

The National Bar Association Trial Lawyers Section Presents: A Critical Analysis of the Trayvon Martin case and the Stand Your Ground Laws

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II. Chapter 2: “Stand your ground” white paper

History of “Stand your ground”

In 2005, the Florida Legislature became the first state in the nation to extend the “Castle doctrine” with its approval of the “Stand your ground” bill. The bill was approved in the Senate with unanimous approval and it was overwhelmingly approved in the House with a vote of 94 for to 20 opposed¹. The law was heavily supported by the National Rifle Association (NRA) and it set the tone for other states that were mulling similar statutes. To date, more than twenty states have enacted similar laws². However, not everyone was pleased with the passage of the new controversial statute. Several weaknesses with the statute were identified by a number of interest groups, but these weaknesses were not addressed by the Florida Legislature.

Now, after seven years, the statute is being challenged by national calls for its amendment or repeal³. A comprehensive review of the problems presented with the enforcement of “Stand your ground” by Zachary Weaver illustrates the weaknesses of the law as is. We will use his framework as the basis of our analysis.

We argue that this statute is not strong enough to protect the rights of all individuals in confrontations. We understand that no statute can account for the myriad variables in social interactions. However, we know that from the cases we examine here and other cases throughout the state that there are common problems with the statute that have denied justice to Florida citizens. Thus, in order for the citizens of Florida to retain the right to protect themselves, we argue that “Stand your ground” be amended to correct these shortcomings, strengthening the law for all Floridians. Our goal is not to make a case for the elimination of the use of firearms. On the contrary, we hope to create an illustration of the law that will lead to a groundswell of support for amendments that will protect the rights of all Floridians.

This review is comprised of four chapters of substantive content to buttress our argument for the strengthening of the “Stand your ground” statute in Florida. In Chapter 1, we present a series of articles from the early days of the Trayvon Martin case. In Chapter 2, we will first provide a brief history of Florida’s “Stand your ground statute.” Then, we examine the

¹ Zachary Weaver, Comment, *Florida’s Stand Your ground” Law: The Actual Effects and the Need for*

² See *Id.* These states include: Alabama, Alaska, Arizona, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, and Texas.

³ See Rene Stutzman and Jeff Weiner, *Trayvon’s parents, others blast Stand Your Ground law to task force*, Orlando Sent., June 12, 2012, at http://articles.orlandosentinel.com/2012-06-12/news/os-trayvon-stand-your-ground-petition-20120612_1_task-force-deadly-force-meeting-today

common problems with “Stand your ground” cases within the framework of four reverberating themes: prevention of prosecution, lack of standards for law enforcement investigations, and determination of probable cause. Then, we will discuss the particulars of the Trayvon Martin case and why “Stand your ground” should not apply to this case. Our argument will be supported by two other cases in which “Stand your ground” was not permitted as a defense in the use of deadly force, illustrating the separate and unequal enforcement of the statute.

In Chapter 3, we will provide a review of cases in which minorities have been subjected to unjust outcomes as the result of racial profiling, police use of deadly force and racism and discrimination in the law. We will then conclude Chapter 3 with a discussion of the Innocence Project and two final articles. In Chapter 4, we will discuss the criminalization of African-American men as justification for their murder. In Chapter 5, we provide our biographies.

Problems with “Stand your ground”

First of all, critics argued, the existing laws protected individuals’ rights to protect themselves, so no new legislation was needed. Former NRA President Marion Hammer countered this claim with her argument that citizens’ rights to protect their homes had been taken away over time by the judicial system, therefore, it was necessary to pass a statute that would irrefutably reinforce these rights.⁴

Secondly, there were criticisms about the long-term effects of the law. Prosecutors and law enforcement advocacy groups were both vehement critics of the law, citing a projected increase in “shoot now and ask later” incidents. The president of the National District Attorneys Association, Paul A. Logli, said at the time that “Stand your ground” would give citizens more leeway to kill than police officers without also subjecting them to the same scrutiny as police officers.⁵

There was also concern that the statute would protect criminals as opposed to law-abiding citizens because criminals are more likely to be involved in shootings than law-abiding citizens. Therefore, the law created a paradox in which it was making more vulnerable the very people it was created to protect. The legislature’s rationale for strengthening Florida’s self-defense laws was that “law abiding people” should have the right to defend themselves and their families without fear of prosecution and civil suits. Unfortunately, a review by the Tampa Bay Tribune found that many of the people who are availing themselves to the

⁴ See, Weaver, *supra*, 396.

⁵ See *Id.* at 402

protections of “Stand your ground” are not the “law-abiding citizens” the legislature was aiming to protect, but individuals who are not “law-abiding” at all.⁶

Another projected problem with the law was that it allowed for conclusive presumptions of a reasonable fear of great bodily harm or death and an intruder’s malicious intent to be irrefutable, §776.013(1), §776.013 (4), Florida Statutes. Therefore, the presumptions under which an individual used deadly force may not be challenged with contradictory evidence. Moreover, during trial, juries need only to consider whether the intruder had “unlawfully or forcibly” entered a dwelling and if the defendant knew that the intrusion had occurred.⁷

Prevention of prosecution

With its broad protections, “Stand your ground” has become a “barrier to prosecution” as opposed to a defense in court.⁸ In 2006, the president of the Florida Association of Criminal Defense Lawyers said that the “Stand your ground” has made it more difficult for prosecutors to file charges in self-defense cases. In many instances in which charges are filed, they are reduced.⁹

The Tampa Bay Times report on the enforcement of “Stand your ground” found that the worst fears of prosecutors are being realized under the statute. The defense has been successfully invoked to garner the release of defendants in cases that would have been prosecuted with serious charges had the statute not been enacted.¹⁰ Examples include a case in which one man shot and killed two unarmed men, one man shot another man while he was lying on the ground and a number of defendants have shot victims in their backs.¹¹ Even drug dealers have been able to successfully use the defense to escape jail.¹²

Lack of Standards for Law Enforcement Investigations

The “Stand your ground” statute has changed the way in which law enforcement officers investigate self-defense cases. Section 776.013(2), Florida Statutes, stipulates that police cannot arrest or otherwise detain a suspect unless they have evidence that shows the force was unlawful. Therefore, unless law enforcement can prove quickly that the force was in

⁶ See Kris Hundley, Susan Taylor Martin and Connie Humburg, *Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied*. Tampa Bay Times, June 3, 2012 at <http://www.tampabay.com/news/publicsafety/crime/article1233133.ece>

⁷ See Weaver, *supra* note 406.

