

Louisiana Law Review

Volume 64 | Number 1

Symposium on Harmless Error - Part II

Fall 2003

Foreword: Symposium on Harmless Error - Part II

Stuart P. Green

Repository Citation

Stuart P. Green, *Foreword: Symposium on Harmless Error - Part II*, 64 La. L. Rev. (2003)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol64/iss1/4>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Foreword: Symposium on Harmless Error – Part II

Stuart P. Green*

When an appellate court decides that an error was made by the trial court below, it must then determine whether the error was sufficiently prejudicial to require reversal. If it was not, the error is said to be “harmless.” The decision that an error at trial was harmless can be particularly consequential in criminal cases, where the stakes are invariably high; the errors made can involve a violation of a defendant’s constitutional rights; and there is a real risk that the appellate court will usurp the jury’s role at trial by speculating on what the outcome *would have been* absent the error.

The subject of the articles that follow is whether and when it is appropriate for a court to make a finding of harmless error. These articles constitute Part II of a symposium on the doctrine of harmful error that is appearing in the pages of the *Louisiana Law Review*. Part I appeared in the Summer 1999 Issue of Volume 59, and featured articles by David McCord and Addison Goff.¹ This second half contains articles by Jim Boren and Michael Fiser, as well as Paul LeBlanc.² When the first half of this symposium appeared, I wrote another foreword, briefly describing both the theoretical interest and practical importance of the harmless error doctrine.³ This time, rather than writing about the substance of the doctrine, I want to explain the impetus for this symposium.

The symposium was conceived, and is sponsored, by the George W. and Jean H. Pugh Institute for Justice, based at the LSU Law Center. George Pugh was a revered member of the LSU law faculty for more than forty years. Known as the “father” of the Louisiana Code of Evidence, he has been a long-time member of the Council of the Louisiana State Law Institute. His wife, Jean, herself a member of the Louisiana bar, has been George’s lifelong

Copyright 2004, by LOUISIANA LAW REVIEW.

* L.B. Porterie Professor of Law, Louisiana State University; Director, Pugh Institute for Justice.

1. David McCord, *Is Death “Different” for Purposes of Harmless Error Analysis? Should It Be?: An Assessment of United States and Louisiana Supreme Court Case Law*, 59 La. L. Rev. 1105 (1999); Addison K. Goff, IV, *Mixed Signals: A Look at Louisiana’s Experience With Harmless Error in Criminal Cases*, 59 La. L. Rev. 1169 (1999).

2. See James E. Boren & Michael A. Fiser, *Fear of a Paper Tiger: Enforcing Louisiana’s Procedural and Statutory Rules in the Wake of Harmless Error Analysis*, 64 La. Law Rev. 5 (2003); A. Paul Leblanc, Jr., *Considerations Concerning Harmless Error in Louisiana Criminal Cases*, 64 La. Law. Rev. 21 (2003).

3. Stuart P. Green, *Foreword: The Challenge of Harmless Error*, 59 La. L. Rev. 1101 (1999).

collaborator and partner. The Pugh Institute was founded as a means to further the ideals for which George and Jean have worked these many years. Its express purpose is to provide support for research, educational, and pro bono activities that will promote justice for individuals in the administration of the criminal and civil justice systems, in the State of Louisiana and elsewhere.

In addition to this symposium, the Pugh Institute has also been engaged in several other important initiatives. First, the Institute, along with the LSU Law Center, recently co-sponsored a conference on the theory of the Criminal Law's "Special Part," the dimension of criminal law that identifies and defines the specific offenses that are subject to criminal sanctions. Leading scholars in law and philosophy from throughout the United States, Great Britain, and Argentina gathered in Baton Rouge on March 5-6, 2004, to explore issues such as those raised by the criminalization of "possession" and "endangerment" offenses, the felony murder rule, bribery, theft, rape, and domestic violence, as well as the categorization of criminal offenses. The papers presented at the conference will be published by Oxford University Press in a book entitled *Defining Crimes: Essays on the Criminal Law's Special Part*. Two of the papers, and commentary, will also appear in a forthcoming issue of the *Louisiana Law Review*.

Second, the Pugh Institute will soon publish *The Collected Works of Judge Albert Tate, Jr.*, a compendium of lively and insightful extra-judicial writings by one of the major figures in the history of Louisiana jurisprudence. The Tate volume contains reflections on themes such as the proper role and function of a judge, the methodology of legal interpretation in a mixed jurisdiction, the proper scope and technique of appellate review in Louisiana, the improvement of appellate advocacy, and the reemergence of Louisiana's civilian tradition in the law of torts and obligations. The book, which also contains a preface by U.S. Fifth Circuit Judge James Dennis, reminiscing on Al Tate, the man, will be published later this year.

Third, the Pugh Institute has been the driving force behind an innovative LSU law course on Punishment, Post-Conviction Procedures, and Wrongful Convictions. Team taught by U.S. District Court Judge Ginger Berrigan, criminal defense attorney Jim Boren, and me, the course exposes students to questions of why and how we punish, why and how the system sometimes results in the conviction of innocent persons, and what can be done to rectify such miscarriages of justice. The course is complemented by a newly launched program, which allows students to work as externs with the Innocence Project in New Orleans, the Louisiana chapter of a nationwide effort to investigate claims of prisoners who claim to

have been wrongly convicted, and to free those who can prove their actual innocence.

Finally, the Institute has begun planning a project that will explore the issues raised by the use and possible misuse of eyewitness testimony. The project, which will entail both research and law reform elements, will focus, in particular, on the difficult question of whether litigants should be allowed to introduce expert testimony that may aid a jury in placing appropriate weight on eyewitness testimony.

Like the symposium that appears in the pages that follow, all of these projects seek to emulate the kind of searching and insightful approach to questions of law and justice that will always be associated with George Pugh. The Pugh Institute, which is grateful to the *Louisiana Law Review* for providing us with this forum, and which welcomes the support and participation of the *Review's* readers, is pleased to present Part II of this Symposium on Harmless Error.

