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STRUCTURAL ERRORS REQUIRE AUTOMATIC REVERSAL
(the truths and evidence exposing corrupt judges)
By Dave Harrison

The harmless error doctrine exists to affirm convictions regardless of the errors, defects, irregularities or variances that may occur in grand jury and trial procedures. For example, Rule 52(a) of the Federal Rules of Criminal Procedure, which governs direct appeals from judgments of conviction in the federal system, provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Under Rule 52(a)'s analysis, errors that are harmless "beyond a reasonable doubt", see, Chapman v. California, 386 U.S. 18, 24 (1967), must be disregarded. The harmless error doctrine is far reaching. Indeed, "if the defendant had counsel and was tried by an impartial adjudicator there is a strong presumption that any other errors that may have occurred are subject to harmless-error analysis." See, Rose v. Clark, 478 U.S. 570, 579 (1986). Nonetheless, there are errors so fundamental as to require automatic reversal, errors every defendant in a criminal prosecution should be fully aware of.

The Supreme Court has long recognized that where a proper objection is made at trial, there exists a limited class of fundamental constitutional errors that "defy analysis by 'harmless error' standards." See, Arizona Fulminante, 499 U.S. 279, 309 (1991). "Errors of this type are so intrinsically harmful as to require automatic reversal (i.e., 'affect substantial rights') without regard to their effect on the outcome." See, Neder v. United States, 527 U.S. 1, 7 (1999). As the Neder Court expressed:

> "Those cases, we have explained, contain a 'defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. ' Fulminante, supra, at 310, 111 S.Ct. 1246. Such errors 'infect the entire trial process,' Brecht v. Abrahamson, 507 U.S. 619, 630, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993), and 'necessarily render a trial fundamentally unfair,' Rose, 478 U.S., at 577, 106 S.Ct. 3101. Put another way, these errors deprive defendants of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair.' Id., at 577-578, 106 S.Ct. 3101."

See, Neder v. United States, 527 U.S. 1, 8-9 (1999). Defendants in federal and state prosecutions, therefore, should be intimately familiar with those cases affording automatic reversal. Once familiar, a defendant can proactively protect his rights so that he may be able to reverse a judgment of conviction on appeal, without worry that some liberal minded appellate court panel will apply the harmless error doctrine to affirm. The cases that follow, while not an exhaustive list, address errors, defects, irregularities and variances in grand jury and trial procedures of the nature defying analysis by harmless error standards.

I. Arguably, the most widely known case requiring automatic reversal is that of Gideon v. Wainwright, 372 U.S. 335 (1963), where Earl Gideon asked the Supreme Court to reverse his conviction due to his being denied counsel in the course of his state of Florida prosecution for breaking and entering a poolroom. At trial Gideon sought counsel but was refused. He thence proceeded to trial on his own, was found guilty by the jury, and eventually brought the question of his right to counsel under the United States Constitution to the United States Supreme Court. The Supreme Court found that defendants in state prosecutions have the same right to counsel as defendants in federal courts, i.e., that the federal Constitution's Sixth Amendment, providing that in all criminal prosecutions the accused shall enjoy the right to assistance of counsel for his defense, is made obligatory on the states by the Fourteenth Amendment, and indigent defendants in criminal prosecutions in state court have the right to have counsel appointed. Denial of counsel results in automatic reversal. See also, Johnson v. United States, 520 U.S. 461 (1997).

II. In any case where a suspect is coerced into confessing, the Supreme Court holds that a resulting conviction must be reversed. In 1958 Frank Payne " (1) was arrested without warrant, (2) was denied a hearing before a magistrate at which he would have been advised of his right to remain silent and of his right to counsel, as required by Arkansas statues, (3) was not advised of his right to remain silent or of his right to counsel, (4) was held incommunicado for three days, without counsel, adviser or friend, and though members of his family tried to see him they were turned away, and he was refused permission to make even one telephone call, (5) was denied food for long periods, and, finally, (6) was told by the chief of police 'that there would be 30 or 40 people there in a few minutes that wanted to get him, ' which statement created such fear in petitioner as immediately produced the 'confession....' confession was coerced and did not constitute an 'expression of free choice,' and that its use before the jury over petitioner's objection, deprived him of 'that fundamental fairness essential to the very concept of justice, ' and, hence, denied him due process of law, guaranteed by the Fourteenth Amendment." See, Payne v. State Of Arkansas, 356 U.S. 560, 567 (1958) (footnotes omitted). Of course, coercion by law enforcement agents to obtain confessions comes in many forms, from sleep and toilet deprivation, to withholding food and water for extended periods of time, even today, physical abuse of a suspect is not uncommon, although psychological manipulation and torture are more in vogue. Regardless, coercion, in any of its evil forms, is prohibited and requires that a conviction based on such a confession be automatically vacated.