⁸ *Id.*

⁹ See *id.* at 402.

¹⁰ See Hundley, Taylor Martin, and Humburg, *supra*.

¹¹ See *id.*

¹² See Kris Hundley, Drug dealer used “stand your ground” to avoid charges in two killings. Tampa Bay times, June 15, 2012 at <http://www.tampabay.com/news/courts/criminal/drug-dealer-used-stand-your-ground-to-avoid-charges-in-two-killings/1235650>.

self-defense, a suspect will not be arrested and important evidence in cases may be overlooked in officers' haste to conduct a speedy investigation.

It has also been shown that there is a lack of uniformity in self-defense investigations and prosecutions. Weaver cited a study of self-defense cases in five Florida counties which found that some cases received as much as twenty hours of investigation while others were handed over to prosecutors with no investigation at all¹³. This variability in the investigation of cases presents the problem of excessive discretion of law enforcement officers. If officers may choose which incidents to investigate fully and which to hand over or close, they may allow personal biases to influence their decisions, which impedes justice.

Determination of Probable Cause by Police

Prior to the passage of "Stand your ground," individuals who used deadly force outside the home were faced with the burden of proving that the force was necessary to prevent their serious bodily injury or death. Now, in the era of "stand your ground," that burden has been taken away from the individual and placed on law enforcement. As we stated earlier, this additional burden on law enforcement is compounded by the fact that law enforcement officers must prove very early in their investigation that the suspect unlawfully used deadly force before they can detain or arrest the suspect. Under the statute, law enforcement officers must assess the amount of deadly force used "based on whether an objectively reasonable person would have had reasonable fear that the alleged attacker was going to kill or do great bodily harm."¹⁴ However, the statute stipulates that this assessment must be made "using standard procedures for investigating the use of force."¹⁵ How can law enforcement officer adequately investigate a homicide if they cannot immediately detain or arrest a suspect?

Another complication with the assessment of the necessity of deadly force in an investigation is the fact that in such cases, there is usually one witness who has a major interest in the outcome of the case.¹⁶ Therefore, law enforcement is further hindered in its investigation of these cases because they are only left with one witness account of what happened. If a sole self-interested eyewitness account of the event is the only evidence law enforcement can gather in a case, then there is a great opportunity for a miscarriage of justice.

¹³ See Weaver, *supra* at 409.

¹⁴ See Weaver, *supra* at 418.

¹⁵ *Id.*

¹⁶ See Weaver, *supra* at 419.

The Trayvon Martin Case

Why the Florida “Stand your ground” law shouldn’t apply in the Trayvon Martin case

On February 26, 2012, seventeen year-old Trayvon Martin was walking to the home of his father’s fiancée when he sought refuge from the drizzling rain. He was on the phone with his girlfriend and he spotted someone watching him. Martin told his girlfriend that he was being watched and that he was afraid.¹⁷ Martin was right; he was being watched by neighborhood watch captain George Zimmerman who was making a phone call of his own—to 911. Zimmerman spotted Martin and did not know that Martin was a regular guest of a resident in the neighborhood.¹⁸ He did not know that Martin always played football with the neighborhood boys when he told the 911 dispatcher that Martin was “a real suspicious guy.”¹⁹ He went on to say that “This guy looks like he's up to no good, or he's on drugs or something. It's raining, and he's just walking around looking about.”

Martin started back toward the home when the man began following him. Zimmerman was told not to follow Martin, but Zimmerman continued his pursuit. Martin’s girlfriend told him to run, but he declined, saying that he was just going to “walk fast.” Zimmerman caught up with him and initiated a confrontation. Martin defended himself and paid for it with his life. Zimmerman claimed that Martin attacked him and he shot Martin in self defense because he (Zimmerman) feared for his life.²⁰

Investigators listened to Zimmerman’s account of what happened and poured over the physical evidence and ultimately concluded that Martin’s death was “ultimately avoidable by Zimmerman”²¹ in part because Zimmerman never identified himself as the neighborhood watch captain or as a concerned citizen.²² Given this information, we argue that Zimmerman does not have the right to claim self-defense in his killing of Martin.

¹⁷ Tracy Connor, *Girlfriend: Trayvon sounded scared before being shot*, May 19, 2012 at http://articles.nydailynews.com/2012-05-19/news/31769251_1_zimmerman-autopsy-results-shot.

¹⁸ Lane DeGregory, *Trayvon Martin's killing shatters safety within Retreat at Twin Lakes in Sanford*, March 25, 2012 at <http://www.tampabay.com/news/humaninterest/article1221799.ece>.

¹⁹ Frances Robles, *At heart of Trayvon Martin death, a one-minute mystery*, April 1, 2012 at http://seattletimes.nwsourc.com/html/nationworld/2017887566_trayvonmartinfacts02.html.

²⁰ Anna Werner, *George Zimmerman lawyer: "Fairly simple but tragic case of self-defense,"* April 5, 2012, at http://www.cbsnews.com/8301-504083_162-57409953-504083/george-zimmerman-lawyer-fairly-simple-but-tragic-case-of-self-defense/.

²¹ Kerry Sanders, *Court docs: Trayvon Martin shooting 'ultimately avoidable by Zimmerman'* May 17, 2012, at http://openchannel.msnbc.msn.com/_news/2012/05/17/11748468-court-docs-trayvon-martin-shooting-ultimately-avoidable-by-zimmerman?lite.

²² Associated Press, *Trayvon Martin investigators: Zimmerman didn't ID himself as watch leader; passed lie tests*, June 26, 2012 at http://www.washingtonpost.com/national/trayvon-martin-investigators-zimmerman-didnt-id-himself-as-watch-leader-passed-lie-tests/2012/06/26/gJQAFDIZ5V_story.html.

