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 STEVENS delivered the opinion of the Court.

We granted certiorari, 500 U. S. — (1991), to resolve a conflict in the Circuits over the question whether an affirmative act of inducement by a public official, such as a demand, is an element of the offense of extortion ``under color of official right'' prohibited by the Hobbs Act, 18 U. S. C. §1951. We agree with the Court of Appeals for the Eleventh Circuit that it is not, and therefore affirm the judgment of the court below.

Petitioner was an elected member of the Board of Commissioners of DeKalb County, Georgia. During the period between March 1985 and October 1986, as part of an effort by the Federal Bureau of Investigation (FBI) to investigate allegations of public corruption in the Atlanta area, particularly in the area of rezonings of property, an FBI agent posing as a real estate developer talked on the telephone and met with petitioner on a number of occasions. Virtually all, if not all, of those conversations were initiated by the agent and most were recorded on tape or video. In those conversations, the agent sought petitioner's assistance in an effort to rezone a 25-acre tract of land for high-density residential use. On July 25, 1986, the agent

handed petitioner cash totaling $7,000 and a check, payable to petitioner's campaign, for $1,000. Petitioner reported the check, but not the cash, on his state campaign-financing disclosure form; he also did not report the $7,000 on his 1986 federal income tax return. Viewing the evidence in the light most favorable to the Government, as we must in light of the verdict, see *Glasser* v. *United States*, 315 U. S. 60, 80 (1942), we assume that the jury found that petitioner accepted the cash knowing that it was intended to ensure that he would vote in favor of the rezoning application and that he would try to persuade his fellow commissioners to do likewise. Thus, although petitioner did not initiate the transaction, his acceptance of the bribe constituted an implicit promise to use his official position to serve the interests of the bribe-giver.

In a two-count indictment, petitioner was charged with extortion in violation of 18 U. S. C. §1951 and with failure to report income in violation of 26 U. S. C. §7206(1). He was convicted by a jury on both counts. With respect to the extortion count, the trial judge gave the following instruction:

> ``The defendant contends that the $8,000 he received from agent Cormany was a campaign contribution. The solicitation of campaign contributions from any person is a necessary and permissible form of political activity on the part of persons who seek political office and persons who have been elected to political office. Thus, the acceptance by an elected official of a campaign contribution does not, in itself, constitute a violation of the Hobbs Act even though the donor has business pending before the official.
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> ``However, if a public official demands or accepts money in exchange for [a] specific requested exercise of his or her official power, such a demand or acceptance does constitute a violation of the Hobbs Act regardless of whether the

payment is made in the form of a campaign contribution.'' App. 16–17.

In affirming petitioner's conviction, the Court of Appeals noted that the instruction did not require the jury to find that petitioner had demanded or requested the money, or that he had conditioned the performance of any official act upon its receipt. 910 F. 2d 790, 796 (CA11 1990). The Court of Appeals held, however, that ``passive acceptance of a benefit by a public official *is* sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power. The official need not take any specific action to induce the offering of the benefit.'' *Ibid*. (emphasis in original).[1]

This statement of the law by the Court of Appeals for the Eleventh Circuit is consistent with holdings in eight other Circuits.[2] Two Circuits, however, have

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[1]The Court of Appeals explained its conclusion as follows:

``[T]he requirement of inducement is *automatically* satisfied by the power connected with the public office. Therefore, once the defendant has shown that a public official has accepted money in return for a requested exercise of official power, no additional inducement need be shown. `The coercive nature of the official office provides all the inducement necessary.''' 910 F. 2d, at 796–797 (footnote omitted).

[2]See *United States* v. *Garner*, 837 F. 2d 1404, 1423 (CA7 1987), cert. denied, 486 U. S. 1035 (1988); *United States* v. *Spitler*, 800 F. 2d 1267, 1274–1275 (CA4 1986); *United States* v. *Jannotti*, 673 F. 2d 578, 594–596 (CA3) (en banc), cert. denied, 457 U. S. 1106 (1982); *United States* v. *French*, 628 F. 2d 1069, 1074 (CA8), cert. denied, 449 U. S. 956 (1980); *United States* v. *Williams*, 621 F. 2d 123, 123–124 (CA5 1980), cert. denied, 450 U. S. 919 (1981); *United*

