
THE REAL REASONS THE TRAYVON MARTIN CASE SHOULD BE A CRIMINAL JUSTICE POSTER CHILD

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I. INTRODUCTION

George Zimmerman is currently on trial for the fatal shooting of Trayvon Martin. The case stands out because it implicates two of our nation’s most polarizing societal issues: race and firearms. Indeed, these dimensions of the case have been underscored by early reporting on the trial, which emphasized that all but one of the selected jurors are White and two of them have guns in their homes.¹

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1. See, e.g., Rene Stutzman and Jeff Weiner, *George Zimmerman Trial: All-Female Jury Seated in Trayvon Martin Shooting Case*, ORLANDO SENTINEL, June 20, 2013, <http://articles.orlandosentinel.com/2013-06-20/news/os-george-zimmerman-trial->

What follows in this Essay is an examination of one of the central controversies surrounding the Trayvon Martin case and the law it implicates, Florida's 2005 "Stand Your Ground" statute, which served as the model for a national wave of similar legislation.² I conclude that some prominent narratives regarding the case, and Stand Your Ground laws more generally, are flawed. Nevertheless, I find alternative grounds for criticism of Zimmerman's decision to confront Martin, the Martin case's initial handling by law enforcement, and Stand Your Ground laws in general.

II. ZIMMERMAN APPARENTLY DID NOT RACIALLY PROFILE MARTIN, BUT 'STAND YOUR GROUND' CASE OUTCOMES ARE RACIALLY DISPARATE

In the initial public outcry over Martin's death, allegations of racial prejudice abounded.³ Zimmerman was accused of racially profiling Martin,⁴ and the initial decision to release Zimmerman from custody without charges or further investigation was characterized as a racial injustice.⁵ Prominent figures on racial issues, including Al Sharpton, Jesse Jackson, and NAACP president Benjamin Jealous, called for Zimmerman's immediate arrest and prosecution.⁶ These early accusations

jury-20130620_1_george-zimmerman-trayvon-martin-de-la-rionda; Cara Buckley, *6 Female Jurors Are Selected for Zimmerman Trial*, N.Y. TIMES, June 20, 2013, <http://www.nytimes.com/2013/06/21/us/6-female-jurors-are-selected-for-zimmerman-trial.html>.

2. Rachel Weiner, *The Political Battle over 'Stand Your Ground' Laws*, WASH. POST: THE FIX (Mar. 23, 2012), http://www.washingtonpost.com/blogs/the-fix/post/the-political-battle-over-stand-your-ground-laws/2012/03/22/gIQAVcJ2VS_blog.html.

3. See Mallory Simon, *Trayvon Martin Case Sparks Dialogue on Racial Inequality, Meaning of Justice*, CNN: THIS JUST IN (Mar. 22, 2012), <http://news.blogs.cnn.com/2012/03/22/trayvon-martin-case-sparks-dialogue-on-racial-inequality-meaning-of-justice/>.

4. David Ovalle, *Race Will Be Key in George Zimmerman Trial*, TAMPA BAY TIMES (June 9, 2013), <http://www.tampabay.com/news/courts/criminal/race-will-be-key-in-george-zimmerman-trial/2125775>.

5. See Rene Stutzman, *Sanford Police Took One Position on Trayvon Shooting in Public, Another in Paperwork to Prosecutors*, ORLANDO SENTINEL (July 7, 2012), http://articles.orlandosentinel.com/2012-07-07/news/os-george-zimmerman-sanford-police-lied-20120707_1_special-prosecutor-angela-corey-chief-bill-lee-arrest-warrant.

6. *Crowds at Rally Call for Gunman George Zimmerman's Arrest in Trayvon Martin's Death*, WFTV.COM (Mar. 20, 2012), <http://www.wftv.com/news/news/state-attorney-case-will-be-given-grand-jury-shoot/nLX9c/>; Arelis R. Hernández,

gained force with the release of several recordings of phone calls by Zimmerman to a police non-emergency line, including the two calls he made about Martin.⁷ A muffled, sighing remark by Zimmerman during the first call was widely interpreted as a racial epithet: “F—-ing coons!”⁸ A few days later, the U.S. Department of Justice announced that its Civil Rights Division would undertake an investigation to determine whether Zimmerman had committed a federal hate crime.⁹