“Separate but Unequal” Enforcement

In their examination of the application of “Stand your ground,” the Tampa Bay Times found that there was a noticeable discrepancy in the percentage of cases in defendants were able to successfully invoke “Stand your ground.” In fatal cases, defendants with African-American victims were successful at escaping penalty seventy-three percent of the time while defendants with white victims only had a fifty-nine percent success rate.²³ Now we will discuss two cases in Florida in which African-Americans were denied the right to “Stand their ground” under questionable circumstances. In the case of Isaac Singletary of Jacksonville, he tried to defend his home against individuals whom he thought were drug dealers and he was killed in front of his home by undercover narcotics detectives. In the case of Marissa Alexander, nine days after she had given birth, she fired a warning shot at her abusive husband while he was assaulting her. Alexander proclaimed that she fired the shot in self defense, but she was charged with assault with a deadly weapon under Florida’s 10-20-Life law.

Isaac Singletary

In 2007, undercover narcotics officers were conducting an operation on a Sunday afternoon outside the home of 80 year-old honorably discharged military veteran Isaac Singletary. They had not solicited his permission to conduct the operation on his property, so Singletary had no idea that the people outside his home were undercover narcotics officers and not drug dealers. He came outside with his firearm to tell the officers to get off his property and they refused to identify themselves as police officers. The officers shot Singletary four times, including once in the back. An investigation by the state’s attorney found that the accounts of the officers changed as to whether an officer fired first or Singletary fired first.²⁴ The state’s attorney also disregarded the testimony of a convicted drug dealer who testified that the officers fired first, because according to the state’s attorney, the drug dealer “couldn’t be considered ‘particularly credible.’ ”²⁵ Statements from four additional witnesses corroborated the drug dealer’s account that the police officers fired first.²⁶ The family’s arguments that Singletary was standing his ground on his own property fell on deaf ears before the court.

Marissa Alexander

In August 2010, Marissa Alexander, nine days removed from childbirth was being assaulted by her abusive husband Rico Gray. She ran to her garage to leave, but she had forgotten her

²³ See Hundley, Taylor Martin and Humburg, *supra*.

²⁴ See Bridget Murphy, *Man’s family wants cops to face charges*, at Florida Courier, May 5-11, 2006 at B1-B4.

²⁵ See *Id.*

²⁶ See *Id.*

car keys during the altercation and the garage door was jammed, leaving her no room to escape.²⁷ ²⁸ She grabbed her firearm and shot it toward the ceiling. She said that she genuinely believed that “when he threatened to kill me, that's what he was absolutely going to do. That's what he intended to do. Had I not discharged my weapon at that point, I would not be here.”²⁹ Alexander's husband admitted in depositions that he had a history of abuse toward his past girlfriends and in one instance, “he beat [Alexander] so severely she ended up in the hospital and he ended up in jail.” ³⁰ In his deposition, Gray also admitted that he told Alexander several times that he would kill her. However at Alexander's pretrial hearing, Gray recanted his earlier statements saying that he only copped to abusing her to save her from jail.

“Stand your ground” cases across America

Now we will provide articles about some of the most controversial “Stand your ground” cases from around the nation. Our purpose is not to decry the merits of these laws, but we hope to show that these laws are too vague and this vagueness leads to far too many instances of injustice. These cases illustrate the necessity for a nuanced investigative approach with which “Stand your ground” cases should be—but rarely are—afforded. “Stand your ground” statutes provide wide protections to people in dangerous confrontations, but these statutes provide little room for justice in cases in which questionable application of deadly force is used. Why? Through the creation of statutes that have taken away the powers of arrest from law enforcement, levying charges from prosecutors and discretion from judges, legislators have made it extremely difficult to prosecute questionable self-defense cases.³¹

²⁷ See Trymaine Lee, *Marissa Alexander, Florida Mom, Faces Mandatory 20 Years In Prison After Failed Stand-Your-Ground Defense (UPDATE)*, May 2, 2012, at http://www.huffingtonpost.com/2012/05/02/marissa-alexander-florida-stand-your-ground_n_1472647.html.

²⁸ See Gary Tuchman, *“Stand your ground” double standard in Florida?*, April 27, 2012, at http://ac360.blogs.cnn.com/2012/04/27/stand-your-ground-plea-rejected-in-florida/?hpt=ac_mid.

²⁹ See *Id.*

³⁰ See *Id.*

³¹ See Vivian Wakefield, *Gun law gets mixed reviews*, February 12, 2001 at http://jacksonville.com/tu-online/stories/021201/met_5375786.html. Also see Weaver, *supra* note at 402.

III. Chapter 3: Can we all get along?

**Rodney King, Martin Lee Anderson, Trayvon Martin, Marshall Burns,
Genie McMeans**

- a. The Intersection of Trayvon Martin and Rodney King

Racial Profiling Statistics

According to the American Civil Liberties Union (ACLU), racial profiling occurs when “law enforcement officials target[ing] individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin.”³²

The origins of racial profiling began as a tactical approach to the “War on Drugs.”³³ While as many as 80 percent of drug users are white, it was African-Americans and Latinos who have been targeted in the federal and state governments’ anti-drug crusades since the beginning. In the 1980s, the Florida Department of Highway Safety and Motor Vehicles distributed procedures in which they developed a profile of drug trafficking suspects. Officers were instructed to be especially suspicious of individuals “wearing ‘lots of gold,’ or who do not fit the vehicle, and ethnic groups associated with the drug trade.”³⁴

This race-based profile of drug traffickers has created a deadly cycle of misperception, overrepresentation, and ultimately, fear. Because law enforcement officers are trained to look at minorities—namely African-Americans and Latinos—as drug traffickers, they are more likely to stop and arrest drug traffickers fitting this pre-conceived description. Because African-American and Latino drug traffickers fitting this description are more likely to be arrested, they are also more likely to populate prisons, leading to the overrepresentation of African-Americans and Latinos in prisons. This overrepresentation then adds credibility to claims that African-Americans and Latinos are a threat and as such, should be profiled and the cycle continues.

The current statistics on the incarceration rates of African-Americans and whites tell the story of the effect of racial profiling on African-Americans: As of 2011, African-Americans made up more than sixty percent of all imprisoned drug offenders, while African-Americans only make up twelve percent of the U.S. population.³⁵ African-American men are incarcerated at 13 times as much as whites.³⁶ African-American men are fifty-seven times more likely to be convicted on federal drug charges than white men.³⁷ Since 1980, one-third of the 25 million people arrested on drug charges were African-American.³⁸ Barring the

³² ACLU.org, *Racial Profiling: Definition*, November 23, 2005, at <http://www.aclu.org/racial-justice/racial-profiling-definition>.