III. In 1927 the United States Supreme Court held that automatic reversal will result in cases where the trier of fact has an interest in the controversy to be decided. See, Tumey v. State Of Ohio, 273 U.S. 510 (1927). "Nice questions, however, often arise as to what degree or nature of the interest must be... Thus matters of kinship, personal bias, state policy, remoteness of interest would seem generally to be matters merely of legislative discretion. Wheeling v. Black, 25 W.Va. 266, 270. But it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." See, Tumey, supra, 273 U.S. at 523.

IV. In Faretta v. California, 422 U.S. 806 (1975), see also, McKaskle v. Wiggins, 465 U.S. 168 (1984), the Supreme Court decided that a defendant has the constitutional right, under the Sixth and Fourteenth Amendments to the United States Constitution, to self-representation. This right is not unqualified, however, as the defendant must have at least the capacity to understand the proceedings and charges against him. Beyond that, a conviction from a trial where the court refused to allow the defendant to proceed as his own counsel must be reversed without harmless error review.

V. Racial discrimination in the selection of the grand jury rises to the level of structural error. See, Vasquez V. Hillery, 474 U.S. 254 (1986). " Indeed, ... discrimination in the grand jury undermines the structural integrity of the criminal tribunal itself, and is not amenable to harmless-error review." Id., 474 U.S at 263-64. (footnote omitted). "Once having found discrimination in the selection of a grand jury, we simply cannot know that the need to indict would have been assessed in the same way by a grand jury properly constituted. The overriding imperative to eliminate this systemic flaw in the charging process, as well the difficulty of assessing its effect on any given defendant, requires our continued adherence to a rule of mandatory reversal." Id. 474 U.S. at 264. The Vasquez Court further noted that "... when a petit jury has been selected upon improper criteria or has been exposed to prejudicial publicity, we have required reversal of the conviction because the effect of the violation cannot be ascertained. See, Davis V. Georgia, 429 U.S. 122 . . . (1976) (per curiam); Sheppard v. Maxwell, 384 U.S. 333, 351-352... (1966)." See, Vasquez, supra, 474 U S. at 263.

VI. Denial of a public trial warrants automatic reversal. In Waller v. Georgia, 467 U.S. 39 (1984), the various gambling convictions of the defendants were reversed without harmless error review, where they were denied a public trial. "The parties do not question the consistent view of the lower federal courts that the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee. 9/... 9. See. e.g., Douglas v. Wainwright. 714 F.2d 1532. 1542 (CALL 1983) (citing cases).. . See also Levine v. United States, 362 U.S. 610, 627, n., 80 S.Ct. 1038, l048, n., 4 L.Ed.2d 989 (1960) (BRENNAN, J., dissenting) ('[T]he settled rule of the federal courts [is] that a showing of prejudice is not necessary for reversal of a conviction not had in public proceedings'). The general view appears to be that of the Court of appeals for the Third Circuit. It noted in an en banc opinion that a requirement that prejudice be shown 'would in most cases deprive [the defendant] of the [public-trial] guarantee, for it would be difficult to envisage a case in which he would have evidence available of specific injury.' United States ex rel. Bennett v. Rundle, 419 F.2d 599, 608 (1969). While the benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance, the Framers plainly thought them nonetheless real. See also State v. Sheppard, 182 Conn. 412, 418 A.2d 125, 128 (1980) ('Because demonstration of prejudice in this kind of case is a practical impossibility, prejudice must necessarily be implied.')." See, Waller, supra, 467 U.S. at 49-50.

In closing, I would like to remind the reader that the cases discussed above are not an exhaustive list of the errors, defects, irregularities or variances, occurring in grand jury and trial procedures that defy harmless error analysis. Two additional examples would be Sullivan v. Louisiana, 508 U.S. 275 (1993) (defective reasonable doubt jury instruction),

and Batson v. Kentucky, 476 U.S. 79 (1986) (racial discrimination in selection of petit jury). Nonetheless, the cases offered protect defendants from a wide ranging assortment of violations affecting substantial rights; violations that occur all too often.

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