

STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 99–6218

WILBERT K. ROGERS, PETITIONER *v.* TENNESSEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
TENNESSEE, WESTERN DIVISION

[May 14, 2001]

JUSTICE STEVENS, dissenting.

While I have joined JUSTICE SCALIA's entire dissent, I must add this brief caveat. The perception that common-law judges had no power to change the law was unquestionably an important aspect of our judicial heritage in the 17th century but, as he has explained, that perception has played a role of diminishing importance in later years. Whether the most significant changes in that perception occurred before the end of the 18th century or early in the 19th century is, in my judgment, a tangential question that need not be resolved in order to decide this case correctly. For me, far more important than the historical issue is the fact that the majority has undervalued the threat to liberty that is posed whenever the criminal law is changed retroactively.