt for testifying? And therefore the injury
21 that the statute must be -- must be referring to would be
22 anything that a witness or potential witness would regard
23 as enough of an injury to induce that witness not to
24 testify or to fear that he would be hurt if he did
25 testify.

1 And if you look at it that way, you don't look
2 to tort law as such, though tort law may be -- be helpful
3 in suggesting things to you, you -- you look to the way
4 witnesses are going to be motivated by what happens to
5 them. And if you do that, you have a concept of injury
6 which I suppose would clearly cover your case.

7 So, my question is, why do you confine yourself
8 to tort law concepts, as helpful as they may be, as
9 opposed to going right to the object of the statute and
10 saying injury should be defined in terms of that
11 ostensible object?

12 MR. STEBBINS: Your Honor, my only answer to
13 that is that I agree with Your Honor, and I didn't mean to
14 confine myself to --

15 QUESTION: Oh, you do. So, it doesn't have to
16 be person or property. I mean, you -- you feel free to
17 invent an object of the statute beyond the words? I mean,
18 it says you have to be injured in your person or property.
19 I mean, if someone says, if you testify, I am going to
20 break the -- break the knees of your -- of your son-in-
21 law, would that be covered by the statute? Because, after
22 all, it would fit the purpose of the statute, but are you
23 injured in your person or property?

24 MR. STEBBINS: I believe the son-in-law has been
25 injured, Your Honor, and I think he would have a claim.

1 QUESTION: That's right.

2 MR. STEBBINS: But I don't think you would have
3 a claim.

4 QUESTION: But I'm the one who -- who's being
5 deterred from testifying and either I have a cause of
6 action or nobody does. We don't rewrite statutes up here,
7 and -- and Congress, when it writes a statute doesn't --
8 doesn't say whatever it takes to -- to reach this
9 objective. It says we have this objective and these are
10 the limits on it. And they have said here person or
11 property.

12 I don't know why you can come up and say
13 anything that will -- will prevent people from being
14 deterred from testifying. You must acknowledge there are
15 some things that will deter people from testifying which
16 are not covered by this statute, like breaking the knees
17 of my son-in-law.

18 QUESTION: But if I may interject, I think what
19 you were saying was that anything that hurts the witness
20 would be covered, not that anything that hurts a third
21 party would be covered.

22 MR. STEBBINS: Yes, Your Honor. I think I have
23 to go somewhere down the middle between what --

24 QUESTION: My son-in-law supports my daughter.
25 I -- I feel very much hurt if my son-in-law cannot have

1 gainful employment. That doesn't hurt me? It certainly
2 does in my person or property.

3 MR. STEBBINS: Well, I think that the tort law
4 concepts have got to have some relevance to the inquiry
5 whether there has been a sufficient injury to person or
6 property --

7 QUESTION: Mr. Stebbins, maybe I misread your
8 position, but I thought you were saying the statute could
9 just as well have said injured, any person who is injured,
10 period. But that in his person or property was an
11 endeavor to show the breadth of the statute rather than
12 the narrowness of it.

13 MR. STEBBINS: That's correct, Your Honor, and I
14 tried to illustrate that by reference to mid-19th century
15 sources to indicate that that was the intention of
16 Congress. I cited to Blackstone and to Cobb's Georgia
17 Code as showing that at the time, and for all I know now,
18 all injuries that would be compensable --

19 QUESTION: But then you simply fall back on how
20 do you define injury. Supposing that I'm in the habit of
21 inviting you to go out to a football game and I have seats
22 and you're subpoenaed to go before a grand jury and I say,
23 well, you know, if you go before that grand jury, I'm just
24 going to get somebody else to go to the game this time.
25 Now, that might meet Justice Souter's criteria of

1 something that would bother someone a great deal and
2 perhaps induce him not to testify, but is that injury in
3 the light of the statute?

4 MR. STEBBINS: Your Honor, I would not think it
5 was, and this is why general tort law is relevant to the
6 determination of what the scope of injury to person or
7 property is.

8 QUESTION: Would you say that intentional
9 infliction of emotional distress is injury?

10 MR. STEBBINS: I think it would depend on the
11 degree of the emotional distress.

12 QUESTION: If it's -- if it's compensable under
13 State law as an intentional infliction of emotional
14 distress, I assume it's injury.

15 MR. STEBBINS: Yes.

16 QUESTION: Is it injury to person?

17 MR. STEBBINS: I believe that would be an injury
18 to person, yes, Your Honor.

19 QUESTION: So, your point is that -- that
20 general concepts of tort law inform our notion of
21 injury --

22 MR. STEBBINS: Well --

23 QUESTION: -- but the -- but to -- to the -- to
24 the witness who is the focus of the statute, but they
25 don't confine us to particular categories of injury that

1 may -- may or may not be recognized in a given State or
2 even a generality of States at a given time. Is -- is
3 that a fair summary?

4 MR. STEBBINS: I believe it is, Your Honor, but
5 I would like to say that general tort law needs to inform
6 the total phrase used by Congress, which is injured in his
7 person or property. I think to -- to parse the phrase too
8 closely would perhaps lead to results that were not
9 intended. I think --

10 QUESTION: But I -- if I may interrupt you, I
11 thought -- and maybe -- maybe I'm just not following you.
12 I thought you had agreed with Justice Ginsburg that the
13 reference -- in her suggestion that the reference to
14 person or property is there to indicate the breadth of the
15 injuries that may be the subject of this statute. And --
16 and in other words, it -- it's -- the phrase is there to
17 -- to say we cover the waterfront, not to -- to indicate
18 some constriction. Is -- is that correct?

19 MR. STEBBINS: That's true, Your Honor, but the
20 way you know that that's true is you look at the way the
21 phrase injured in person or property was used in the law
22 generally, text writers, cases, and so forth, at the time
23 in question. I agree it was intended from -- from looking
24 at the applicable general background of legal speech that
25 was available at the time, the phrase injured in his

1 person or property was intended to be inclusive of the
2 universe of compensable injuries rather than exclusive or
3 restrictive.