But the available evidence strongly suggests that race had little to do with the deadly confrontation. Zimmerman’s initial exchange with the police operator indicates that he did not make note of Martin’s race until prompted to do so and even then gave an uncertain response.¹⁰ Zimmerman first responded to the operator’s query by indicating that Martin “look[ed] Black,” then followed up more than twenty seconds later, after getting a better look, confirming, “he’s a Black male.”¹¹ Moreover, recently released FBI interviews with dozens of people who knew Zimmerman did not uncover any information suggesting that Zimmerman is racist.¹² Sanford police investigator Christopher Serino, who interviewed

Trayvon Marchers: ‘We Want an Arrest. Shot in the Chest’, ORLANDO SENTINEL (Mar. 31, 2012), http://articles.orlandosentinel.com/2012-03-31/news/os-george-zimmerman-trayvon-naacp-rally-sanford-20120331_1_naacp-shooting-death-sanford-police-headquarters.

7. See Lizette Alvarez, *911 Calls Add Detail to Debate Over Florida Killing*, N.Y. TIMES (Mar. 17, 2012), <http://www.nytimes.com/2012/03/19/us/911-tapes-released-in-killing-of-florida-teenager.html>.

8. Matt Gutman, *Trayvon Martin Killing: 911 Tape Reveals Possible Racial Slur by Neighborhood Watchman*, ABC NEWS (Mar. 20, 2012), <http://abcnews.go.com/US/neighborhood-watch-killing-911-tape-reveals-racial-slur/story?id=15966309#.UcKBS-t5Ey4>.

9. Justice Department, *FBI to Probe Shooting Death of Florida Teen Trayvon Martin*, NBCNEWS.COM: U.S. NEWS (Mar. 19, 2012), http://usnews.nbcnews.com/_news/2012/03/19/10766858-justice-department-fbi-to-probe-shooting-death-of-florida-teen-trayvon-martin?lite.

10. Korva Coleman, *George Zimmerman Sues NBC, Says He’s a Victim of ‘Yellow Journalism,’* NPR: THE TWO-WAY (Dec. 7, 2012), <http://www.npr.org/blogs/thetwo-way/2012/12/07/166727771/george-zimmerman-sues-nbc-says-hes-a-victim-of-yellow-journalism>.

11. Isabelle Zehnder, *George Zimmerman’s 911 Call Transcribed*, EXAMINER.COM (Mar. 24, 2012), <http://www.examiner.com/article/george-zimmerman-s-911-call-transcribed>.

12. Kevin Gray & Barbara Liston, *No Evidence Trayvon Martin’s Killer is Racist: FBI Interviews*, CHI. TRIB. (July 12, 2012), http://articles.chicagotribune.com/2012-07-12/news/sns-rt-us-usa-florida-shootingbre86b1ad-20120712_1_trayvon-martin-george-zimmerman-zimmerman-claims.

Zimmerman immediately after the incident, told the FBI that he knew Zimmerman from several prior interactions and had probed whether he had racially profiled Martin.¹³ His conclusion was that Zimmerman was merely an overzealous neighborhood watchman with a “little hero complex” who had profiled Martin “based on his attire,” not his race.¹⁴ Detective Serino explained that dark hoodies were characteristic of local gang members known in the community as “goons,”¹⁵ a moniker that provides a plausible alternative interpretation to the outdated racial epithet “coon.”¹⁶ A third alternative interpretation emerged when the defense asserted that the disputed word is “punks.”¹⁷ This interpretation was endorsed, after digital enhancement of the audio, by Tom Owen, chairman emeritus of the American Board of Recorded Evidence.¹⁸ It was also quickly adopted by the prosecution, beginning with the affidavit of probable cause outlining the charges against Zimmerman.¹⁹ At trial, the prosecution has sought to characterize Zimmerman as profiling Martin as a “criminal,” without any mention of race, suggesting an adoption of Detective Serino’s theory that Zimmerman’s suspicion arose from non-racial factors such as Martin’s attire.²⁰

Yet, race does very much matter in the Trayvon Martin case. Racial disparities in the outcomes of Stand Your Ground cases are substantial and widespread, prompting the U.S. Commission on Civil Rights to launch a special multi-state investigation.²¹ In its proposal for this investigation, the

13. *Id.*

14. REPORT OF FEDERAL BUREAU OF INVESTIGATION INTERVIEW OF SANFORD, FLORIDA, POLICE INVESTIGATOR CHRISTOPHER SERINO 1 (Mar. 3, 2012) [hereinafter SERINO INTERVIEW], <http://www.scribd.com/doc/99942204/Serino-s-FBI-Interview-2-Pges-1>.