held that an affirmative act of inducement by the public official is required to support a conviction of extortion under color of official right. *United States* v. *O'Grady*, 742 F. 2d 682, 687 (CA2 1984) (en banc) (``Although receipt of benefits by a public official is a necessary element of the crime, there must also be proof that the public official did something, under color of his public office, to cause the giving of benefits''); *United States* v. *Aguon*, 851 F. 2d 1158, 1166 (CA9 1988) (en banc) (``We find ourselves in accord with the Second Circuit's conclusion that inducement is an element required for conviction under the Hobbs Act''). Because the majority view is consistent with the common-law definition of extortion, which we believe Congress intended to adopt, we endorse that position.

It is a familiar ``maxim that a statutory term is generally presumed to have its common-law meaning.'' *Taylor* v. *United States*, 495 U. S. 575, 592 (1990). As we have explained, ``where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.'' *Morissette* v. *United States*, 342 U. S. 246,

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States v. *Butler*, 618 F. 2d 411, 417–420 (CA6), cert. denied, 447 U. S. 927 (1980); *United States* v. *Hall*, 536 F. 2d 313, 320–321 (CA10), cert. denied, 429 U. S. 919 (1976); *United States* v. *Hathaway*, 534 F. 2d 386, 393–394 (CA1), cert. denied, 429 U. S. 819 (1976).

263 (1952).[3]

At common law, extortion was an offense committed by a public official who took ``by colour of his office''[4] money that was not due to him for the performance of his official duties.[5] A demand, or request, by the public official was not an element of the offense.[6] Extortion by the public official was the rough equivalent of what we would now describe as

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[3]Or, as Justice Frankfurter advised, ``if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.'' Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947).

[4]Blackstone described extortion as ``an abuse of public justice, which consists in an officer's unlawfully taking, *by colour of his office*, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due.'' 4 W. Blackstone, Commentaries *141 (emphasis added). He used the phrase ``by colour of his office,'' rather than the phrase ``under color of official right,'' which appears in the Hobbs Act. Petitioner does not argue that there is any difference in the phrases. Hawkins' definition of extortion is probably the source for the official right language used in the Hobbs Act. See Lindgren, The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act, 35 UCLA L. Rev. 815, 864 (1988) (hereinafter Lindgren). Hawkins defined extortion as follows: ``[I]t is said, That extortion in a large sense signifies any oppression under colour of right; but that in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due.'' 1 W. Hawkins, Pleas of the Crown 316 (6th ed. 1787).

[5]See Lindgren 882–889. The dissent says that we

``taking a bribe.'' It is clear that petitioner committed that offense.[7] The question is whether the federal statute, insofar as it applies to official extortion, has narrowed the common-law definition.

Congress has unquestionably *expanded* the common-law definition of extortion to include acts by private individuals pursuant to which property is obtained by means of force, fear, or threats. It did so by implication in the Travel Act, 18 U. S. C. §1952, see *United States* v. *Nardello*, 393 U. S. 286, 289–296 (1969), and expressly in the Hobbs Act. The portion of the Hobbs Act that is relevant to our decision today provides:

> ``(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
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> ``(b) As used in this section—
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> . . . . .
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> ``(2) The term `extortion' means the obtaining of property from another, with his consent,

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assume that "common law extortion encompassed *any* taking by a public official of something of value that he was not `due.'" *Post*, at 2. That statement, of course, is incorrect because, as stated in the text above, the payment must be "for the performance of his official duties."

[6]*Id*., at 884–886.

[7]Petitioner argued to the jury, at least with respect to the extortion count, that he had been entrapped, see App. 20; however, in light of the jury's verdict on that issue, we must assume that he was predisposed to commit the crime.

induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.'' 18 U. S. C. §1951.

The present form of the statute is a codification of a 1946 enactment, the Hobbs Act,[8] which amended the federal Anti-Racketeering Act.[9] In crafting the 1934 Act, Congress was careful not to interfere with legitimate activities between employers and

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[8]The 1946 enactment provides:

``The term `extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.''' Act of July 3, 1946, ch. 537, §1(c), 60 Stat. 420.

[9]Section 2(b) of the 1934 Act read as follows:

``SEC. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

. . . . .