4 QUESTION: May I ask you about compensable? If
5 we would go this far with you and say it's an injury, but
6 what would be the measure of compensation given that it
7 was an at-will employment and the employer could have
8 said, for any unpoisoned reason, go, I don't like you.

9 MR. STEBBINS: Your Honor, again this same
10 question comes up, say, in a Title 7 case where this Court
11 has never spoken to that issue, and I believe there's a
12 difference of opinion among the circuits. I believe in
13 our circuit, the Eleventh Circuit, the Court generally
14 holds that the extent of compensation available will be
15 measured by what it states vaguely as a reasonable
16 standard.

17 Let's suppose that the employer has not been
18 able to prevail on his affirmative defense that he would
19 have fired the person anyway. Then, of course, the Court
20 is not going to allow damages to go on forever. But this
21 is not an issue that's peculiar to section 1985, part 2.
22 This is an issue that exists with all Federal anti-
23 discrimination laws to the extent that they affect at-
24 will employment. No --

25 QUESTION: Mr. Stebbins, you're not only

1 assuming or asserting that -- that injury to person or
2 property means general -- general tort law, but you're
3 also assuming that it means general tort law as it may
4 evolve into the future. Why do you assume that?

5 If -- if, for example, at-will employment was
6 not considered or any interference with at-will employment
7 was not considered to be a tort at the time this provision
8 was adopted, why -- why would I believe that the Congress
9 which enacted this would want that rather minor injury to
10 be sucked into the provision because some future states
11 give causes of action for interference with at-will
12 employment?

13 MR. STEBBINS: Well, Your Honor, I have two
14 answers to that.

15 First of all, the most direct answer would be
16 that when Congress legislates in this broad manner and
17 says, injured in his person or property, I believe
18 Congress expects and it necessarily follows that this
19 Court and the lower courts, the courts below, are going to
20 develop a law to interpret these broad terms, and that law
21 is going to change over time, just as in the antitrust
22 laws which is the closest analogy in terms of the actual
23 words used where there's a reference to injured in
24 business or property. This Court is then faced with the
25 -- and the lower courts are faced with the necessity of

1 developing the law as cases appear before it, and that's a
2 necessary concomitant of a common law system.

3 But I'd also like to say more specifically I
4 understand the -- the -- Justice Scalia, what you said
5 about it matters to you all, but not to us, but I do want
6 not to lose sight of the fact that there is no evidence at
7 all that this injury was not compensable at common law at
8 the time or that it would not be compensable under the
9 State law of the State of Georgia to somebody.

10 Now, I'd like to reserve any further time I
11 have, Mr. Chief Justice, if there are no further
12 questions.

13 QUESTION: Very well, Mr. Stebbins.

14 Mr. Roberts, we'll hear from you.

15 ORAL ARGUMENT OF MATTHEW D. ROBERTS
16 FOR THE UNITED STATES, AS AMICUS CURIAE
17 SUPPORTING THE PETITIONER

18 MR. ROBERTS: Mr. Chief Justice, and may it
19 please the Court:

20 Petitioner was injured in his person or property
21 because he lost wages when he was fired pursuant to a
22 conspiracy prohibited by section 1985. Subsection 2 of
23 section 1985 protects the Federal courts by creating a
24 Federal right to be free of conspiracies to interfere with
25 Federal witnesses --

1 QUESTION: Well, should we look to State law to
2 determine whether there's injury to person or property?

3 MR. ROBERTS: No, Your Honor.

4 QUESTION: Why not?

5 MR. ROBERTS: Injury to person or property was a
6 term of art with a well-established meaning at common law.
7 It meant a loss or damage that was compensable in a tort
8 suit. Nothing in the other provisions of section 1985 or
9 its legislative history warrants a departure from that
10 meaning and, indeed, the limited legislative history on
11 point confirms it.

12 In addition, there's no question that lost wages
13 were compensable in 1871 and that they remain so today.
14 An employee who loses his job because he's struck by a car
15 driven negligently can recover the wages he has lost, and
16 he can recover them whether or not his employment was at
17 will. Petitioner, who was deprived of wages because his
18 employment was terminated by a conspiracy prohibited by
19 section 1985, likewise has suffered a compensable injury.

20 QUESTION: Well, that -- that covers this case.
21 What if -- what if in fact the only party here were the
22 employer? What would the answer be then?

23 MR. ROBERTS: It's -- it's not relevant whether
24 the -- the employer is the party or not. Our -- our point
25 is not --

1 QUESTION: But under -- under Georgia law at the
2 time the statute was passed, the employer would -- would
3 be scot-free as a matter of State common law, I take it.

4 MR. ROBERTS: The wrong and the tort is the
5 conspiracy that is prohibited by the second clause of
6 section 1985. The question is whether there's been a harm
7 or a loss that would be ordinarily compensated in a tort
8 suit, and lost wages are that kind of a harm.

9 QUESTION: But isn't there also a question
10 whether someone who was incapable of committing the
11 substantive offense can be guilty of conspiracy to commit
12 it?

13 MR. ROBERTS: The -- the offense is conspiracy
14 to deter a witness from testifying truthfully or to
15 retaliate against a witness for testifying or attending
16 court. I -- I don't think that there's any question that
17 the employer can be guilty of that -- of that wrong. The
18 wrong is not wrongful discharge or tortious interference
19 under State law. The wrong is the wrong that is
20 prohibited by section 1985. The question is whether
21 there's been a harm.

22 QUESTION: Well, that says if two or more
23 persons conspire to injure the party in his person or
24 property.

25 MR. ROBERTS: That's -- that's one of the

1 clauses. The -- the first clause of -- I mean, the first
2 part --

3 QUESTION: Isn't that the relevant clause here?

4 MR. ROBERTS: Well, I believe there are several.
5 There are several relevant clauses, Your Honor. Let me
6 -- let me try to explain.

7 The petitioner has alleged a conspiracy to deter
8 him and others from testifying, as well as a conspiracy to
9 injure him because he testified. I think what's really at
10 issue before the Court is the remedy clause in the third
11 subsection which gives the petitioner a right to recover
12 the damages he suffered when he was fired pursuant to the
13 unlawful conspiracy. I don't think there's much of a
14 question that petitioner has alleged a conspiracy that's
15 violated by this subsection 2, clause i.