15. *Id.*

16. *See supra* text accompanying note 8.

17. *Lawyers: Zimmerman Whispered “Punks” Before Shooting Trayvon Martin*, CNN (Apr. 6, 2012), <http://www.cnn.com/2012/04/05/justice/florida-teen-shooting/index.html>.

18. *Id.*

19. Jeff Weiner, *Affidavit: No Racial Slur in Zimmerman Police Call*, ORLANDO SENTINEL (Apr. 14, 2012), http://articles.orlandosentinel.com/2012-04-14/news/os-sidebar-george-zimmerman-2nd-degree-20120414_1_racial-slur-racial-epithet-punks.

20. Stephen Loiaconi, *Get Caught Up: Week 1 of Zimmerman Trial*, CNN (Jun. 29, 2013), http://www.cnn.com/2013/06/29/justice/zimmermantrial-recap?hpt=ju_t2; Transcript, *Live Coverage of the George Zimmerman Trial*, CNN (Jul. 2, 2013), <http://transcripts.cnn.com/TRANSCRIPTS/1307/02/cnr.02.html>.

21. Yamiche Alcindor, *Officials Plan to Take Closer Look at Stand-Your-*

Commission noted a statistical analysis by the Wall Street Journal, which found highly disproportionate representation of Black victims among homicides deemed justifiable, as well as large increases in justifiable homicide counts generally following enactment of Stand Your Ground laws.²² Multiple other analyses have corroborated the Wall Street Journal's findings regarding disparities in Stand Your Ground case outcomes according to the victim's race.²³ A major factor in these racial disparities appears to be the design and application of Stand Your Ground laws.

III. STAND YOUR GROUND LAWS NOT RADICAL ON DUTY TO RETREAT, BUT RADICAL ELSEWHERE

Public discourse surrounding the Martin case initially focused largely on Stand Your Ground laws such as Florida's and their lack of a duty to retreat if possible before using deadly force in self-defense.²⁴ This focus is understandable, at least in the case of Martin's death. First, his death resulted from a street confrontation that could easily have been avoided

Ground Laws, USA TODAY (June 9, 2012), <http://usatoday30.usatoday.com/news/nation/story/2012-06-09/trayvon-martin-stand-your-ground/55480352/1>.

22. U.S. COMM'N ON CIVIL RIGHTS, *USCCR Special Investigation: Stand Your Ground Laws & Racial Bias*, SCRIBD., <http://www.scribd.com/doc/96430532/U-S-Commission-On-Civil-Rights-Proposal> (last visited Jul. 5, 2013); see also Joe Palazzolo & Rob Barry, *More Killings Called Self-Defense*, WALL ST. J. (Apr. 2, 2012), <http://online.wsj.com/article/SB10001424052702303404704577311873214574462.html>.

23. See, e.g., Susan Taylor Martin et al., *Race Plays Complex Role in Florida's "Stand Your Ground" Law*, TAMPA BAY TIMES (June 4, 2012), <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152> (finding, after an in-depth analysis of nearly 200 cases, that "people who killed a black person walked free 73 percent of the time, while those who killed a white person went free 59 percent of the time"); John Roman & Mitchell Downey, *Stand Your Ground Laws and Miscarriages of Justice*, URB. INST.: METRO TRENDS BLOG (Mar. 29, 2012), <http://blog.metrotrends.org/2012/03/stand-ground-laws-miscarriages-justice/> (finding that "the scenario with the highest probability of being a justified homicide is much like the Martin case—a single, White civilian handgun shooter who is a stranger to (and older than) the Black victim," and that about 39 percent of such scenarios are ruled justified, well above the national average of 10.9 percent).