``(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right.'' Act of June 18, 1934, ch. 569, §2, 48 Stat. 979–980.

One of the models for the statute was the New York statute:

``Extortion is the obtaining of property from another, or the obtaining the property of a corporation from an officer, agent or employee thereof, with his consent, induced by a wrongful use of force or fear, or under color of official right.'' Penal Law of 1909, §850, as amended, Laws of 1917, ch. 518, codified in N.Y. Penal Law §850 (McKinney Supp. 1965).

The other model was the Field Code, a 19th century model code:

``Extortion is the obtaining of property from

employees. See H. R. Rep. No. 1833, 73rd Cong., 2d Sess., 2 (1934). The 1946 Amendment was intended to encompass the conduct held to be beyond the reach of the 1934 Act by our decision in *United States* v. *Teamsters*, 315 U. S. 521 (1942).[10] The Amendment did not make any significant change in the section referring to obtaining property ``under color of official right'' that had been prohibited by the 1934 Act. Rather, Congress intended to broaden the scope of the Anti-Racketeering Act and was concerned primarily with distinguishing between ``legitimate'' labor activity and labor ``racketeering,'' so as to prohibit the latter while permitting the former. See 91 Cong. Rec. 11899–11922 (1945).

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another, with his consent, induced by a wrongful use of force or fear, or under color of official right.'' Commissioners of the Code, Proposed Penal Code of the State of New York §613 (1865) (Field Code).

Lingren points out that according to the Field Code, coercive extortion and extortion by official right extortion are separate offenses, and the New York courts recognized this difference when, in 1891, they said the Field Code treats ``extortion by force and fear as one thing, and extortion by official action as another.'' *People* v. *Barondess*, 61 Hun. 571, 576, 16 N. Y. S. 436, 438 (App. Div. 1891). The judgment in this case was later reversed without opinion. See 133 N. Y. 649, 31 N. E. 240 (1892). Lindgren identifies early English statutes and cases to support his contention that official extortion did not require a coercive taking, nor did it under the early American statutes, including the later New York statute. See Lindgren 869, 908.

[10]In *United States* v. *Teamsters*, the Court construed the exemption for ```the payment of wages by a bona-fide employer to a bona-fide em-ployee''' that was contained in the 1934 Act but is no longer a part of the statute. 315 U. S., at 527.

Many of those who supported the Amendment argued that its purpose was to end the robbery and extortion that some union members had engaged in, to the detriment of all labor and the American citizenry. They urged that the Amendment was not, as their opponents charged, an anti-labor measure, but rather, it was a necessary measure in the wake of this Court's decision in *United States* v. *Teamsters*.[11] In their view, the Supreme Court had mistakenly exempted labor from laws prohibiting robbery and extortion, whereas Congress had intended to extend such laws to all American citizens. See, *e.g.*, 91 Cong. Rec. 11910 (1945) (remarks of Rep. Springer) (``To my mind this is a bill that protects the honest laboring people in our country. There is nothing contained in this bill that relates to labor. This measure, if passed, will relate to every American citizen''); *id*., at 11912 (remarks of Rep. Jennings) (``The bill is one to protect the right of citizens of this country to market their products without any interference from lawless bandits'').

Although the present statutory text is much broader[12] than the common-law definition of extortion because it encompasses conduct by a private

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[11]In fact, the House Report sets out the text of *United States* v. *Teamsters* in full, to make clear that the Amendment to the Anti-Racketeering Act was in direct response to the Supreme Court decision. See H. R. Rep. No. 238, 79th Cong., 1st Sess., 1–10 (1945).

[12]This Court recognized the broad scope of the Hobbs Act in *Stirone* v. *United States*, 361 U. S. 212, 215 (1960):

``That Act speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence. The Act outlaws such interference `in any way or degree.'''

individual as well as conduct by a public official,[13] the portion of the statute that refers to official misconduct continues to mirror the common-law definition. There is nothing in either the statutory text or the legislative history that could fairly be described as a ``contrary direction,'' *Morissette* v. *United States*, 342 U. S., at 263, from Congress to narrow the scope of the offense.