16 And in reference to the question --

17 QUESTION: May I ask? It's not clear to me that
18 this kind of thing is so obviously covered. I mean,
19 suppose my wife and I have a -- a household retainer, a
20 woman who's lived with us and taken care of the children
21 and helped with the housework and so forth, all on an at-
22 will basis. And this woman decides to testify against us
23 in some -- in some lawsuit. You're asserting that my wife
24 and I couldn't, feeling wronged and injured by that,
25 decide to -- that we no longer wanted this woman to work

1 for us even though she has no contract. It's been just,
2 you know, she can leave whenever she wants and we could
3 fire her whenever she wants.

4 MR. ROBERTS: You could not --

5 QUESTION: It seems like a very strange result.

6 MR. ROBERTS: You could not conspire to injure
7 her in her person or property in order -- on account of
8 her testimony in Federal court. Yes, the -- that -- if
9 the -- if your purpose was to retaliate against her for
10 her truthful --

11 QUESTION: That's sort of -- that's --

12 MR. ROBERTS: -- truthful testimony, that --
13 that would be covered by the statute. The statute is
14 trying to protect the Federal courts.

15 QUESTION: Only -- only if we interpret property
16 as broadly as you -- as you want us to interpret it, and
17 that situation makes me think maybe we shouldn't interpret
18 it that broadly because --

19 MR. ROBERTS: I don't believe so. I don't
20 believe so --

21 QUESTION: -- it seems an unreasonable result.

22 MR. ROBERTS: I don't believe so, Your Honor.
23 The statute gives a cause of action to anyone injured in
24 person or property.

25 QUESTION: Provided it's a conspiracy. If the

1 individual did it to himself, it would not be covered,
2 would it?

3 MR. ROBERTS: No. It only covers conspiracy,
4 so --

5 QUESTION: So, they have -- both the husband and
6 wife have to agree to do it.

7 MR. ROBERTS: Would have to agree together for
8 that improper purpose and there would have to be an injury
9 that was compensable in a tort suit in order for it to be
10 covered.

11 In addition, the -- the solution to -- to the
12 concern that you're talking about can't be that the remedy
13 for the Federal right that's created by section 1985
14 should depend on whether the person whose right is
15 violated has an independent remedy under State law.
16 Congress enacted section 1985 precisely because it was
17 concerned that State remedies were unavailable or
18 ineffective. And as I said before, the purpose of the
19 statute is to protect the Federal courts.

20 QUESTION: What -- what about the situation
21 Justice Scalia suggests where there's a question you're
22 injured in your property? You say it's my property, but
23 someone else says, no, that's not your property. It's A's
24 property.

25 MR. ROBERTS: You must be injured in your -- the

1 person whose action it -- it's injured in his person or
2 property. I think that his is the relevant term there in
3 resolving that question.

4 QUESTION: But that doesn't -- you have to go to
5 State law, don't you?

6 MR. ROBERTS: To determine whether it's his --
7 to determine whether he suffered an injury, I don't know
8 if -- whether you have to go to State law or not. You --
9 if there's a question --

10 QUESTION: Well, take --

11 MR. ROBERTS: It's a factual question I think,
12 but --

13 QUESTION: Wait -- wait a minute. I'm trying to
14 ask you a question.

15 MR. ROBERTS: I'm sorry.

16 QUESTION: If you'll simply slow down, maybe
17 I'll be able to.

18 MR. ROBERTS: I apologize, Your Honor, Mr. Chief
19 Justice.

20 QUESTION: Supposing that the question is
21 there's a house, and I say the house was injured, it was
22 mine. But someone else says, no, under Georgia law that
23 house belonged to me. How do you resolve that question?

24 MR. ROBERTS: I think that if the house belonged
25 to another person under Georgia law, then there would --

1 it would not be an injury in his property under the
2 statute, under the Federal statute. It would be no injury
3 to him under the Federal statute. So, yes, I agree that
4 if there's a question of ownership --

5 QUESTION: That was my first question to you,
6 whether we look to State law, and you said no. And yet,
7 if under Georgia law there is no right whatever to
8 maintain employment, then how could it be a property right
9 as -- as against the employer?

10 MR. ROBERTS: The -- the question -- first --
11 first of all, the -- as I said before, we believe that the
12 phrase, injured in person or property, was the term of art
13 that was a unified meaning and that it encompassed all
14 laws that were to be compensable under tort law. Even if
15 you -- if you look at property separately, you still have
16 to deal with the question of whether there was an injury
17 to person here.

18 QUESTION: We agree with that that -- I mean,
19 let's assume we agree with that, that it covers all
20 injuries compensable under -- under tort law. The
21 question is whose tort law. Some federally-imagined tort
22 law or -- or State tort law? I mean, that's --

23 MR. ROBERTS: I think this Court -- the
24 question --

25 QUESTION: Of course, if you don't own the

1 house, it's not going to be compensable in anybody's tort
2 law. There's no injury if you don't own the house.

3 MR. ROBERTS: Yes, Your Honor. That was the
4 point that -- that I was trying to make, that there's been
5 no injury to you.

6 QUESTION: Unless you create a Federal law of
7 property, just as you want us to create a Federal law of
8 torts. If you can do the one, why can't you do the other?

9 QUESTION: You don't have a Federal law to own
10 other people's houses.

11 QUESTION: Suppose -- suppose -- this might
12 help. Suppose Georgia made it quite clear that there was
13 no tort for interference with an advantageous business
14 relation where you destroy an at-will employment relation.
15 What then would be the answer in this case?

16 MR. ROBERTS: I still think the answer in this
17 case would be that petitioner has a cause of action.
18 The --

19 QUESTION: Because?

20 MR. ROBERTS: Because the tort, the wrong, the
21 right that's been violated is the right to be free of a
22 conspiracy that's prohibited by subsection 2 of section
23 1985. The question is whether there's been a loss or a
24 harm that is compensable in tort law.