24. See, e.g., Jeffrey Bellin, *How 'Duty to Retreat' Became 'Stand Your Ground'*, CNN OPINION (Mar. 21, 2012), <http://www.cnn.com/2012/03/21/opinion/bellin-stand-your-ground-law> (discussing self-defense claims under Florida's current Stand Your Ground law, which permits a person to stand his or her ground if attacked); Michael J.Z. Mannheimer, *Trayvon Martin and Florida's "Stand Your Ground" Law*, PRAWFSBLAWG (Mar. 22, 2012), <http://prawfsblawg.blogs.com/prawfsblawg/2012/03/trayvon-martin-and-floridas-stand-your-ground-law.html> (discussing what the Florida Stand Your Ground law does and does not do).

altogether. Second, up until the 2005 enactment of Florida's Stand Your Ground law, the state had a longstanding common law duty to retreat except in one's own home.²⁵ However, despite the deep pedigree of the duty to retreat in Anglo-American common law, its reach as a rule is often overstated.

The common law of the various states has featured a fairly even split over the duty to retreat since before the turn of the twentieth century—a reflection of uniquely American attitudes toward violence and honor shaped by many states' rugged frontier days.²⁶ The sudden tide of Stand Your Ground laws following the 2005 passage of Florida's law made no-retreat states a decisive majority for the first time in American history.²⁷ However, the laws in this legislative tide represented a self-defense paradigm shift, not so much because they imposed no duty to retreat, but because of a variety of other, less-heralded but profoundly consequential provisions. Those provisions, in their dynamic interplay with the practical realities of law enforcement, have created a variety of public safety and criminal justice quandaries. The Martin case serves as a vivid illustration of several of those problems.

25. Jessica Slatten, Recent Developments, *Florida Legislation—The Controversy Over Florida's New "Stand Your Ground" Law—Fla. Stat. § 776.013 (2005)*, 33 FLA. ST. U. L. REV. 351, 354 (2005); see also Christine Catalfamo, Stand Your Ground: Florida's Castle Doctrine for the Twenty-First Century, 4 RUTGERS J.L. & PUB. POL'Y 504, 512–22 (2007) (detailing the evolution of Florida's common law Castle Doctrine prior to 2005).

26. See RICHARD MAXWELL BROWN, NO DUTY TO RETREAT: VIOLENCE AND VALUES IN AMERICAN HISTORY AND SOCIETY 8, 20 (1991) (describing how some states began rejecting the English common law duty to retreat as settlers moved westward in the nineteenth century based upon notions of "true men," the "American mind," and the prevalence of guns on the frontier). By the beginning of the twentieth century, no duty to retreat was apparently the common law rule in a majority of states. See Joseph H. Beale, Jr., *Homicide in Self-Defence*, 3 COLUM. L. REV. 526, 539–42 (1903) (collecting cases demonstrating the turn-of-the-century split among the states as to the duty to retreat, but noting that states without this duty still required an imminent threat of death or serious bodily injury for the use of force to be justified); see also *Brown v. United States*, 256 U.S. 335, 343 (1921) ("[I]f a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground . . .").

27. As of July 2012, 37 states do not impose a duty to retreat. ASS'N OF PROSECUTING ATTORNEYS, CASTLE DOCTRINE EXPANSION CHART 1–7 (2012), available at <http://www.apainc.org/files/DDF00000/Castle-Doctrine%20Expansion%20Chart%2010.2012.pdf>.

A. *The Danger of Increased Initiation and Deadly Escalation of Altercations*

Zimmerman initiated a confrontation with Martin, intent upon making sure Martin did not leave before police arrived. As he followed Martin, he remarked to the police operator, “These assholes. They always get away.”²⁸ Against the direction of the police operator, he got out of his SUV and pursued the unarmed Martin, on foot, in the dark of night, armed with a gun.²⁹ That confrontation ultimately resulted in Martin’s fatal shooting. Detective Serino opined in his police report that the entire confrontation “was ultimately avoidable by Zimmerman, if Zimmerman had remained in his vehicle and awaited the arrival of law enforcement, or conversely, if he had identified himself to Martin as a concerned citizen and initiated dialog”³⁰ This course of events evokes criminal justice experts’ concern that privileging the use of deadly force can lead to its increased use to resolve misunderstandings, which are especially likely to occur across lines of class, culture, and race.³¹

B. *The Danger of Exploitation of Permissive Self-Defense Laws*

Zimmerman, a longtime neighborhood watch volunteer, was apparently not only aware of Florida’s Stand Your Ground law but prepared to exploit it as a legal shield. Detective Serino told the FBI that Zimmerman’s answers seemed “scripted,” as if intended to invoke Florida’s “Stand Your Ground” law,³² including statements that he feared for his life and acted in “self-defense.”³³ These mere assertions allowed him to walk out of the police station, uncharged, on the same night he fatally shot Martin.³⁴ Although Zimmerman told the media that he had never

28. Transcript, *Live Coverage of the George Zimmerman Trial*, CNN (July 2, 2013), <http://transcripts.cnn.com/TRANSCRIPTS/130702/cnr.02.html> (quoting from audio file).