The legislative history is sparse and unilluminating with respect to the offense of extortion. There is a reference to the fact that the terms ``robbery and extortion'' had been construed many times by the courts and to the fact that the definitions of those terms were ``based on the New York law.'' 89 Cong.

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[13]Several States had already defined the offense of extortion broadly enough to include the conduct of the private individual as well as the conduct of the public official. See, *e.g.*, *United States* v. *Nardello*, 393 U. S. 286, 289 (1969) (``In many States . . . the crime of extortion has been statutorily expanded to include acts by private individuals under which property is obtained by means of force, fear, or threats''); *Bush* v. *State*, 19 Ariz. 195, 198, 168 P. 508, 509–510 (1917) (recognizing that the state Penal Code ``has enlarged the scope of this offense so as not to confine the commission of it to those persons who act under color of official right''); *People* v. *Peck*, 43 Cal. App. 638, 643, 185 P. 881, 882–883 (1919) (In some States ``the statutory definitions have extended the scope of the offense beyond that of the common law so as to include the unlawful taking of money or thing of value of another by any person, whether a public officer or a private individual, and this is so in California . . .'').

At least one commentator has argued that at common law, extortion under color of official right could also be committed by a private individual. See Lindgren 875.

Rec. 3227 (1943) (statement of Rep. Hobbs); see 91 Cong. Rec. 11906 (1945) (statement of Rep. Robsion). In view of the fact that the New York statute applied to a public officer ``who asks, or receives, or agrees to receive'' unauthorized compensation, N. Y. Penal Code §557 (1881), the reference to New York law is consistent with an intent to apply the common-law definition. The language of the New York statute quoted above makes clear that extortion could be committed by one who merely *received* an unauthorized payment.[14] This was the statute that was in force in New York when the Hobbs Act was enacted.

The two courts that have disagreed with the decision to apply the common-law definition have interpreted the word ``induced'' as requiring a wrongful use of official power that ``begins with the public official, not with the gratuitous actions of another.'' *United States* v. *O'Grady*, 742 F. 2d, at 691; see *United States* v. *Aguon*, 851 F. 2d, at 1166 (```inducement' can be in the overt form of a `demand,' or in a more subtle form such as `custom' or `expectation'''). If we had no common-law history to guide our interpretation of the statutory text, that reading would be plausible. For two reasons, however, we are convinced that it is incorrect.

First, we think the word ``induced'' is a part of the definition of the offense by the private individual, but not the offense by the public official. In the case of

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[14]Many of the treatise-writers explained that at common law, extortion was defined as the corrupt taking or receipt of an unlawful fee by a public officer under color of office. They did not allude to any requirements of ``inducement'' or ``demand'' by a public officer. See, *e.g.*, W. LaFave & A. Scott, Handbook on Criminal Law §95, p. 704 (1972); R. Perkins & R. Boyce, Criminal Law 448 (1982); 4 C. Torcia, Wharton's Criminal Law §695, p. 481, §698, p. 484 (14th ed. 1981).

the private individual, the victim's consent must be ``induced by wrongful use of actual or threatened force, violence or fear.'' In the case of the public official, however, there is no such requirement. The statute merely requires of the public official that he obtain ``property from another, with his consent, . . . under color of official right.'' The use of the word ``or'' before ``under color of official right'' supports this reading.[15]

Second, even if the statute were parsed so that the word ``induced'' applied to the public officeholder, we do not believe the word ``induced'' necessarily indicates that the transaction must be *initiated* by the recipient of the bribe. Many of the cases applying the majority rule have concluded that the wrongful acceptance of a bribe establishes all the inducement that the statute requires.[16] They conclude that the coercive element is provided by the public office itself. And even the two courts that have adopted an inducement requirement for extortion under color of official right do not require proof that the inducement

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[15]This meaning would, of course, have been completely clear if Congress had inserted the word ``either'' before its description of the private offense because the word ``or'' already precedes the description of the public offense. The definition would then read: ``The term `extortion' means the obtaining of property from another, with his consent, *either* induced by wrongful use of actual or threatened force, violence, or fear, *or* under color of official right.''

