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COMMENT AND NOTE

The “Cowardly Counsel” Exception: Eliminating the Contemporaneous Objection Rule

Elizabeth George57

The contemporaneous objection rule is very clear and precise in its application. However, as the law stands in the Ninth Circuit, failure to contemporaneously object coupled with any mention of race by the sentencing judge is automatic grounds for resentencing. This article explores the origins of this exception to the contemporaneous objection rule. Next, it explores why these statements constitute harmless error on the part of the trial court. Finally, it explains why this “cowardly counsel” exception could have potentially devastating effects to the policies that underlie the contemporaneous objection rule.

The Error in Finding that Undocumented Persons are Not “The People”: A Deeper Look at the Implications of *United States v. Portillo-Munoz*

Dorota Gibala83

*In 2011, the Fifth Circuit held in *United States v. Portillo-Munoz* that undocumented persons are not entitled to the protections of the Second Amendment to the Constitution. Although part of the court’s reasoning was based on 18 U.S.C. § 922(g)(5), its decision also turned on the belief that the meaning of the phrase “the people” in the Second Amendment did not incorporate undocumented persons. This Note argues that *Portillo-Munoz*’s interpretation of “the people,” as implying that “the people” exclusively encompasses only citizens, is erroneous with how the phrase “the people” is similarly situated in the Fourth Amendment. As set out in *District of Columbia v. Heller*, the two amendments have been tied together in purpose as asserting a basic right of persons against governmental intrusion. In the same vein, contrary to what *United States v. Portillo-Munoz* asserted, undocumented persons have been held to retain certain Fourth Amendment rights, thus, by implication, to be included in “the people” therein. Thus, in siding with the *Portillo-Munoz* dissent, this Note maintains that the Second Amendment’s reading of “the people” should extend to undocumented persons.*

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