

## **Criminal Procedure Counsel Issues**

*Weaver v. Massachusetts*, 582 U.S. \_\_\_\_ (June 22, 2017). In a case where the defendant failed to preserve a claim of structural error with respect to improper closure of the courtroom and raised it later in the context of an ineffective assistance claim, the Court held that the defendant was not relieved of his burden of establishing prejudice, which he failed to do. During the defendant's state criminal trial, the courtroom was occupied by potential jurors and closed to the public for two days of jury selection. Defense counsel neither objected to the closure at trial nor raised the issue on direct review. The case came to the Court in the context of an ineffective assistance of counsel claims. On the facts presented, the Court held that the defendant had not established prejudice. It explained:

In the criminal justice system, the constant, indeed unending, duty of the judiciary is to seek and to find the proper balance between the necessity for fair and just trials and the importance of finality of judgments. When a structural error is preserved and raised on direct review, the balance is in the defendant's favor, and a new trial generally will be granted as a matter of right. When a structural error is raised in the context of an ineffective assistance claim, however, finality concerns are far more pronounced. For this reason, and in light of the other circumstances present in this case, petitioner must show prejudice in order to obtain a new trial. As explained above, he has not made the required showing.

### **Discovery**

*Turner v. United States*, 582 U.S. \_\_\_\_ (June 22, 2017). Evidence withheld by the Government was not material under *Brady*. In 1985, a group of defendants were tried together in the Superior Court for the District of Columbia for the kidnaping, armed robbery, and murder of Catherine Fuller. Long after their convictions became final, it emerged that the Government possessed certain evidence that it failed to disclose to the defense. The only question before the Court was whether the withheld evidence was "material" under *Brady*. The Court held it was not, finding that the withheld evidence as "too little, too weak, or too distant from the main evidentiary points to meet *Brady's* standards." [Author's note: For a more detailed discussion of the withheld evidence and the Court's reasoning, see my colleague's blog post [here](#)].