³³ David A. Harris, *Driving While Black: Racial Profiling On Our Nation's Highways*, June 7, 1999, at <http://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our-nations-highways>.

³⁴ *See Id.*

³⁵ Erik Kain, *The War on Drugs is a war on minorities and the poor*, June 28, 2011, at <http://www.forbes.com/sites/erikkain/2011/06/28/the-war-on-drugs-is-a-war-on-minorities-and-the-poor/>

³⁶ *See Id.*

³⁷ *See Id.*

³⁸ *See Id.*

blatantly unethical practice of racial profiling, the exercise of singling out minorities as the single participants in the drug trade has proved ineffective. The Global Commission on Drug Policy, as cited by Watkins in Kain, claims that the systematic arresting and incarcerating of individuals in the drug trade does not “reduce the availability of illicit drugs or the power of criminal organizations.”³⁹ Therefore, not only does the use of racial profiling put minorities at risk of being harassed, but the practice has not helped to win the “War on Drugs,” but it has only caused adversity and hardship for those who have been wrongly profiled not to mention the victims of law enforcement officials who have unjustly used force on innocents.

Criminalization of the Poor

A rising concern of the legal community is the increase in profiling of the poor. While the background of this kind of profiling is beyond the scope of this paper, the implications of the rising amount of legal action being taken against the poor does bear some discussion here. The National Law Center found that ordinances, citations and arrests against the poor have been increasing since 2006.⁴⁰ Unfortunately, the combination of being African-American and/or Latino and poor is often a perilous one. Common behaviors—wearing particular colors, walking around, or leaving home without identification—have been deemed as criminal behavior in many minority communities and carry with them harsh consequences.

Analyzing Police Use of Deadly Force

This trend of profiling African-Americans transcends the anti-drug war. The perception of African-Americans—especially African-American males—as particularly violent and prone to illegal activity has also been used as a defense in cases in which law enforcement officers have used deadly force on innocents or in situations in which the force was not necessary to coerce a suspect to yield to their authority. Below, we highlight several clear-cut cases of extreme use of force by law enforcement officers.

Rodney King

Perhaps the most famous case of excessive use of police force is that of Rodney King whose beating by four police officers was captured on videotape. King was struck 55 times, kicked six times and tasered twice.⁴¹ His injuries included a cracked eye socket, skull fractures, a

³⁹ *See Id.*

⁴⁰ *See* Barbara Ehrenreich, *Is It Now a Crime to Be Poor?*, New York Times Op-ed, August 9, 2009 at <http://www.nytimes.com/2009/08/09/opinion/09ehrenreich.html?pagewanted=all>.

⁴¹ Doug Linder, *The Trials of Los Angeles Police Officers' in Connection*, 2001 with the *Beating of Rodney King* at <http://law2.umkc.edu/faculty/projects/ftrials/lapd/lapdaccount.html> .

crushed cheekbone, a broken leg, fractured ribs, and abrasions and contusions. He also suffered from migraines until his death in 2012.⁴²

Martin Lee Anderson

The case of Martin Lee Anderson also illustrates the dangerous combination of excessive use of police force and African-American males. In 2006, videotape surfaced from a Bay County, Florida juvenile boot camp in which 14 year-old Martin Lee Anderson was beaten by nine camp guards in the presence of a nurse who watched the incident.⁴³ Throughout the duration of the video, Anderson was not seen to be offering resistance to officers. Even while he lay on the ground motionless, a guard continued to assault him. Anderson died hours later in a hospital.

Marshall Burns

Marshall Burns was also a victim of excessive use of force by police. In November 2001, Marshall Burns, 24 years old, was attempting to break up an altercation at a nightclub in St. Augustine, when police were called to the scene. Burns was one of only two African-American patrons in the nightclub that evening. Immediately when police arrived, they profiled and confronted Burns as the perpetrator. Police confronted Burns and he was pepper sprayed, beaten and eventually restrained using a “full Nelson” wrestling maneuver.⁴⁴ Burns’ neck was broken during the altercation and when he told officers he could not feel his legs, they dragged him to the police car and drove him to the police station. After being taken out of the car, he was seen by an EMT and was immediately life-flighted to Shands Memorial Hospital. Several witnesses stated during the litigation they felt the police confronted Burns because he was black.

Genie McMeans

Genie McMeans was a 23 year-old unarmed African-American who was killed in broad daylight on the shoulder of interstate 10 by a Florida Highway Patrol Trooper four days after he had graduated from college. He was first shot in the back then he was shot three more times in the abdomen and chest.⁴⁵ Two months later, a grand jury cleared the trooper of all wrongdoing in the shooting. However, after a more thorough investigation by the Florida Department of Law Enforcement and during the course of discovery in the civil lawsuit, it

⁴² Rodney King describes his injuries, May 11, 2012 at <http://www.youtube.com/watch?v=IYAC-KgVOvM&feature=relmfu>

⁴³ Associated Press, *Parents want charges in boot camp death*, February 18, 2006, at http://www.msnbc.msn.com/id/11396434/ns/us_news-life/t/parents-want-charges-boot-camp-death/.

⁴⁴ Ken Lewis, *Burns settles suit with city for \$2.5 million*, June 10, 2003 at http://staugustine.com/stories/061003/new_1594778.shtml

⁴⁵ Associated Press, *Trooper cleared in May shooting of Alabama man*, July 25, 2002 at http://www.sptimes.com/2002/07/25/State/Trooper_cleared_in_Ma.shtml

was revealed that the trooper failed to follow the training and protocol of the Florida Highway Patrol (FHP). For the first time in its history, FHP concluded that one of its troopers had used excessive force.

Unfortunately, the use of excessive force on African-Americans—especially African-American males—is still a prevalent problem as most recently illustrated by the case of Trayvon Martin. The justification used in cases of excessive force is fear. In the Rodney King case, the four officers claimed that they beat King in self-defense.⁴⁶ In the Trayvon Martin case, his killer, George Zimmerman claimed that he was in fear for his life after he initiated contact with the teen.

