SUPREME COURT OF THE UNITED STATES

No. 97–6203

NATHANIEL JONES, PETITIONER *v.* UNITED STATES

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

[March 24, 1999]

JUSTICE STEVENS, concurring.

Like JUSTICE SCALIA, see *post,* at 1, I am convinced that it is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt. That is the essence of the Court's holdings in *In re Winship*, 397 U. S. 358 (1970), *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975), and *Patterson* v. *New York*, 432 U. S. 197 (1977). To permit anything less "with respect to a fact which the State deems so important that it must either be proved or presumed is impermissible under the Due Process Clause." *Id.*, at 215. This principle was firmly embedded in our jurisprudence through centuries of common law decisions. See, *e.g.*, *Winship*, 397 U. S., at 361–364; *Duncan* v. *Louisiana*, 391 U. S. 145, 151–156 (1968). Indeed, in my view, a proper understanding of this principle encompasses facts that increase the minimum as well as the maximum permissible sentence, and also facts that must be established before a defendant may be put to death. If *McMillan* v. *Pennsylvania*, 477 U. S. 79 (1986), and Part II of the Court's opinion in *Walton* v. *Arizona*, 497 U. S. 639, 647–649 (1990), departed from that principle, as I think they did, see *McMillan*, 477 U. S., at 95–104 (STEVENS, J., dissenting) and *Walton*, 497 U. S., at 709–714 (STEVENS,

J., dissenting), they should be reconsidered in due course. It is not, however, necessary to do so in order to join the Court's opinion today, which I do.