29. *See id.*

30. SERINO INTERVIEW, *supra* note 14, at 1.

31. *See* STEVEN JANSEN & M. ELAINE NUGENT-BORAKOVE, EXPANSIONS TO THE CASTLE DOCTRINE: IMPLICATIONS FOR POLICY AND PRACTICE 12–13 (2008), available at <http://apainc.org/files/DDF/Castle%20Doctrine.pdf>.

32. SERINO INTERVIEW, *supra* note 14, at 2.

33. *See* Lizette Alvarez & Timothy Williams, *Documents Tell Zimmerman’s Side in Martin Case*, N.Y. TIMES, June 21, 2012, <http://www.nytimes.com/2012/06/22/us/documents-tell-zimmermans-side-in-martin-shooting.html?ref=us>.

34. *See* Bill Chappell, *Zimmerman Arrested on Murder Charge in Martin Case; Will Plead Not Guilty*, NPR: THE TWO-WAY (Apr. 11, 2012), <http://www.npr.org/blogs/the-two-way/2012/04/11/150449405/zimmerman-arrested-on-murder-charge-in-martin-case> (noting the charges and arrest came more than six weeks after the

heard of Florida's law before the shooting, it came to light at trial that he had earned an A in a college-level criminal investigations course that covered the law.³⁵ Whether Zimmerman invoked Florida's Stand Your Ground law cynically or not, his case illustrates the law's potential as a "Get Out of Jail Free" card for legitimate self-defenders, overzealous vigilantes, and calculating criminals alike. Stand Your Ground laws provide such broad, readily available protection because of their fundamental restructuring of the legal regime for claims of self-defense.

C. The Obstruction of Law Enforcement Function by Statutory Design

Traditionally, self-defense is an affirmative defense at trial. Florida's law, however, does not allow even arrest when self-defense is claimed unless police have probable cause to rebut the claim.³⁶ In the absence of much immediately available physical or testimonial evidence to rebut Zimmerman's claim, Detective Serino found himself in a difficult position. As he told the press a few weeks after the shooting, "The best evidence we have is the testimony of George Zimmerman, and he says the decedent was the primary aggressor in the whole event. Everything I have is adding up to what he says."³⁷ Approximately two weeks later, as public attention surged, Sanford Police Chief Bill Lee defended the decision not to charge Zimmerman, citing the lack of grounds to disprove his account.³⁸ Consequently, the law enabled Zimmerman to initially avoid charges and further investigation.

Detective Serino's decision to release Zimmerman—despite pressure not to from several colleagues, as well as his own misgivings³⁹—illustrates

shooting).

35. Cara Buckley, *Zimmerman Studied 'Stand Your Ground' in Class, Florida Court Is Told*, N.Y. TIMES (Jul. 3, 2013), <http://www.nytimes.com/2013/07/04/us/witnesses-tell-of-zimmermans-interest-in-law-enforcement.html>.

36. FLA. STAT. ANN. § 776.032(2) (West 2010) (providing that, when a user of deadly force alleges he acted in self-defense, law enforcement "may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful").

37. Rene Stutzman & Amy Pavuk, *Lawyer for Trayvon's Family: Wolfinger and Police Chief Met the Night Teen was Killed*, ORLANDO SENTINEL (Apr. 2, 2012), http://articles.orlandosentinel.com/2012-04-02/news/os-trayvon-martin-federal-review-justice-letter-20120402_1_chief-bill-lee-federal-review-federal-agency.

38. Greg Allen, *Fla. Teen's Shooter Still Free; Lack of Evidence Cited*, NPR (Mar. 28, 2012), <http://www.npr.org/2012/03/28/149556747/fla-teens-shooter-still-free-lack-of-evidence-cited>.