Fear has long been cited as the justification for excessive force. Just two weeks before the officers in the Rodney King beating were acquitted, fear was cited as the reasoning behind the killing of 15 year-old Latasha Harlins by a Korean store clerk in Los Angeles.⁴⁷ And in 2009, Oscar Grant was killed by an Oakland, California transit police officer while lying on the train platform.⁴⁸ These cases are just a fraction of the instances in which individuals in positions of authority—real or perceived—use excessive force against African-Americans in situations in which that level of force is not necessary to ensure compliance with the law or established social norms.

In the cases of excessive use of police force, law enforcement officers clearly employ tactics that are not only unethical but also unlawful. In the cases of excessive use of force by civilians, the justice system is upset when civilians take the law into their own hands. In sum, the need for justice demands that law enforcement officers and civilians alike practice restraint in the use of force. The “Stand your ground” law usurps this societal need, which has led to the disruption of the justice system in Florida as it pertains to gun policy.

Racism, Discrimination and the Law

As the law is the basis for the ordering of our society, legislation is the starting point for many injustices in the legal system. The Constitution, the supreme law of the nation explicitly excluded nonwhites and white women from citizenship and its benefits such as voting, holding office and pursuing justice in the legal system.⁴⁹ Even after the passage of the 13th, 14th, and 15th Amendments to the Constitution and the Civil Rights and Voting

⁴⁶ Sylvester Monroe, *Profiling Blacks, Use of Excessive Force: From Rodney King to Trayvon Martin*, June 30, 2012 at <http://www.afro.com/sections/opinion/story.htm?storyid=75464>.

⁴⁷ *See Id.*

⁴⁸ *See Id.*

⁴⁹ Marcella Monk Flake, *Racism, Discrimination and the Law*, September 1, 2002 at <http://www.yale.edu/ynhti/curriculum/units/1994/1/94.01.02.x.html>.

Rights Acts, people of color in this country have still been civically disadvantaged under numerous state and federal laws that affect African-Americans and Latinos more harshly than whites. In many instances, the evidence shows that whites should—but generally do not—face the same magnitude of punitive measures as African-Americans and Latinos.

The major discrepancies in the law between incarceration of whites and nonwhites are the result of historical patterns of discrimination in the way in which laws are created to target certain groups. A specific type of legislation, mandatory minimum sentencing laws, has had a particularly devastating on African-Americans and Latinos.

In their 2009 report, *Mandatory Minimums and Unintended Consequences*, the House Subcommittee on Crime, Terrorism, and Homeland Security reported their findings from their investigation of the effect of federal mandatory minimums. They found that due to mandatory minimum sentences, the United States incarcerates more people than any other nation in the world.⁵⁰ The effect is magnified when examining the fate of African-Americans under these guidelines. African-Americans are only 12 percent of the U.S. population, but are 50 percent of the population in the nation’s prisons.⁵¹ In 2006, African-American defendants comprised 24 percent of federal offenders, but comprise 36 percent of those convicted under federal mandatory minimums.⁵²

Also included in the report were findings about the application of mandatory minimum sentences. They found that “mandatory penalty statutes are used inconsistently” and disproportionately affect African-American defendants. ... African-American drug defendants are 20 percent more likely to be sentenced to prison than white drug defendants.”⁵³ They also found that African-Americans comprise only 14 percent of drug users and account for 30 percent of federal drug convictions.⁵⁴ They also noted that while “drug use is fairly consistent with across racial and ethnic groups. ... and that drug users generally buy drugs from someone of their own racial and ethnic background. But almost three-quarters of all Federal narcotics cases are filed against blacks and Hispanics, many of whom are low-level offenders.”

In 1999, Florida instituted its 10-20-Life mandatory minimum sentencing guidelines for firearm offenders. The statute requires that individuals who are use a firearm during the

⁵⁰ House Subcommittee on Crime, Terrorism, and Homeland Security, *Mandatory Minimums and Unintended Consequences*, July 14, 2009 at http://judiciary.house.gov/hearings/printers/111th/111-48_51013.PDF.

⁵¹ *See Id.*

⁵² *See Id.* at 2.

⁵³ *See Id.* at 9.

⁵⁴ *See Id.* at 12.

commission of a crime be sentenced to 10 years, individuals who discharge a firearm during a crime are sentenced to 20 years and individuals who injure or kill someone with a firearm are sentenced to 25 years to life.⁵⁵ It was under this mandatory minimum sentencing guideline that Marissa Alexander was charged when she fired a warning shot to scare her abusive husband.⁵⁶ Alexander's defense of "Stand your ground" was rejected by the judge in the case and she was convicted of three charges aggravated assault with a deadly weapon.⁵⁷

These examples of the inequalities of mandatory minimums are just a small fraction of the number of cases in which individuals were over-sentenced due to archaic laws that have taken away the discretion of judges and made legislators the primary arbiters of justice. As a result, laws have been created that undermine the expertise of judges and attorneys, much to the detriment of the justice system and the individuals who find themselves subject to it. All too often, these individuals are African-American and Latino.

The Innocence Project

The Innocence Project was created as a way of correcting injustices in the justice system by helping the wrongly convicted to obtain their freedom and changing criminal justice policy.⁵⁸ The project is housed in the Cordoza School of Law at Yeshiva University and employs the talents of law students in investigating claims of wrongful convictions using DNA evidence. To date, seventy percent of those freed through the work of the Innocence Project have been members of minority groups. Their pursuit of justice through the use of science has proved that the justice system has and continues to convict innocent people. The Innocence Project is also a partner with the Innocence Network which is a system of journalism schools, public defenders and law schools which also pursues justice for wrongly convicted people.

⁵⁵ State of Florida Department of Corrections, *Mandatory Sentences Under the 10-20-Life Law*, September 2007, at <http://www.dc.state.fl.us/pub/10-20-LIFE/bg.html>.

⁵⁶ See Julia Dahl, Fla. *Woman Marissa Alexander gets 20 years for "warning shot": Did she stand her ground?*, May 15, 2012 at http://www.cbsnews.com/8301-504083_162-57434757-504083/fla-woman-marissa-alexander-gets-20-years-for-warning-shot-did-she-stand-her-ground/.

⁵⁷ See *Id.*

⁵⁸ The Innocence Project, *About the Innocence Project* at <http://www.innocenceproject.org/about/>.