25 Let me -- let me try to phrase it another way,

1 if I may, to see if I can explain -- explain our position.

2 This might be viewed as a Federal tort that's
3 been created where, in order to have a damages action, one
4 of the elements of it is that you prove damages. That's
5 what the requirement that injured in a person or property
6 requires.

7 To answer the question that -- that Justice
8 Ginsburg, for example, asked petitioner, we don't believe
9 that the statute would mean the same thing if it said
10 injured as opposed to saying injured in person or
11 property. The in person or property requirement does
12 clarify that it's a broad coverage, but it also limits
13 coverage. There can't be a suit just for nominal damages.
14 There can't be a suit unless the petitioner -- unless the
15 plaintiff alleges that -- and proves that he has suffered
16 an injury that's compensable in tort law.

17 QUESTION: In the hypothetical that I gave, no
18 tort in Georgia for interference with that advantageous
19 business right, what is the property that's been injured
20 in that instance?

21 MR. ROBERTS: The property is the lost wages
22 that you would have received but for the Federal wrong,
23 the wrong in violation of Federal law. Just as in Mt.
24 Healthy when the at-will employee was fired in violation
25 of the First Amendment, he could recover his lost wages.

1 It's difficult --

2 QUESTION: Thank you, Mr. Roberts.

3 We'll hear now from you, Mr. Bradley.

4 ORAL ARGUMENT OF PHILLIP A. BRADLEY

5 ON BEHALF OF THE RESPONDENTS

6 MR. BRADLEY: Mr. Chief Justice, and may it
7 please the Court:

8 The issue before you today is whether this Court
9 will, for the first time in more than 125 years since the
10 reconstruction era enactments, construe the words, quote,
11 injured in person or property, close quote, to include the
12 termination of at-will employment.

13 There are three bases that I would like to
14 review today as to why the Court should not embark on the
15 path suggested by petitioner and the Government which
16 would result in a significant Federal involvement in the
17 employer-employee relationship traditionally reserved to
18 State law.

19 Number one, the terms to be construed in this
20 case have potentially far-reaching implications both
21 within the statute itself and in the other reconstruction
22 era enactments.

23 Number two, the interpretation proposed by the
24 petitioner and the Government simply is inaccurate.

25 And number three, the recent pronouncement of

1 the Georgia Court of Appeals on the issue of whether
2 employment at will constitutes property within the meaning
3 of Georgia law.

4 QUESTION: May I just --

5 QUESTION: Mr. Bradley, do I understand from
6 what you just said that, to take the clearest case, the
7 at-will employer says to employee, there's a Federal
8 investigation going on. Don't you dare testify. If you
9 do, you will be fired at once. That's our case. And you
10 would say that this statute does not provide a remedy.
11 Let's say that the employee testifies and is fired at
12 once.

13 MR. BRADLEY: This statute does not provide a
14 remedy.

15 QUESTION: Does not, yes.

16 MR. BRADLEY: There are other statutes that
17 might provide a remedy to that same employee.

18 QUESTION: And I assume you would say this
19 statute also doesn't provide a remedy if he -- if you say
20 to this person not that I will fire you, but I will break
21 your son-in-law's knees. That also wouldn't be covered,
22 would it?

23 MR. BRADLEY: That's correct.

24 QUESTION: May I ask you just a question of
25 Georgia tort law? I assume that if I run over an at-will

1 employee with my car or if Justice Scalia does --

2 (Laughter.)

3 QUESTION: -- that --

4 QUESTION: Gratuitous. Gratuitous.

5 QUESTION: -- that the at-will -- that the at-
6 will employee can recover damages for -- for lost wages.

7 MR. BRADLEY: That's correct, and that goes to
8 the heart of where I think the Government confuses the
9 issue in this case, and that is whether you're talking
10 about an element of damages versus a substantive facet of
11 the tort itself.

12 Certainly if Justice Scalia were to run over my
13 colleague, Mr. Armstrong, and he was to lose time at work,
14 the element of special damages of lost wages would be
15 recoverable. That doesn't mean that there is property
16 interest in that employment at will, though. That's a
17 different issue as to whether or not I have injured
18 something of property. The injury in that case was the
19 bodily injury of the person who was run over.

20 QUESTION: Well, but from that, it also
21 necessarily followed that the property interest in
22 continued employment was also -- was also injured.

23 MR. BRADLEY: It was --

24 QUESTION: We -- we say -- I mean, you're quite
25 right. In our usual vocabulary we say, well, lost wages

1 is an element of damage or damages, but the reason it's an
2 element of damages is that there is a property interest
3 which in fact has -- has been diminished as a consequence
4 of the personal injury. So, it's -- I -- I don't see how
5 you can avoid the conclusion that there is a property
6 interest recognized in the damages remedy.

7 MR. BRADLEY: But the damages remedy would not
8 exist but for the property -- I mean -- excuse me -- the
9 personal injury that occurred.

10 QUESTION: Well, it wouldn't the way the law of
11 any State is -- is structured today, but I -- it's -- it
12 -- there would be a lot of foolishness but no illogic, I
13 suppose, in a State's coming along and saying, we aren't
14 going to have any more recovery for pain and suffering,
15 but we are going to have recovery for economic damages in
16 automobile accident cases. And you would end up with the
17 same kind of recovery that you get as an element of damage
18 in the -- in the case -- in the scheme that we all have
19 now.

20 MR. BRADLEY: Keeping in mind, though, Justice
21 Souter, that with respect to the element of lost wages in
22 the tort case that we're talking about, you would be
23 looking to the wages that were lost up to the time of
24 trial. In an employment at will --

25 QUESTION: Well, I presume you would have a --

1 if you were -- if you were still injured, I presume you
2 would have a recovery for future earnings.

3 MR. BRADLEY: You may or may not under Georgia
4 tort law. You would have to prove with a sufficient
5 certainty that there would have been an expectation of
6 earnings.

7 QUESTION: Oh, sure. You would -- you would
8 have to prove the -- the likelihood of continued
9 employment, even though it was at will. But the fact that
10 it was at will would not preclude your proving the
11 likelihood of continued employment.