39. See SERINO INTERVIEW, *supra* note 14, at 2.

the heightened demands that Florida's Stand Your Ground law places on law enforcement's exercise of discretion and allocation of limited resources. Although Detective Serino could have continued to investigate the case, it did not promise to be fruitful. Even without the extra hurdles imposed by Florida's Stand Your Ground law, homicide cases involving claims of self-defense tend to be "murky and hard to sort out," frequently lacking credible, cooperative witnesses and strong physical evidence.⁴⁰ Investigation is even more challenging where Stand Your Ground laws bestow a presumption of reasonableness, as Florida does, for use of deadly force in one's home or vehicle.⁴¹

By requiring law enforcement to prove a negative, such a presumption is "virtually un rebuttable."⁴² As the state attorney for Tallahassee, Willie Meggs, has observed, "The person who is alive always says, 'I was in fear that he was going to hurt me.' . . . And the other person would say, 'I wasn't going to hurt anyone.' But he is dead. That is the problem they are wrestling with in Sanford."⁴³ Indeed, an Orlando Sentinel study of police records shows that defendants invoking Florida's Stand Your Ground law generally face charges only in cases in which the prosecution has cooperating, living witnesses.⁴⁴

D. *The Danger of Over-Application of Stand Your Ground Immunity*

Florida's Stand Your Ground law has also proven "malleable" and is

40. Lizette Alvarez, *A Florida Law Gets Scrutiny After a Teenager's Killing*, N.Y. TIMES (Mar. 20, 2012), <http://www.nytimes.com/2012/03/21/us/justice-department-opens-inquiry-in-killing-of-trayvon-martin.html>.

41. FLA. STAT. ANN. § 776.013(1).

42. See JANSEN & NUGENT-BORAKOVE, *supra* note 31, at 6 (internal quotation marks omitted); see also Elizabeth B. Megale, *Deadly Combinations: How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allow Criminals to "Get Away with Murder,"* 34 AM. J. TRIAL ADVOC. 105, 108, 129-30 (2010) (noting that "irrebuttable presumptions," such as the one created by Florida's Stand Your Ground law, are almost always unconstitutional); cf. *Dixon v. United States*, 548 U.S. 1, 19 (2006) (Kennedy, J., concurring) (stating that it is proper for the defendant to bear the burden of proving that she acted under duress because, "as the person who allegedly coerced the defendant is often unwilling to come forward and testify, the prosecution may be without any practical means of disproving the defendant's allegations").

43. Alvarez, *supra* note 40.

44. See Henry Pierson Curtis, *Central Florida Cops Routinely Make Arrests Despite Self-Defense Claims*, ORLANDO SENTINEL (Mar. 21, 2012), http://articles.orlandosentinel.com/2012-03-21/news/os-trayvon-martin-stand-cases-20120322_1_orlando-police-prosecutors-records-show.

routinely stretched well beyond its already ample boundaries.⁴⁵ The law's main sponsors and its signer, ex-Governor Jeb Bush, have asserted publicly that it does not apply to situations like Zimmerman's pursuit and confrontation of Martin.⁴⁶ Yet, because of the law, Zimmerman initially avoided detention and charges. Moreover, defendants are afforded two opportunities to gain both criminal and civil immunity, first before a judge at a pre-trial hearing—which Zimmerman waived for strategic reasons⁴⁷—and again before a jury at trial.⁴⁸

In addition to covering avoidable confrontations that escalate into deadly altercations such as the Martin case, Stand Your Ground laws have provided protection to violent criminals and vigilantes dispensing “street justice.” The most famous case yet is that of Joe Horn. Horn left his Houston-area home with a shotgun, against the admonishment of a police operator, and shot two men he suspected of burglarizing a neighboring home as they fled from the premises.⁴⁹ The laws also have covered overreactions to speculative threats, such as the shooting death of a Florida

45. Kris Hundley et al., *Florida ‘Stand Your Ground’ Law Yields Some Shocking Outcomes Depending on How Law is Applied*, TAMPA BAY TIMES (June 1, 2012), <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133> (quoting Miami-Dade State Attorney's Office spokesperson Ed Griffith).