IV. Chapter 4: The justification for murdering African-American men

The issues we have identified up to this point have illustrated the numerous problems faced by people of color in regards to the enforcement of Florida’s landmark “Stand your ground” legislation. Now, we will conclude our analysis with a look at the implications for African-American males with the continued application of this law and others like it. We are not discussing the implications in the usual fashion of reviewing the law and the effects. In this discussion, we are looking at how a draconian law—in this case, “Stand your ground”—is used to perpetuate the proverbial second-class status ascribed to African-American males. We have found three factors that contribute to the continued legal subjugation of African-American males: media portrayal of African-American males, the criminalization of African-American men, and the resulting de-valuing of African-American men’s lives.

Media portrayals of African-American males

There are dozens of studies and a mountain of anecdotal evidence that supports the assertion that media portrayals of African-Americans are largely responsible for the negative perceptions of African-Americans. These perceptions are important because they help to shape the way in which many people behave when they encounter African-Americans. Kristin Anderson, Ph.D., wrote that because most whites still have limited interactions with African-Americans, their perceptions of African-Americans are largely shaped by the portrayals of African-Americans on television.⁵⁹ Most often, these images of African-Americans are transmitted to whites via local television news shows which have been shown to shape their perceptions of African-Americans the most.⁶⁰ Television news shows have been found to portray African-American as perpetrators of crime more often than is accurate in crime statistics and they are portrayed more often as threatening in handcuffs and jail uniforms than their white counterparts.⁶¹ On the other hand, African-American men are less likely to be portrayed on television as victims as their white male counterparts.

The 2008 study *The Perceived Realism of African-American Portrayals on Television*, reported that “portrayals of African-Americans on television may have an influence on viewers and their perceptions about African-Americans in general.”⁶² Further, the study

⁵⁹ See Kristin J. Anderson, Ph.D., *Professor Gates and the Criminalization of Black Men in America* at <http://www.psychologytoday.com/blog/benign-bigotry/200907/professor-gates-and-the-criminalization-black-men-in-america>.

⁶⁰ See Narissra M. Punyanunt-Carter, *The Perceived Realism of African American Portrayals on Television*, *The Howard Journal of Communications*, 19:241-257, 2008, at http://libweb.uoregon.edu/index/cms-file-system-action/guides/english/howard_journal_communications.pdf.

⁶¹ See Anderson, id.

⁶² See id at 251.

found that viewers did not believe that the portrayals of African-Americans as low-achieving were realistic, they also did not believe that the positive stereotypes of African-Americans were realistic. However, they did believe that the negative personality characteristics of African-Americans were realistic.⁶³ In addition, studies have found that television viewers are less likely to perceive African-Americans as less sympathetic than their white counterparts.

When it comes to portrayals of African-Americans in print media, white readers are more likely to consider the surrounding circumstances of crimes that are committed by white assailants while they are more likely to believe that African-American criminal activity is attributed to the nature of African-Americans, surrounding circumstances, notwithstanding.⁶⁴

Criminalization of African-American men

The criminalization of African-American men is rooted in the history of the racialization of America. American, or New World, slavery was not based on financial, criminal or even punitive foundations, but on the sole basis of race. Historical studies show that to justify the practice of slavery and later Jim Crow laws, myths and untruths were created to de-humanize African-Americans, especially African-American men. Then as now, a number of these untruths portrayed African-American men as criminals. In the present day, these myths and untruths are now transmitted through the mass media, but their theme of African-American men as criminals has prevailed.

A common example of the criminalization of African-American men is that of the news coverage of the Los Angeles riots in 1992. While 60 percent of the rioters and looters were white and Hispanic, the rioters were portrayed mostly as African-Americans.⁶⁵ Perhaps as a result of the media conditioning that reinforces perceptions of criminality among African-American men, there have been cases of whites who have implicated African-American men in crimes that they (the white accusers) themselves have committed. Among the most infamous cases is that of Susan Smith, who told authorities that an African-American man stole her car with her two sons inside, when in actuality she had killed them herself.⁶⁶

⁶³ See Punyanunt-Carter at 251.

⁶⁴ See Anderson, id.

⁶⁵ See Stephen Balkaran, *Mass Media and Racism*, Yale Political Quarterly, 21:1 1999 at <http://www.yale.edu/ypq/articles/oct99/oct99b.html>.

⁶⁶ See id.

Case Study: New York's Stop and Frisk

In May 2012, U.S. District Judge Shira A. Scheindlin ruled that a class-action lawsuit over the New York Police Department's (NYPD) "Stop and Frisk" policy could proceed. In 2012, 684,330 people were stopped by NYPD officers, and more than 203,000 stops were conducted in the first three months of 2012 alone.^{67 68} From 2008 to 2009, NYPD officers conducted 2.8 million stops. Not surprisingly, more than half of the individuals stopped were black, thirty percent were Latino and ten percent were white. The New York Civil Liberties Union (NYCLU) found that African-American men specifically, comprised 25.6 percent of the men who were stopped in 2011 while they comprised only 1.9 percent of the male population. In fact, more African-American men were stopped in 2011 than there are in New York City! Moreover, while African-American and Latino men account for only 4.7 percent of the overall male population in New York City, they accounted for 87 percent of the individuals stopped in 2011.^{69 70}

So what accounts for the disproportionate number of "stop and frisks" in New York? First of all, this policy enables police to conduct searches of individuals at random. For example, "Operation Clean Halls," a "stop and frisk" policy that was started in 1991, allows NYPD officers to enter private buildings and frisk individuals in hallways. More than 200,000 such searches were conducted in 2003.⁷¹ Furthermore, NYPD can conduct stops of individuals who are dressed in off-season attire, have pocket bulges, and make "furtive movements."⁷² Second, NYPD claims that "stop and frisks" have curbed violent crime, but the analysis by the NYCLU has found that only 10.5 percent of stops were due to "violent criminal activity."⁷³ Interestingly enough, in 2005, only 2 percent of these searches result in arrests while 94 percent resulted in no action.⁷⁴

Mayor Michael Bloomberg is known for his tough stance on crime and guns and since his election in 2003, the number of "stop and frisks" has gone up 600 percent. However, this policy has not been proven to deter crime. Only 1.9 percent of these searches led to the recovery of a weapon and while in 2006, 198,000 of these stops were conducted in minority

⁶⁷ See Stephen C. Webster, *Judge approves class action lawsuit over NYPD's stop-and-frisk searches*, at <http://www.rawstory.com/rs/2012/05/16/judge-approves-class-action-lawsuit-over-nypds-stop-and-frisk-searches/>.