12 MR. BRADLEY: That's correct.

13 QUESTION: Okay.

14 QUESTION: I presume that if I struck your
15 colleague in -- in the way that has been fancifully
16 hypothesized and -- while he was on his -- on his way to
17 his wedding and -- as a result of which, he missed the
18 wedding, and -- and the young woman in question
19 reconsidered the whole thing and refused to marry him, he
20 might have a cause of action against me, might he not?
21 And would you say that he had a property interest in his
22 wedding?

23 MR. BRADLEY: I would not say so, Your Honor.

24 QUESTION: Would Justice Souter, do you think?

25 QUESTION: May I ask you a question?

1 QUESTION: It sounds like a valuable --

2 QUESTION: Assume you --

3 (Laughter.)

4 QUESTION: Assume you do have a contract right
5 to employment. Say this had happened to a person who had
6 a 3-year contract to employment, and therefore would have
7 had a damage remedy under State law for breach of contract
8 when he was discharged. Is it your view that the remedy
9 provided by the Federal statute is coextensive what would
10 otherwise be just a State law remedy for either a tort or
11 a breach of contract? Or does the State -- does the
12 Federal law give the plaintiff anything extra?

13 MR. BRADLEY: In that circumstance where you had
14 a 3-year contract, the Federal remedy would be coextensive
15 with the State law.

16 QUESTION: Can you give me a case in which the
17 Federal remedy gives you something more than you can get
18 at State law for a victim of this kind of conspiracy?

19 MR. BRADLEY: Of this kind of conspiracy?

20 QUESTION: Yes.

21 MR. BRADLEY: I cannot, Your Honor.

22 QUESTION: And can you also answer another
23 question for me? Do you think the word property in this
24 statute has the same or a different meaning from the word
25 property in section 7 of the Sherman Act, which was

1 enacted in the 19th century also?

2 MR. BRADLEY: Your Honor, that was a different
3 enactment at a different period of time, but --

4 QUESTION: I'm just asking, do you think it has
5 the same or a different meaning?

6 MR. BRADLEY: It has a similar meaning but not
7 identical. The -- the Reiter v. Sonotone case, which is
8 what the petitioner and the Government rely on, talk about
9 the situation in which there is a deprivation of property
10 to which the person already has an existing right.

11 QUESTION: I'm not asking you about the Sonotone
12 case. I'm familiar with the case. I'm just asking you if
13 you think the word property has a significantly different
14 meaning in section 7 of the Sherman Act and in this
15 statute, and if so, what's the difference?

16 MR. BRADLEY: I don't know that there is a
17 significant difference as you've couched it. I also don't
18 think that there is a difference in meaning between the
19 term property, as used in the Fourteenth Amendment, which
20 was enacted at roughly the same time as section 1985 --

21 QUESTION: Of course, that refers to -- to the
22 constitutional protection against deprivations of
23 property, and this is a statutory remedy for injuries.
24 The word injury is quite different from the word
25 deprivation.

1 MR. BRADLEY: But the word property is the same
2 in both statutes.

3 QUESTION: But those two things are totally
4 different, aren't they? The Sherman Act and the
5 Fourteenth Amendment protects property where property is
6 defined as those things that people rely upon keeping in
7 their ordinary lives. Hence, we look to State law and
8 distinguish between probationary teachers and permanent
9 teachers and so forth.

10 Now, here the Sherman Act doesn't do that, does
11 it?

12 MR. BRADLEY: No, sir.

13 QUESTION: All right. So -- so, here we don't
14 have that. I concede that, I think. But we do have here
15 an expectation of money, don't we? We have that. I mean,
16 I want to go element by element. There's an expectation
17 of money.

18 MR. BRADLEY: In an employment at will
19 situation --

20 QUESTION: Yes.

21 MR. BRADLEY: -- there's an expectation of money
22 for -- for services rendered.

23 QUESTION: Correct. There's --

24 MR. BRADLEY: Nothing in the future.

25 QUESTION: No, no. Well, isn't it -- don't you

1 expect -- I'm not talking legally, I'm talking in human
2 terms -- that an executive of a company expects to be
3 there next month and to render services and to get paid?

4 MR. BRADLEY: He certainly hopes that that's the
5 case.

6 QUESTION: Well, I would say he expects it. I
7 mean, don't you think in 90 percent -- I'm talking in
8 human terms. I mean, I don't know if you -- all right.
9 You don't want to go that far. You don't have to.

10 QUESTION: I guess it depends upon whether it's
11 a reasonable expectation that society is prepared to
12 consider as legitimate.

13 QUESTION: Yes, that's --

14 QUESTION: To quote a whole other line of cases.

15 QUESTION: But anyway, that expectation is
16 protected by State law, isn't it? At least protected
17 against interference by a third person. I mean, there are
18 standing cases where standing is premised on a person's
19 expectation protected by State law that his contract or
20 -- will not be interfered with or a business relationship
21 won't be interfered with or a future contract not entered
22 into yet that possibly will come about as a result of this
23 negotiation. All of those things are protected often by
24 State law, and I assume Georgia is the same, isn't it?

25 MR. BRADLEY: Under Georgia law, you would have

1 an expectation that a third party would not interfere with
2 your contractual --

3 QUESTION: All right. So, we have a protection,
4 at least against third parties. We have an expectation,
5 and we also have the fact that it is an element in many
6 ordinary tort suits.

7 So, my question -- an element of damages. So,
8 where you have those three things, why isn't it property
9 for purposes of this statute?

10 MR. BRADLEY: For a number of reasons, Justice
11 Breyer.

12 Number one, I turn the Court's attention back to
13 the Paul v. Davis case in which the issue was whether or
14 not reputation was property for purposes of a section 1983
15 deprivation of property action. And this Court
16 specifically rejected the notion that it was a -- it was
17 property to -- anything that was recognizable injury in an
18 ordinary tort suit was property for purposes of section
19 1983.

20 QUESTION: But that was a constitutional
21 deprivation, and I thought Justice Breyer started out by
22 saying those cases are not what's involved here. We're
23 not talking about deprivation of constitutionally
24 protected property.

