federal agency in violation of 18 U.S.C. § 1001 erred when it took the issue of the "materiality" of the false statement away from the jury.[73] Later, however, the Court backed off from this latter ruling, holding that failure to submit the issue of materiality to the jury in a tax fraud case can constitute harmless error.[74] Subsequently, the Court held that, just as failing to prove materiality to the jury beyond a reasonable doubt can be harmless error, so can failing to prove a sentencing factor to the jury beyond a reasonable doubt. "Assigning this distinction constitutional significance cannot be reconciled with our recognition in *Apprendi* that elements and sentencing factors must be treated the same for Sixth Amendment purposes."[75]

When the Jury Trial Guarantee Applies.—The Sixth Amendment is phrased in terms of "all criminal prosecutions," but the Court has always excluded petty offenses from the guarantee to a jury trial in federal courts, defining the line between petty and serious offenses either by the maximum punishment available[76] or by the nature of the offense.[77] This line has been adhered to in the application of the Sixth Amendment to the states,[78] and the Court has now held "that no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized."[79] A defendant who is prosecuted in a single proceeding for multiple petty offenses, however, does not have a constitu-

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[73] 515 U.S. at 523.

[74] Neder v. United States, 527 U.S. 1 (1999).

[75] Washington v. Recuenco, 548 U.S. 212, 220 (2006). *Apprendi* is discussed in the next section.

[76] District of Columbia v. Clawans, 300 U.S. 617 (1937); Schick v. United States, 195 U.S. 65 (1904); Callan v. Wilson, 127 U.S. 540 (1888).

[77] District of Columbia v. Colts, 282 U.S. 63 (1930).

[78] Duncan v. Louisiana, 391 U.S. 145, 159–62 (1968); Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968).

[79] Baldwin v. New York, 399 U.S. 66, 69 (1970). Justices Black and Douglas would have required a jury trial in all criminal proceedings in which the sanction imposed bears the indicia of criminal punishment. Id. at 74 (concurring); Cheff v. Schnackenberg, 384 U.S. 373, 384, 386 (1966) (dissenting). Chief Justice Burger and Justices Harlan and Stewart objected to setting this limitation at six months for the States, preferring to give them greater leeway. *Baldwin*, 399 U.S. at 76; Williams v. Florida, 399 U.S. 78, 117, 143 (1970) (dissenting). No jury trial was required when the trial judge suspended sentence and placed defendant on probation for three years. Frank v. United States, 395 U.S. 147 (1969). There is a presumption that offenses carrying a maximum imprisonment of six months or less are "petty," although it is possible that such an offense could be pushed into the "serious" category if the legislature tacks on onerous penalties not involving incarceration. No jury trial is required, however, when the maximum sentence is six months in jail, a fine not to exceed $1,000, a 90-day driver's license suspension, and attendance at an alcohol abuse education course. Blanton v. City of North Las Vegas, 489 U.S. 538, 542–44 (1989).