⁶⁸ See Christopher Mathias, *NYPD Stop And Frisks: 15 Shocking Facts About A Controversial Program*, at http://www.huffingtonpost.com/2012/05/13/nypd-stop-and-frisks-15-shocking-facts_n_1513362.html.

⁶⁹ See Webster, *supra*.

⁷⁰ See Mathias, *supra*.

⁷¹ See Mathias, *supra*.

⁷² See Mathias, *supra*.

⁷³ See *id.*

⁷⁴ See NYCLU.org, *Stop And Frisk Charts*, at <http://www.nyclu.org/node/1597>.

neighborhoods because individuals were in areas with “a high crime incidence,” weapons were found only on 1.8 percent of African-Americans and Latinos while they were found on 3.8 percent of whites searched.⁷⁵ In addition, analyses of crime statistics from the 1990s on show that murders have regularly decreased. The New York Times found that in 2002, fewer than 100,000 New York residents were stopped and there were 587 homicides and in 2011, 658,000 residents were stopped and 532 homicides were reported.⁷⁶

De-valuing of African-American life

A frightening reality of the continued overrepresentation of African-Americans as criminals in the media is shown in video simulation studies. Anderson reported that during these studies, African-Americans and whites are more likely to fire at an armed African-American target than they are to fire at a white armed target.⁷⁷ The implication of these studies is that due to the bombardment of media portrayals of African-American men as criminals, African-Americans are just as likely as whites to subconsciously link African-American men with criminality. This implication raises a number of serious questions we must ask ourselves that transcend the limitations of “Stand your ground”: How do we change the perception of African-American men as criminals? How do we accurately train our law enforcement officials to look for *criminals* without the use of broad, inaccurate profiles? How do we as a society re-train ourselves to value all lives equally? Lastly, when we begin to value all lives equally, will we finally have the momentum to critically examine legislation such as “Stand your ground” to ensure justice for *all* of us, not JUST US?

⁷⁵ See Mathias, *supra*.

⁷⁶ See *id.*

⁷⁷ See *id.*

V. Chapter 5: Attorney Biographies

Attorney Benjamin L. Crump

Benjamin L. Crump is a principal with the Tallahassee firm of Parks & Crump, LLC. Recently, Attorney Crump received the distinction as the first African-American to be named Philanthropist of the Year from the Association of Fundraising Professions in recognition of his donation of \$1,000,000.00 to the Legal Services of North Florida. Attorney Crump was distinguished amongst Florida Trend's Legal Elite and awarded the NAACP Legal Defense Fund Bootstrap Award in tribute to his enduring pursuit of justice, his outstanding advocacy on behalf of many who are without means of redress and for leaving footprints on the sands of time that others can follow. He received his Bachelor's degree in 1992 in Criminal Justice from Florida State University, where he served as two-term Black Student Union President, President of the Order of Omega and the inaugural President of the Burning Spear. He then earned his Juris Doctorate from the FSU College of Law in 1995 and will become the first African-American Chairman of the Law School Board of Directors for the 2009 administration.

Mr. Crump was appointed as the first Board Chairman of the Florida's Big Bend Fair Housing Center, Inc., a Federal Grant organization dedicated to the eradication of housing discrimination. He was recently elected as the Board Chairman of the Internationally Renowned Tallahassee Boys Choir, and serves as current President of the National Black Alumni Association for Florida State University. Mr. Crump is a Life Member of the Omega Psi Phi Fraternity, Inc., the Southern Christian Leadership Conference, the NAACP, and a member of the Free and Accepted Masons, Michael R. Moore Lodge 764, P.H.A. Mr. Crump is a Past President of the Tallahassee Barristers Association and the Virgil Hawkins Florida Chapter of the National Bar Association and currently, he is the Vice-President of the Federal Bar Association for the Northern District of Florida. He is a member of the American Bar Association, The Florida Justice Association and the William Stafford Inns of Court.

Over the years Mr. Crump has dedicated his areas of practice to serious personal injury, wrongful death, mass torts and civil rights. He has extensive experience litigating complicated legal matters in state and federal courts, including the United States District Courts for the Southern, Middle and Northern Districts of Florida, the United States Court of Appeals for the Eleventh Circuit, the Southern District of Mississippi, the Combined District of South Carolina, the Northern District of Texas and the Florida Supreme Court.

Mr. Crump is a frequent author and speaker. He has recently published an article entitled "The Police don't shoot White Men in the Back, Representing Minority Victims in Police Brutality Cases." Attorney Crump understands that the practice of law is a privilege that carries with it certain responsibilities and obligations to our society and to our democracy. He gives freely and unselfishly of his time and legal talent to represent the poor, the powerless, the defenseless and the oppressed among us. He strives through his work to fulfill the promise of equal justice for all.

He is a member of Bethel Missionary Baptist Church where he serves on the Board of Trustees. He is married to the lovely, Dr. Genae Angelique Crump.

Attorney Daryl D. Parks

Daryl Parks is a founding and managing partner of Parks & Crump, LLC. He hails from Haines City, Florida, and attended Florida A&M University on a Presidential Scholarship. While there, Mr. Parks was the first Student Body President elected to two consecutive terms and founded the National Coalition of Black College Student Governments. In 1992, Mr. Parks was selected as Alpha Phi Alpha Fraternity's National College Brother of the Year and received his Bachelor degree in political science and economics. He graduated from the Florida State University College of Law in 1995 and had his first client only one day after being sworn into The Florida Bar.

After founding Parks & Crump law firm, Daryl Parks quickly established a reputation as a methodical businessman and relentless attorney. Over the years, he's had several articles written about his extremely successful legal career. One Tallahassee Democrat article is entitled "Even With His Success, Attorney Parks Keeps Focus." The article brings up part of Mr. Parks inspiration for his work. It points out that "His mother's death – after her insurance company refused to pay for a liver transplant – underscores the value he finds in his personal injury law practice." Mr. Parks explains, "It's trial lawyers who challenge the big companies for the people who couldn't mount that challenge on their own. Somebody has to hold those doctors and big companies accountable."