25 MR. BRADLEY: You have to distinguish between

1 constitutionally protected rights, the privileges and
2 immunities of citizenship, which are different than
3 property which is simply protected by procedural due
4 process. And the -- the Court's rulings are uniform, that
5 to define property for procedural due process purposes,
6 you look outside the Constitution to such places as State
7 law.

8 QUESTION: Mr. --

9 MR. BRADLEY: This Court has never held at-will
10 employment to be property in that context.

11 QUESTION: You're right. I --

12 QUESTION: Mr. Bradley, I think we are less
13 concerned -- or at least I am. I'm -- I'm not sure we
14 have before us the question of what property means. I
15 think what we have before us more precisely is what the
16 phrase injury to person or property means, and -- and what
17 other -- what other statutes use precisely that phrase and
18 have been interpreted in a way favorable to you?

19 I mean, property in isolation is something
20 different, but somehow the phrase injury to person or
21 property means all sorts of injury, whatever injury,
22 whether it's, you know -- that's the argument made by the
23 petitioner here, and I -- and I think there's something to
24 it.

25 Do you have other statutes that use precisely

1 that phrase, injury to person or property?

2 MR. BRADLEY: There are not many statutes that
3 use that precise phrase, injury to person or property.

4 I would like to take you, if I may, Justice
5 Scalia, to this particular statute and look at some of the
6 scenarios that arise if you construe injury to person or
7 property in this particular context to mean what the
8 petitioner and the Government --

9 QUESTION: Before you do that, could you just
10 clarify the answer to my -- to what I had asked? I take
11 it from your answer to my question that you say the word
12 property here does mean what the Fourteenth Amendment
13 provides, in which case your answer to Justice Stevens is
14 it's totally different. I mean, I take it that -- I have
15 -- I set one position. The opposite position has the same
16 meaning as the Fourteenth Amendment has, which I take it
17 is your position, and I want to be sure there isn't some
18 fall-back position you have between those two.

19 I mean, if -- you're right, in my opinion, if
20 the word property means the same as what it means in the
21 Fourteenth Amendment. So -- so, I'm not going to argue
22 that one with you. I just want to be sure that that is
23 your argument, and you don't have some other argument that
24 I'm missing.

25 MR. BRADLEY: One of our arguments is that when

1 you look at the Fourteenth Amendment use of property as
2 enacted in the reconstruction era, that that has
3 instructive if not the identical meaning as property is
4 used in this context.

5 QUESTION: If -- on -- on that point, assuming
6 that in fact there -- there may be an overriding objective
7 here to prevent people from being coerced against
8 testifying or retaliated against for testifying by
9 conspiracies of people who are mad about their testifying,
10 why would Congress, in enacting this statute, have wanted
11 to leave a whole classification of injuries which in
12 Justice Breyer's sense in human terms are injuries to the
13 witness from coverage of the statute? Because that seems
14 to be the consequence of your position.

15 If I -- if I run over the person with my car or
16 if I -- if I get you fired from your at-will job by saying
17 to your employer or two of -- two people get you fired by
18 -- by saying, you know, Bradley is an embezzler, you ought
19 to let him go, under straight Georgia law, there's going
20 to be compensation for the employee. So, there's a --
21 there's a good common-sense understanding that the
22 employee gets hurt and gets hurt in the pocketbook which
23 is a property kind of hurt.

24 Why would Congress, in -- in wanting to preserve
25 the integrity of the Federal courts by protecting

1 witnesses, want to leave that loophole?

2 MR. BRADLEY: First of all, Your Honor, I would
3 point out that there are modifying terms in the statute
4 that involve the use of force, intimidation, or threat
5 which suggest that you're talking about something other
6 than an inchoate interest such as property.

7 Number two, if you focus on what the concept of
8 employment at will was at the time this statute was
9 enacted, you must keep in mind that the -- that the
10 country was coming out of an era where the employment
11 relationship with the people primarily intended to be
12 protected by the statute was slavery, where the employee
13 was the property of the employer.

14 We then shifted into an era that's described by
15 H.G. Wood in the Law of Master & Servant back in 1877 of a
16 pure at-will employment, where the employer had the right
17 to employ, the employee had the right to work, but there
18 was no compulsion between the two. One was free to go as
19 to the other.

20 That -- that type of relationship is discussed
21 and described in this Court's opinion in Arnett v. Kennedy
22 which discussed the Federal relationship of employer and
23 employee. And in this era in the late 1800s, it was
24 purely a patronage system where if the employer wanted to
25 keep the employee, that was fine. If the employee wanted

1 to leave, that was fine as well.

2 QUESTION: Okay, but what's the answer to my
3 question? Assuming that there is this sphere of genuine
4 harm to the witness or potential witness, why would
5 Congress want to have left that sphere totally uncovered
6 by the statute?

7 MR. BRADLEY: Employment was not considered
8 something that was going to be injured because there was
9 the freedom to move both on the side of the employer and
10 on the side of the employee.

11 QUESTION: But do you -- do you -- do you
12 dispute the fact that there -- there certainly would be a
13 very potent way to coerce or retaliate by ending or by
14 causing a third party to end at-will employment, and yet
15 that -- that particular subject would be uncovered by the
16 statute? Do you agree to that extent --

17 MR. BRADLEY: Because the --

18 QUESTION: -- with the premise of my question?

19 MR. BRADLEY: Because the employee had the --

20 QUESTION: Well, yes or no. Do you agree with
21 the premise of my question?

22 MR. BRADLEY: No, because the employee had the
23 unfettered discretion to move to work wherever he wanted.

24 QUESTION: So, he doesn't care whether he gets
25 fired or not because he can leave. The fact that he may

1 want to stay and spend his life in a particular job is of
2 no consequence because in fact, if he should change his
3 mind, he can leave and get another job tomorrow. Is -- is
4 that your reasoning?

5 MR. BRADLEY: Well, whether somebody would
6 prefer to have something and whether they have a property
7 interest in it are two different things.

