

SUPREME COURT OF THE UNITED STATES

No. 90-6105

JOHN H. EVANS, JR., PETITIONER v.
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[May 26, 1992]

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

I join Parts I and II of the Court's opinion, because in my view they correctly answer the question on which the Court granted certiorari—whether or not an act of inducement is an element of the offense of extortion under color of official right. See Pet. for Cert. i. The issue raised by the dissent and discussed in Part III of the Court's opinion is not fairly included in this question, see our Rule 14.1(a), and sound prudential reasons suggest that the Court should not address it. Cf. *Yee v. City of Escondido*, ___ U. S. ___, ___-___ (slip op. at 13-17) (1992). Neither party in this case has briefed or argued the question. A proper resolution of the issue requires a detailed examination of common law extortion cases, which in turn requires intensive historical research. As there appear to be substantial arguments on either side, we would be far more assured of arriving at the correct result were we to await a case in which the issue had been addressed by the parties. It is unfair to the respondent to decide a case on a ground not raised by the petitioner and which the respondent has had no opportunity to address. For these reasons, I join neither the dissent nor Part III of the Court's opinion, and I express no view as to which is correct.