Attorney Parks is admitted to practice in the State of Florida, the Federal Courts for the Middle and Northern Districts of Florida and the United States Supreme Court. He has appeared for special purposes before courts in the states of Georgia, Maryland, Missouri and New Jersey.

Attorney Parks is on the Board of Directors for the Florida Justice Association (FJA) and the Bethel AME Community Development Corporation. He is a member of the Tallahassee Barristers and the American Bar Association. Attorney Parks is currently the Vice-President of Finance for the National Bar Association and has previously served its on board and as General Counsel. He is the past Chair of the Minority Caucus for the American Justice Association (AJA – formerly ATLA). He has also served on the board of the Florida Bar Foundation and the Florida Bar Admissions Committee.

Attorney Parks continues his commitment to serving his alma mater as the Vice-Chair of the Board of Trustees for Florida A&M University and is a board member of the Florida A&M University (FAMU) Foundation, Inc. He is also the past Chair of the FAMU Boosters.

In the community, Attorney Parks is the Chairman of the board for the Leon County Sickle Cell Foundation and serves on the board for the Tallahassee Urban League.

Attorney Natalie Jackson

Natalie A. Jackson has more than 13 years combined leadership, media, and legal experience. She is best known for her work in advocating for the legal concerns of women and her work in the fields of personal injury, injury to children, and wrongful death as it relates to women and their families, as well as being a popular co-host on the well-received radio talk show, Ask the Law Divas.

Natalie has long been at the forefront of women and minority legal issues. During her first career as a Naval Intelligence Officer, Natalie lobbied successfully to be a member of one of the first group of female naval personnel to be deployed aboard an aircraft carrier. As an attorney, she has successfully represented numerous women and their family members injured by the negligence of others and have lobbied relentlessly to improve healthcare as it relates to high-risk pregnancies and premature births. Further, Natalie has long been an advocate of equal rights, protections and treatment of women and minorities in the criminal justice system.

As the founder of the Women's Trial Group, a holistic litigation firm which boasts 6 attorneys and 4 paraprofessionals, Natalie has achieved her life's goal of creating and building a successful law firm that caters to the requirements and needs of women and their families. Natalie and the other attorneys with Women's Trial Group are staunch advocates for the rights of women, their children and families. These rights don't just stop at monetary settlements. Natalie has represented, among others, a mother whose child was killed by a speeding driver. The case resolved with a full insurance policy settlement for the family. Natalie, however, is now lobbying the city to install speed bumps to prevent future injury to children in that low income neighborhood. She has also worked in conjunction with the NAACP to ensure that security guards who shot and killed an unarmed teenage boy were brought to justice. The civil case is still pending. Most recently, Natalie represented the husband and daughter of a FAMU law student who was killed when a NASCAR-owned airplane crashed into their Sanford home. The case settled for a significant eight-figure amount which all parties agreed will remain confidential.

Natalie received her BA from Hampton University and her JD from the University of Florida's Levin College of Law where she serves on the Law Alumni Council. She has also served on the Board of Directors of the Central Florida Chapter of the America Red Cross, the Seminole County Chapter of the Boys & Girls Club, and the Sanford Chapter of the NAACP, where she is still a member of the Legal Redress Committee. Natalie is an active member of the Florida Bar Association where she serves on the Advertising Committee, the Association of Florida Trial Lawyers, the Virgil Hawkins Bar Association, the Florida Association of Women Lawyers, and Alpha Kappa Alpha Sorority, Inc. She resides in Orlando and has a son (Kevin) who played football and recently graduated from the United States Naval Academy.

Attorney Jasmine Rand

Jasmine Rand is an attorney with Parks & Crump, L.L.C. in Tallahassee, Florida, where she leads the firm's Civil Rights Department. Her evolving practice focuses on civil rights, wrongful death, civil rape, and catastrophic personal injury. Notable representations include: a police brutality case involving an eighty-one year old man shot to death on his own property; a police brutality case involving a mentally ill inmate beaten and tasered to death by officers; premise liability rape cases; and a wrongful death action in which a diver was killed in the propeller of a yacht in the Bahamas. In her first year of practice, Jasmine prepared a Petition for Rehearing for an employment discrimination case before the United States Supreme Court. When necessary, Jasmine represents her clients against law enforcement agencies, insurance companies, and large corporations in State and Federal litigation.

Prior to graduating from law school, Jasmine worked for Greenberg Traurig, LLP's litigation department in Atlanta, Georgia under the tutelage of Ernest Greer, Esquire, and for the Southern Poverty Law Center's Immigrant Justice Project on human trafficking cases and immigrant justice issues. While at the Southern Poverty Law Center, Jasmine assisted in editing a best practices manual for publication titled, *Civil Litigation on Behalf of Victims of Human Trafficking*. Jasmine is fluent in Spanish and used her language skills as a bilingual international union organizer to serve disadvantaged populations, and supervise an international campaign to fight for workers' rights against a multinational corporation.

Jasmine is a graduate of the University of Georgia, where she simultaneously earned a Bachelor of Arts degree in both African American Studies and Political Science, while also earning a minor in Spanish. She received her Juris Doctor degree from Florida State University College of Law, where she achieved membership on the Mock Trial Team, graduated on to the *Business Review Journal*, served on the Black Law Students Association board and won its Outstanding Member of the Year Award in 2007, and founded *Alternative Breaks*, an organization that provides pro bono legal services to low income individuals.

Jasmine is admitted to practice in the state of Florida as well as in the United States District Courts for the Northern and Middle Districts of Florida. In addition to her dynamic legal practice, Jasmine is also an adjunct professor at Florida Agricultural & Mechanical University, where she teaches *Legal Problems of the Poor*. Jasmine looks forward to serving on the National Bar Association's Young Lawyers Division board as the Community Service Chair, on the National Black Law Students Associations Advisory Board, as a judicial training panelist on cultural diversity issues for the Florida Commission on Human Relations, and on this year's Host Committee for IMPACT's Nation's Best Advocates.

Jasmine credits her success to her grandparents, Beverly and Ernest Gray, for the personal sacrifices they made for her education.