

Solicitor General Tells Supreme Court that Legal Advice is Property

Is the advice of an attorney intangible property that can be taken by taken by extortion under the Hobbs Act? On April 23, 2013, this precise question was presented to the Supreme Court of the United States during oral arguments in *Sekhar v. United States*.

In 2009, the federal government accused financier Giridhar Sekhar of threatening to expose the alleged infidelity of an attorney for the state of New York if he did not give legal advice that could benefit Sekhar's financial interests. Sekhar sought a recommendation from the attorney to the State Comptroller that the state should invest its state employee pension in his fund.

Sekhar was charged under the Hobbs Act, which makes it a federal crime to take someone else's property by threats of physical, economic, and informational harm. Sekhar moved to dismiss the charge on the grounds that a recommendation by a government lawyer paid by the state was not a form of property that could be sought by threats. The trial court disagreed. On appeal, the Second Circuit affirmed the trial court's ruling that legal advice is property under the Hobbs Act. In January 2013, the Supreme Court agreed to hear the case.

The Government argued in its brief to the Supreme Court that the right to pursue an occupation, which includes an attorney giving legal advice, is property that can be taken by extortion under the Hobbs Act:

The traditional concept of property in our legal system embraces intangible rights with economic value. At the core of these intangible rights protected as property is the right to pursue one's livelihood. The major source of wealth in the lives of most people is their business or job. The right to run a business or to pursue a job without unlawful outside interference is undoubtedly a "thing of value" to everyone who runs a business or has a job. Such a right is therefore property that can be extorted....

At oral argument, several Justices were skeptical of the Government's argument. Justice Breyer and Justice Kennedy, for instance, called the Government's theory that legal advice is property because it is at the core of an attorney's occupation "very far-reaching." Justice Sotomayor, however, seemed more receptive.

An opinion from the Supreme Court in this case is expected by the end of June 2013.

The information and materials on this web site are provided for general informational purposes only and are not intended to be legal advice. The law changes frequently and varies from jurisdiction to jurisdiction. Being general in nature, the information and materials provided may not apply to any specific factual or legal set of circumstances or both.