46. See David Jeannot, “*Stand Your Ground*” Authors Say Law Doesn't Apply to Trayvon Martin Shooter, NBC MIAMI (Mar. 21, 2012), <http://www.nbcmiami.com/news/local/Stand-Your-Ground-Authors-Say-Law-Doesnt-Apply-To-Trayvon-Martin-Shooter-143684626.html> (noting former state Senator Durell Peaden and state Representative Dennis Baxley, the authors of the 2005 act, as saying Zimmerman's actions are not protected by the law); Gromer Jeffers Jr., *In Arlington, Jeb Bush Says ‘Stand Your Ground’ Invalid In Trayvon Martin Case*, DALL. MORNING NEWS (Mar. 23, 2012), <http://www.dallasnews.com/news/community-news/arlington/headlines/20120323-in-arlington-jeb-bush-says-stand-your-ground-invalid-in-trayvon-martin-case.ece> (quoting Jeb Bush saying “[t]his law does not apply to this particular circumstance. . . . Stand your ground means stand your ground. It doesn't mean chase after somebody who's turned their back”).

47. Lizette Alvarez, *Zimmerman Forgoes Pretrial Hearing, Taking Issue of Immunity to a Jury*, N.Y. TIMES, Apr. 30, 2013, http://www.nytimes.com/2013/05/01/us/george-zimmerman-waives-right-to-pretrial-hearing.html?_r=0.

48. See FLA. STAT. ANN. § 776.032(1) (West 2010) (granting immunity in both civil and criminal actions); *Dennis v. State*, 50 So. 3d 456, 462–63 (Fla. 2010) (finding that a defendant may raise § 766.032 immunity as an affirmative defense or during a pretrial hearing).

49. Ralph Blumenthal, *Shootings Test Limits of New Self-Defense Law*, N.Y. TIMES (Dec. 13, 2007), http://www.nytimes.com/2007/12/13/us/13texas.html?_r=2&oref=slogin&.

man who was causing a disturbance in the shooter's apartment complex, banging loudly on car hoods and apartment windows.⁵⁰ Law enforcement entities in Florida have even had trouble mounting cases against participants in full-blown shootouts.⁵¹ In at least one case, Florida's law was invoked in dismissing charges—possession of a gun by a felon—for which self-defense is not an applicable defense.⁵² Because Stand Your Ground laws serve as a powerful impediment to investigation and prosecution of crimes, they lead inevitably to under-enforcement of violent crimes, particularly when law enforcement resources are limited.

Stand Your Ground laws also appear to make enforcement more uneven. Inexplicable discrepancies—both racial and otherwise—exist in the outcomes of factually similar Stand Your Ground cases across different counties in Florida.⁵³ This appears attributable at least in part to variances in the resources, protocols, and oversight accorded self-defense cases by law enforcement. The investigations of some police departments and prosecuting offices are thorough, while others are perfunctory, and some police departments' decisions are subjected to prosecutorial review as a matter of course while others are not.⁵⁴ Indeed, one controversy in the Trayvon Martin case was whether Seminole County State's Attorney Norm Wolfinger and Sanford Police Chief Bill Lee intervened in the decision to release Zimmerman, as alleged by Martin's family in a letter to the Justice

50. Hundley et al., *supra* note 45.

51. See, e.g., Susan Taylor Martin, *Sometimes, the 'Stand Your Ground' Defense Cuts Both Ways*, TAMPA BAY TIMES (June 1, 2012), <http://www.tampabay.com/news/publicsafety/article1233131.ece> (detailing how both participants in a shootout were arrested, but the Pinellas-Pasco State Attorney's Office declined to prosecute either because each shooter alleged he acted in self-defense); *Florida's Stand Your Ground Law: Anthony Gonzales, Jr.*, TAMPA BAY TIMES, http://www.tampabay.com/stand-your-ground-law/cases/case_51 (last updated July 3, 2012) (detailing how the surviving shooter in a high-speed car-crash shootout that resulted in the death of the other driver ended up merely pleading guilty to manslaughter after making a "Stand Your Ground" motion). Explaining the problem, a spokesperson for the Miami-Dade County State Attorney's office remarked, "The limitations imposed on us by the 'stand your ground' law made it impossible for any prosecutor to pursue murder charges." *Id.*

52. Megale, *supra* note 42, at 121–22.

53. Hundley et al., *supra* note 45 (detailing a variety of similar incidents handled in dramatically different ways by police and prosecutors).