8 QUESTION: I -- I thought your point was that
9 there are a lot of things not covered. I -- I could say
10 if you testify, I will not remember you in my will. That
11 doesn't appear to be -- to be covered either.

12 MR. BRADLEY: That's correct.

13 QUESTION: But your point is not only are there
14 a lot of things covered, but nothing is covered except
15 where there's already a remedy under State law. That's
16 your real position.

17 MR. BRADLEY: Your Honor, where there is injury
18 to a recognized property interest --

19 QUESTION: And it's either a breach of contract
20 or a tort. So, there's always recovery under State law.
21 So, the statute is totally meaningless.

22 MR. BRADLEY: I don't necessarily agree with
23 that, Your Honor.

24 QUESTION: Well, the statute didn't trust State
25 law. It gave a Federal cause of action because it didn't

1 trust State courts and State law. And -- and what the
2 statute says is you have a Federal cause of action. If
3 there's a right under State law, we will enforce it. What
4 they were worried about was the enforcement of State laws
5 against -- against the Ku Klux Klan in particular.

6 MR. BRADLEY: That's correct, Justice Scalia.

7 With respect to the particular language of this
8 statute, which is reprinted in the appendix to the gray
9 brief, there are -- the terms injury to person or property
10 are used throughout the entirety of section 1985, not
11 simply in 1985(3). And there are a number of interests
12 other than testimony at court that are protected by
13 section 1985, and if you apply the Government and the
14 petitioner's reasoning in this particular context, you
15 could have such situations as -- as the following.

16 With respect to section 1985(1), if --

17 QUESTION: Where is this?

18 MR. BRADLEY: It's in the appendix to the gray
19 brief.

20 QUESTION: Okay.

21 MR. BRADLEY: It's the last couple of pages.

22 Under section 1985(1), subpart 1, there's a
23 prohibition to prohibit by force --

24 QUESTION: What page are you reading from?

25 MR. BRADLEY: It's 1a, Mr. Chief Justice.

1 QUESTION: Thank you.

2 MR. BRADLEY: Prohibition by force,
3 intimidation, or threat from any person accepting or
4 holding office, trust, or place of confidence in a
5 position with the United States. Using my colleague,
6 Mr. Armstrong, as the example again, let's assume that
7 Mr. Armstrong came to me and said that he wanted to take a
8 position in a -- with a Federal commission somewhere, not
9 a full-time job, but a particular Federal appointment.

10 QUESTION: You know, the language you quote --
11 and it's true of all the subsections -- emphasized the
12 fact that in each of these cases, there's a Federal wrong.
13 So, the statute was not merely intended to provide a
14 Federal remedy for pre-existing State wrongs, was it?

15 MR. BRADLEY: Certainly for cause of action
16 under this particular statute, setting aside the equal
17 protection issues, there must be a Federal wrong.

18 But let's assume Mr. Armstrong comes to me and
19 says, I want to take this Federal position and a client
20 for whom Mr. Armstrong works significantly says, wait a
21 minute, we can't have Mr. Armstrong leaving to go work for
22 this Federal commission. That's not going to work out for
23 us. You need to get rid of him if that's going to happen.
24 And we fire him. Under the Government and the
25 petitioner's view of this statute, that creates a Federal

1 remedy because he's now been injured in his person or
2 property by the termination of his employment.

3 If you look at the section in 1985(3) on page 2a
4 where it talks about advocacy in voting, if Mr. Armstrong
5 were to decide to become the campaign manager for a
6 particular candidate and that candidate was taking a
7 position that was strongly adverse to one of the firm's
8 clients, then we -- the client comes to us and says,
9 you've got to get rid of Mr. Armstrong. He's hurting us.
10 And we fire Mr. Armstrong. Under the Government and the
11 petitioner's reading of this statute, Mr. Armstrong has a
12 cause of action. What that leaves you with is under their
13 interpretation of this statute, Mr. Armstrong as a private
14 employee has greater rights vis-a-vis his employer than a
15 public employee would, and that is stretching the scope of
16 this statute way beyond the scope of what was intended.

17 If you take the particular provision we're
18 dealing with here with respect to a Federal investigation
19 of an employer, not uncommon, for example, in the health
20 care industry, particularly in this case, an employer
21 comes under investigation, multitudes of its employees are
22 called before a grand jury. Because of the investigation,
23 there's a downturn in business, and the employer then lays
24 off a number of employees. Every one of those employees
25 who's laid off now has a prima facie case of a violation

1 of this statute.

2 QUESTION: Of course, you agree that -- you
3 would agree they -- they would have a prima facie case if
4 they had term contracts. Right?

5 MR. BRADLEY: Correct.

6 QUESTION: So, that -- that horrible can -- can
7 happen in -- in another context anyway.

8 MR. BRADLEY: But only if they have term
9 contracts, not employees at will.

10 Therefore, to interpret this statute in the
11 manner proposed by petitioner and Government --

12 QUESTION: And of course, the other side of the
13 coin too is that under your reading of the statute, they
14 could just put a bulletin out and say anybody who goes to
15 testify before the grand jury truthfully gets -- gets
16 canned.

17 MR. BRADLEY: No, sir. There are statutes
18 already on the books that address that particular
19 situation, both from the Government's standpoint of the
20 interest of protecting the Federal system and also from
21 the employee's standpoint. There are obstruction statutes
22 that would prohibit the employer from --

23 QUESTION: We talked about criminal statutes.

24 QUESTION: The criminal statutes.

25 QUESTION: What civil remedy is there for

1 someone who -- take the case that you were candid to say,
2 yes, that's what I'm talking about. You testify before
3 that grand jury, you're fired.

4 MR. BRADLEY: 18 U.S.C., section 1514 --

5 QUESTION: It's a criminal statute.

6 MR. BRADLEY: -- provides for a civil action to
7 restrain the harassment of a victim or a witness. That
8 would be one civil remedy.