[16]See, *e.g.*, *United States* v. *Holzer*, 816 F. 2d 304, 311 (CA7), vacated on other grounds, 484 U. S. 807 (1987), aff'd in part on remand, 840 F. 2d 1343 (CA7 1988), cert. denied, 486 U. S. 1035 (1988); *United States* v. *Paschall*, 772 F. 2d 68, 72–74 (CA4 1985); *United States* v. *Williams*, 621 F. 2d, at 124; *United States* v. *Butler*, 618 F. 2d, at 418.

took the form of a threat or demand. See *United States* v. *O'Grady*, 742 F. 2d, at 687; *United States* v. *Aguon*, 851 F. 2d, at 1166.[17]

Petitioner argues that the jury charge with respect to extortion, see *supra*, at 2–3, allowed the jury to convict him on the basis of the ``passive acceptance of a contribution.'' Brief for Petitioner 24.[18] He contends that the instruction did not require the jury

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[17]Moreover, we note that while the statute does not require that affirmative inducement be proven as a distinct element of the Hobbs Act, there is evidence in the record establishing that petitioner received the money with the understanding that he would use his office to aid the bribe-giver. Petitioner and the agent had several exchanges in which they tried to clarify their understanding with each other. For example, petitioner said to the agent: ``I understand both of us are groping . . . for what we need to say to each other. . . . I'm gonna work. Let m[e] tell you I'm gonna work, if you didn't give me but three [thousand dollars], on this, I've promised to help you. I'm gonna work to do that. You understand what I mean. . . . If you gave me six, I'll do exactly what I said I was gonna do for you. If you gave me one, I'll do exactly what I said I was gonna do for you. I wanna' make sure you're clear on that part. So it doesn't really matter. If I promised to help, that's what I'm gonna do.'' App. 36–37.

Petitioner instructed the agent on the form of the payment (``What you do, is make me out one, ahh, for a thousand. . . . And, and that means we gonna record it and report it and then the rest would be cash''), and agreed with the agent that the payment was being made, not because it was an election year, but because there was a budget to support petitioner's actions, and that there would be a budget either way (``Either way, yep. Oh, I understand that. I understand''). *Id.*, at 38.

to find ``an element of duress such as a demand,'' Brief for Petitioner 22, and it did not properly describe the *quid pro quo* requirement for conviction if the jury found that the payment was a campaign contribution.

We reject petitioner's criticism of the instruction, and conclude that it satisfies the *quid pro quo* requirement of *McCormick* v. *United States*, 500 U. S. — (1991), because the offense is completed at the

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[18]Petitioner also makes the point that ``[t]he evidence at trial against [petitioner] is more conducive to a charge of bribery than one of extortion.'' Brief for Petitioner 40. Although the evidence in this case may have supported a charge of bribery, it is not a defense to a charge of extortion under color of official right that the defendant could also have been convicted of bribery. Courts addressing extortion by force or fear have occasionally said that extortion and bribery are mutually exclusive, see, *e.g.*, *People* v. *Feld*, 262 App. Div. 909, 28 N.Y.S.2d 796, 797 (1941); while that may be correct when the victim was intimidated into making a payment (extortion by force or fear), and did not offer it voluntarily (bribery), that does not lead to the conclusion that extortion under color of official right and bribery are mutually exclusive under either common law or the Hobbs Act. See, *e.g.*, Stern, Prosecutions of Local Political Corruption Under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion, 3 Seton Hall L. Rev. 1, 14 (1971) (``If the [Hobbs] Act is read in full, the distinction between bribery and extortion becomes unnecessary where public officials are involved'').

Another commentator has argued that bribery and extortion were overlapping crimes, see Lindgren 905, 908, and has located an early New York case in which the defendant was convicted of both bribery and extortion under color of official right, see *People* v. *Hansen*, 241 N.Y. 532, 150 N.E. 542 (1925), aff'g, 211

time when the public official receives a payment in return for his agreement to perform specific official acts; fulfillment of the *quid pro quo* is not an element of the offense. We also reject petitioner's contention that an affirmative step is an element of the offense of extortion ``under color of official right'' and need be included in the instruction.[19] As we explained above, our construction of the statute is informed by the common-law tradition from which the term of art was drawn and understood. We hold today that the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.[20]