54. See Megale, *supra* note 42, at 108–09, 119–20; P. Luevonda Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground*, 35 S.U. L. Rev. 1, 33–34 (2007–2008).

Department.⁵⁵

The result of under-enforcement and uneven enforcement of crimes in Stand Your Ground cases is a vast, permissive gray area for the questionable use of deadly force. This gray area has served as a backdrop to an increase in avoidable homicides.⁵⁶ An in-depth study of Stand Your Ground cases by The Tampa Bay Times found that most victims were unarmed and not committing a crime, while the wielder of deadly force usually had an opportunity to retreat.⁵⁷ Likewise, multiple more general studies have found a correlation between passage of Stand Your Ground laws and a substantial increase in those states' homicide rates.⁵⁸ The most sophisticated and comprehensive study on the topic, by Texas A&M University economists Mark Hoekstra and Cheng Cheng, estimated that the increase was as high as nine percent.⁵⁹ The study also found, contrary to the authors' expectations, that Stand Your Ground laws have failed to meet their goal of deterring crime.⁶⁰

IV. CONCLUSION

There is little dispute that George Zimmerman made a poor decision to follow Trayvon Martin and leave his vehicle, which led to a deadly confrontation. But evidence that he racially profiled Martin is scant. The more salient racial question in the case is the impact of racial disparities in the law's application.

Likewise, it is misguided to focus primarily on the portion of Florida's Stand Your Ground law abrogating the state's common law duty to retreat. That abrogation, although significant, was arguably not radical, given the 150-year pedigree of "stand your ground" in American law. However, the genuinely radical departures from self-defense doctrine's traditional structure—by Florida's law and others—pose challenges for public safety and criminal justice. Many of those challenges were vividly illustrated by the problematic early handling of the Trayvon Martin case.

55. Stutzman & Pavuk, *supra* note 37.

56. See Hundley et al., *supra* note 45.

57. *Florida's Stand Your Ground Law*, TAMPA BAY TIMES, <http://www.tampabay.com/stand-your-ground-law> (last updated Apr. 29, 2013).

58. Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine 4* (Nat'l Bureau of Econ. Research, Working Paper No. 18134, 2012), available at http://faculty.uml.edu/jbyrne/44.624/documents/castle_doctrine.pdf.

59. *Id.* at 23.

60. *Id.*

As George Zimmerman stands trial, with the nation watching, Stand Your Ground laws are on trial with him. The nation will debate whether the result of Zimmerman's case constitutes justice and whether Stand Your Ground laws are worth preserving in some form. In the meantime, there is no clear political momentum, in part because high-profile mass shootings such as those in Aurora and Newton have since dominated headlines and legislative lobbying efforts. Nevertheless, the Republican Party made Stand Your Ground a plank in its official platform at its presidential nominating convention in 2012,⁶¹ and last month Alaska passed the first new Stand Your Ground law since Trayvon Martin's death.⁶² Meanwhile, the New Hampshire House voted to repeal the state's Stand Your Ground law—which required a veto override to pass in 2011—but the New Hampshire Senate blocked the repeal.⁶³ Thus, debate among policymakers and the public continues, inconclusively. At least for now, the jury is still out.

61. *Republican Platform Calls for Unlimited Capacities of Guns*, THE BOS. GLOBE (Aug. 31, 2012), <http://www.bostonglobe.com/news/nation/2012/08/30/republican-platform-calls-for-unlimited-capacities-guns/ZYRSTcZc6Dz6NEtL2kE7gK/story.html>.

62. Daysha Eaton, *Parnell Signs Bills, Resolutions Supporting Gun Rights*, ALASKA PUB. MEDIA (June 20, 2013), <http://www.alaskapublic.org/2013/06/20/parnell-signs-bills-resolutions-supporting-gun-rights/>.

63. Ben Leubsdorf, *N.H. Senate Blocks 'Stand Your Ground' Repeals, Debates Voter ID, Kills State Minimum Wage*, CONCORD MONITOR, May 23, 2013, <http://www.concordmonitor.com/home/6354580-95/nh-senate-blocks-stand-your-ground-repeal-debates-voter-id-kills-state-minimum-wage>.