9 The False Claims Act, particularly again in the
10 health care arena, would be --

11 QUESTION: Go a little slower over that. What
12 is the remedy? Whose remedy is it?

13 MR. BRADLEY: It's the Government's remedy to
14 restrain harassment of a victim or a witness.

15 QUESTION: Yes, injunctive relief for the
16 Government. What remedy is there for a Mr. Haddle?

17 MR. BRADLEY: Mr. -- Mr. Haddle could have
18 asserted a claim for witness retaliation under the False
19 Claims Act, 37 U.S.C. -- excuse me -- 30 U.S.C. 3730. He
20 chose not to.

21 QUESTION: And what does that provide?

22 MR. BRADLEY: That provides that for any person
23 who participates in a cause of action filed or to be filed
24 -- and under the Eleventh Circuit law, to be filed means
25 there is a reasonable possibility of it being filed -- and

1 their employment is terminated, that they have a cause of
2 action against their employer.

3 QUESTION: That -- that covers witnesses?

4 MR. BRADLEY: Yes, explicitly covers witnesses.
5 It does not have to be a person who actually filed the
6 false claims action. It is any witness who participates
7 in that False Claims Act investigation.

8 So, there is a protection under Federal law for
9 witnesses such as Mr. Haddle. He simply elected not to
10 pursue that remedy, but instead pursue this Civil Rights
11 Act remedy.

12 QUESTION: Was there some impediment? I know
13 there was another person who was mentioned in this
14 picture, somebody named Neal.

15 MR. BRADLEY: O'Neal.

16 QUESTION: O'Neal? Yes.

17 MR. BRADLEY: Mr. O'Neal did assert a False
18 Claims Act retaliation action against his employer.

19 QUESTION: And that -- and that failed I think.

20 MR. BRADLEY: No. Actually he received a
21 verdict on that particular claim, not against any party to
22 this case, but against another company.

23 QUESTION: Is the difference attorney's fees?

24 MR. BRADLEY: Is?

25 QUESTION: Can he get attorney's fees here and

1 he can't get it under the -- under the other act?

2 MR. BRADLEY: He can get it under both of them.

3 QUESTION: Under both?

4 MR. BRADLEY: Mr. Haddle's articulated reason
5 for not proceeding with the False Claims Act action in his
6 brief is that the particular company that was his employer
7 was in bankruptcy, but that doesn't mean that that
8 eliminates his right. And in fact, that particular
9 company in bankruptcy ended up generating far more dollars
10 than anybody would have believed. He simply elected not
11 to pursue the remedy that was available to him and to try
12 to concoct a remedy out of this old civil rights statute
13 which has never been used to protect employment at will.

14 The recent case that we filed with our
15 supplemental brief is Robbins v. Federal Credit Union, and
16 I do think it's an important case for those who may look
17 and say, we are looking to State law to determine whether
18 or not a property interest is involved. That case, which
19 was recently decided, you had an employee who was an
20 employee of a Federal credit union, initially took the
21 position that makes me a Federal employee and therefore I
22 am protected by various statutes, but asserted a cause of
23 action for wrongful termination and for tortious
24 interference under Georgia law.

25 The Georgia Court of Appeals looked at that and

1 said, we have an exception creating a property interest
2 for public employees when they can be fired only with
3 cause. However, with respect to private employees, we are
4 not going to make any such exception. We're not going to
5 imply a with-cause requirement, and therefore, for private
6 employees, there simply is no property interest in your
7 employment at will, and there would not be a cause of
8 action under Georgia law for the termination of at-will
9 employment.

10 If there are no further questions, thank you.

11 QUESTION: Thank you, Mr. Bradley.

12 Mr. Stebbins, you have 2 minutes remaining.

13 REBUTTAL ARGUMENT OF CHARLES C. STEBBINS, III

14 ON BEHALF OF THE PETITIONER

15 MR. STEBBINS: There was a substantial
16 impediment to Mr. Haddle bringing an action under the
17 False Claims Act, and it was that the company was in
18 bankruptcy. It was not a financial consideration,
19 however. I was there and made the decision.

20 The fact is that officially Mr. Haddle was
21 terminated by the United States trustee in bankruptcy.
22 This was a result of a conspiracy among these respondents,
23 none of whom were the employer, to feed false information
24 to the trustee in bankruptcy who was duped and tricked
25 into dismissing Mr. Haddle.

1 Now, I couldn't sue the trustee in bankruptcy.
2 He's a -- a well-respected member of the bar in Augusta,
3 and my investigation revealed that there was -- he had not
4 done anything wrong. He was completely innocent. So,
5 Mr. Haddle had no way to utilize the False Claims Act in
6 order to remedy this situation. Mr. O'Neal did and we
7 recovered a judgment, a verdict which is on appeal. Mr.
8 Haddle did not have that available.

9 And I would observe that the False Claims Act is
10 a relatively narrow provision and certainly would not
11 provide a suitable alternate remedy. To say that
12 witnesses who have an at-will employment and are fired
13 because they have testified in Federal court have an
14 adequate remedy, civil remedy, under any statute that I'm
15 aware of is simply not the case. I canvassed the statutes
16 just as widely as I possibly could to find somebody to
17 remedy this injury to Mr. Haddle, and there was no way to
18 do it.

19 This brings me to the second point I wanted to
20 make which is that none of the defendants in this case are
21 Mr. Haddle's employer, and under Georgia law, Mr. Haddle
22 had a valuable property right as to everyone other than
23 his employer which is protected by this act as well as by
24 Georgia law.

25 And I would refer in response to the question

1 that Justice Souter and Justice Rehnquist gave -- asked
2 the Government as to whether it makes a difference if only
3 the employer were the defendant. That's not my case, but
4 I would refer to the last words of section 1985 which
5 provide that when there is a proscribed conspiracy, the
6 injured party shall have an action against any one or more
7 of the conspirators. Now, I couldn't find anything in the
8 legislative history, but it almost appears to me that this
9 language was put here to abrogate any immunity that the
10 employer might have had at State law. That appears to be
11 one of the reasons.

12 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
13 Stebbins.

14 The case is submitted.

15 (Whereupon, at 12:04 p.m., the case in the
16 above-entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

MICHAEL A. HADDLE, Petitioner v. JEANETTE G. GARRISON, ET AL.
CASE NO: 97-1472

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Don Mari Federico

(REPORTER)