App. Div. 861, 207 N. Y. S. 894 (1924). He also makes the point that the cases usually cited for the proposition that extortion and bribery are mutually exclusive crimes are cases involving extortion by fear and bribery, see, *e.g.*, *People* v. *Feld*, *supra*; *People* v. *Dioguardi*, 8 N.Y.2d 260, 263, 271–273, 203 N.Y.S.2d 870, 873, 879–881 (1960), and we note that the latter case was decided after the Hobbs Act, so it could not have been a case on which Congress relied. We agree with the Seventh Circuit in *United States* v. *Braasch*, 505 F. 2d 139, 151, n. 7 (1974), cert. denied, 421 U. S. 910 (1975), that ```the modern trend of the federal courts is to hold that bribery and extortion as used in the Hobbs Act are not mutually exclusive. *United States* v. *Kahn*, 472 F. 2d 272, 278 (2d Cir. 1973), cert. den., 411 U. S. 982.'''

[19]We do not reach petitioner's second claim pertaining to the tax fraud count because, as petitioner conceded at oral argument, we would only have to reach that claim in the event that petitioner succeeded on his Hobbs Act claim. See Tr. of Oral Arg. 3–4, 27.

[20]The dissent states that we have "simply made up," *post*, at 9, the requirement that the payment must be

Our conclusion is buttressed by the fact that so many other courts that have considered the issue over the last 20 years have interpreted the statute in the same way.[21] Moreover, given the number of appellate court decisions, together with the fact that many of them have involved prosecutions of important officials well known in the political community,[22] it is obvious that Congress is aware of

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given in return for official acts. On the contrary, that requirement is derived from the statutory language "under color of official right," which has a well-recognized common-law heritage that distinguished between payments for private services and payments for public services. See, for example, *Collier* v. *State*, 55 Ala. 125 (1877), which the dissent describes as a "typical case." *Post*, at 4.

[21]See, *e.g.*, *United States* v. *Swift*, 732 F. 2d 878, 880 (CA11 1984), cert. denied, 469 U. S. 1158 (1985); *United States* v. *Jannotti*, 673 F. 2d, at 594–596; *United States* v. *French*, 628 F. 2d, at 1074; *United States* v. *Williams*, 621 F. 2d, at 123–124; *United States* v. *Butler*, 618 F. 2d at 417–418; *United States* v. *Hall*, 536 F. 2d, at 320–321; *United States* v. *Hathaway*, 534 F. 2d, at 393–394; *United States* v. *Price*, 507 F. 2d 1349 (CA4 1974); *United States* v. *Braasch*, 505 F. 2d, at 151.

[22]For example, in *United States* v. *Hall, supra*, the Governor of Oklahoma was convicted of extorting money ``under color of official right,'' in violation of the Hobbs Act; in *United States* v. *Kenny*, 462 F. 2d 1205, 1211 (CA3 1972), each of the eight defendants, who was part of a scheme to interfere with interstate commerce in violation of the Hobbs Act, ``was, or had been, a highly placed public official or political leader in Jersey City or Hudson County or both''; and in *United States* v. *Jannotti*, 673 F. 2d, at 578, the government operation, which came to be known as ABSCAM, led to the trial and conviction of various

the prevailing view that common-law extortion is proscribed by the Hobbs Act. The silence of the body that is empowered to give us a ``contrary direction'' if it does not want the common-law rule to survive is consistent with an application of the normal presumption identified in *Taylor* and *Morissette*, *supra*.

An argument not raised by petitioner is now advanced by the dissent. It contends that common-law extortion was *limited* to wrongful takings under a false pretense of official right. *Post*, at 2–3; see *post*, at 4 (offense of extortion "was understood ... [as] a wrongful taking *under a false pretense of official right*") (emphasis in original); *post*, at 5. It is perfectly clear, however, that although extortion accomplished by fraud was a well-recognized type of extortion, there were other types as well. As the court explained in *Commonwealth* v. *Wilson*, 30 Pa. Super. 26 (1906), an extortion case involving a payment by a would-be brothel owner to a police captain to ensure the opening of her house:

> "The form of extortion most commonly dealt with in the decisions is the corrupt taking by a person in office of a fee for services which should be rendered gratuitously; or when compensation is permissible, of a larger fee than the law justifies, or a fee not yet due; but this is not a complete definition of the offense, by which I mean that it does not include every form of common-law extortion." *Id*., at 30.

See also *Commonwealth* v. *Brown*, 23 Pa. Super. 470, 488–489 (1903) (defendants charged with and

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local and federal public officials, which, in other phases of the operation, included several Congressmen.

convicted of conspiracy to extort because they accepted pay for obtaining and procuring the election of certain persons to the position of school-teachers); *State* v. *Sweeney*, 180 Minn. 450, 456, 231 N.W. 225, 228 (1930) (alderman's acceptance of money for the erection of a barn, the running of a gambling house, and the opening of a filling station would constitute extortion) (dicta); *State* v. *Barts*, 132 N.J.L. 74, 76, 83, 38 A.2d 838, 841, 844 (Sup. Ct. 1944) (police officer, who received $1,000 for not arresting someone who had stolen money, was properly convicted of extortion because "generically extortion is an abuse of public justice and a misuse by oppression of the power with which the law clothes a public officer"); *White* v. *State*, 56 Ga. 385, 389 (1876) (If a ministerial officer used his position "for the purpose of awing or seducing" a person to pay him a bribe that would be extortion).

The dissent's theory notwithstanding, not one of the cases it cites, see *post*, at 4–5, and n. 3, holds that the public official is innocent unless he has deceived the payor by representing that the payment was proper. Indeed, none makes any reference to the state of mind of the payor, and none states that a "false pretense" is an element of the offense. Instead, those cases merely support the proposition that the services for which the fee is paid must be official and that the official must not be entitled to the fee that he collected—both elements of the offense that are clearly satisfied in this case. The complete absence of support for the dissent's thesis presumably explains why it was not advanced by petitioner in the District Court or the Court of Appeals, is not recognized by any Court of Appeals, and is not advanced in any scholarly commentary.[23]

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[23]Moreover, the dissent attempts to have it both ways in its use of common-law history. It wants to draw an artificial line and say that we should only look at

The judgment is affirmed.

It is so ordered.

American common law and not at the more ancient English common law (even though the latter provided the roots for the former), see *post*, at 3–4, and at the same time, it criticizes the Court for relying on a "`modern' view of extortion," *post*, at 7, n. 4; it also uses a 1961 case, which was decided 15 years *after* the enactment of the Hobbs Act, to explain the American view of the common law crime of extortion at the time of the Act, see *ibid.*, even though it claims that we are only supposed to look at "the American understanding of the crime at the time the Hobbs Act was passed in 1946." *Post*, at 4. Moreover, the 1961 case that it cites, *State* v. *Begyn*, 34 N.J. 35, 46, 167 A.2d 161, 166, in which a sanitary inspector was charged with extortion for accepting payments by a scavenger who held a garbage removal contract and who made payments in order to ensure the continuation of the contract, merely supports the proposition that extortion was not limited to the overpayment of fees. The common-law crime of extortion was broader than the dissent now attempts to paint it, and in any of the historical periods to which the dissent wants to point there are cases that are contrary to the dissent's narrow view. For "modern" cases, see *Begyn*, *supra*, and *State* v. *Barts*, 132 N.J.L. 74, 38 A.2d 838 (1944); for early American common-law cases, see *supra*, at 14–15; and for English common-law cases, see, *e.g.*, 36 Lincoln Record Society, A Lincolnshire Assize Roll for 1298, p. 74, no. 322 (W. Thomson ed. 1944) (Adam of Lung

(1298)) (was convicted of extortion for accepting payment to spare a man from having to contribute to an official collection of a quantity of malt); 10 Calendar of Patent Rolls, Edward III, A.D. 1354–1358, p. 449 (1909) (Hugh de Elmeshale (1356)) (coroner would not perform his "office without great ransoms and that he used to extort money from the people by false and feigned indictments"); Calendar of Patent Rolls, Edward II, A.D. 1313–1317, pp. 681–682 (1898) (Robert de Somery (1317)) (Robert de Somery, commissioner of array for Worcester received money from men "in order that by his connivance they might escape service and remain at home"); 1 Middlesex County Records (Old Series) 69 (J. Jeaffreson ed. 1886) (Smythe (1570)) (one of Queen Elizabeth's providers of wagons for ale and beer "by color of his office took extortionately" payments from the wagon-owners to exonerate them from their obligations to the Queen).