Disaster Unaverted: Reconciling the Desire for a Safe and Secure State with the Grim Realities of Stand Your Ground

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Disaster Unaverted:
Reconciling the Desire for a Safe and Secure State with the Grim Realities of Stand Your Ground

Elizabeth B. Megale†

Abstract

Professor Megale writes this Article as a follow-up to her 2010 article discussing Florida’s Stand Your Ground laws, where she predicted incidents much like the death of Trayvon Martin. This Article takes her predictions a step further and discusses the changes in self-defense norms in the United States. The Article uses the Zimmerman case as a vehicle to discuss the culture-law-culture cycles that gave rise to changes in the law and essentially set the stage for homicides like Trayvon Martin. The Article also calls for legislative change and a return to the legal structure of affirmative defense.

Introduction

On February 26, 2012, heavy pressures collided in a tempest when Trayvon Martin was shot and killed.¹ On one side of the altercation was an eager neighborhood watchman, desperate to curtail the rising vandalism and crime in his gated community. On the other side was a teenage boy walking from a nearby store through the neighborhood toward the townhouse where he was staying while visiting his father.² In the

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background is a galvanizing law, seven years looming, burrowing into societal norms, essentially allowing citizens to shoot first and ask questions later.

A killing of this significance was bound to happen; it was practically foretold. What is more, Trayvon Martin’s death is not unique. Events like these are routinely considered justified uses of force in Florida. For example, in Broward County, Evio Landa shot Nicholas Pastor in what was characterized as an unprovoked attack after Pastor threw a tissue in Landa’s car. Given the facts of the case, including the fact that Pastor was the larger man, Landa was not charged with a crime. In Pinellas County, Seth Browning shot and killed Brandon Patrick Baker after a confrontation where Baker attempted to punch Browning for tailgating him. Browning was branded as a citizen enforcing the law, and thus, he was also not charged with a crime. The Pastor and Baker cases are just two recent examples; many other cases occur every year.

This Article follows up on a 2010 article written by the author as a statutory analysis of the 2005 Stand Your Ground legislative scheme,

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4 Florida’s Stand Your Ground Law Cases, TAMPA BAY TIMES, http://www.tampabay.com/stand-your-ground-law/cases/case_251 (last updated Aug. 10, 2013) [hereinafter Pastor]. Landa confronted Pastor in a restaurant regarding the throwing of a used tissue at Landa’s car. Id. When Pastor followed Landa outside, Landa non-fatally shot Pastor after warning him that he was armed. Id.

5 Id.

6 Florida’s Stand Your Ground Law—Brandon Patrick Baker and Seth Browning, TAMPA BAY TIMES, http://www.tampabay.com/stand-your-ground-law/cases/case_144 (last updated Aug. 10, 2013) [hereinafter Baker]. Browning, a security guard and former soldier, was confronted in his car by Baker on the side of the road after Baker accused Browning of tailgating. Id. Baker’s brother, who was driving another car alongside his brother, witnessed the shooting. Id.

7 Id.

8 Florida’s Stand Your Ground Law, TAMPA BAY TIMES, http://www.tampabay .com/stand-your-ground-law (last updated Aug. 13, 2013) [hereinafter Study]. After the Trayvon Martin shooting, “[t]he Tampa Bay Times reviewed other ‘stand your ground’ cases for similar circumstances. The Times relied on available information, some of which may not tell the whole story.” Id.
including Florida statute sections 776.012, 776.013, and 776.032. Through its analysis, that article predicted the law would promote a rise in vigilante justice in that it "creates a mindset to 'shoot first, ask later.'" This Article takes that prediction a step further and boldly states that the legislature has fundamentally changed the nature of self-defense. Rather than recognizing an affirmative defense to unlawful activity, the Stand Your Ground laws have in effect legalized many forms of homicide. This legalization has occurred via the expansive definition of the castle doctrine, the presumption of reasonable fear for acts of violence occurring in the castle, the subjective nature of reasonable fear applicable to individuals who stand their ground, the ability of an initial aggressor to claim self-defense, and the provision of immunity from prosecution for anyone plausibly claiming self-defense. The cumulative effect has contributed to a rise in justifiable homicides in the State of Florida.

To illustrate these points, this Article relies on cognitive theory and particularly focuses on narrative. It proposes that cultural narrative has influenced both the creation of the 2005 Stand Your Ground statutory scheme and the statutes' impact on the citizenry of Florida. Furthermore, this Article identifies a culture-law-culture cycle whereby cultural narratives influence the creation of laws, which then impact the cultural narrative, cycling back to affect changes in the law. This Article relies on the notion that the power of the law over a constituency lies in its ability to reflect the values and norms of its people. Thus, both law and culture create, perpetuate, and succumb to narrative throughout this culture-law-culture cycle.

Section I provides essential background information on cognitive theory in subsection A and Florida's Stand Your Ground statutory scheme in subsection B. Section II(A) identifies and unpacks the competing narratives that led to the enactment of the 2005 laws and how those narratives contributed to the death of Trayvon Martin. Section II(B)
analyzes the competing narratives surrounding the legal actors, particularly focusing on how the media narrative influenced the strategic decisions of both the prosecutors and defense attorneys. This Article concludes by asserting that both the legal and media narratives have been built upon exaggerations. The initial legal narrative used hyperbole and fear to garner support for passage of the 2005 legislation. The more recent media narrative has also relied on hyperbole and fear to garner support for condemning the existing statutes and mobilizing societal demands for "justice." This Article does not seek to criticize these narratives; rather, it simply identifies them and analyzes their influence on the culture-law-culture cycle.

I. Background and History

A major impetus for this Article was Florida State House Representative Dennis Baxley’s assertion that Stand Your Ground was not meant for people like Zimmerman. He stated, “The law was meant for innocent people,” which he stated at a Tiger Bay Club luncheon in April 2012, while participating as a panelist.13 This author, along with retired Judge O.H. Eaton and then-Assistant Public Defender Aramis Donell Ayala,14 participated as panelists as well. Representative Baxley further responded to inquiry by indicating that the Stand Your Ground laws were not intended for people like George Zimmerman.

Though Representative Baxley did not clarify the specific meaning of “innocent people,” others in the state have offered opinions about who might not be innocent.15 For example, the legislature likely did not intend

13 TIGER BAY CLUB OF CENTRAL FLORIDA, INC., http://www.tigerbayclub.org/index.html (last visited Sept. 3, 2013) (“The Tiger Bay Club of Central Florida is the region’s premier non-partisan political club. Our membership consists of business leaders, lawyers, judges and all levels of elected officials—of all ages—who share a passion for politics and public affairs. The Club fosters community discussion of important issues through monthly presentations and debates by nationally known journalists, controversial figures and notable political personalities, as well as by hosting candidate forums in current races for local, state and federal office.”).

14 Aramis Donell Ayala is now practicing at Gobel Flakes, LLC.

15 See Susan Taylor Martin et al., Race Plays Complex Role in Florida’s ‘Stand Your Ground’ Law, TAMPA BAY TIMES (June 2, 2012, 1:00 PM), http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-
to protect gang members, drug dealers, and persons with violent histories from prosecution for use of force. Nevertheless, "[m]any killers who go free with [the] Florida 'stand your ground' law have [a] history of violence." At least one attorney stated that Stand Your Ground was not intended for young black males, even though they are a segment of the population who often benefits from the law, at least when the young black male is the person using force. On the other hand, the law is a double-edged sword because young black males, like Trayvon Martin, are statistically more likely to fall victim to Stand Your Ground shootings.

Notably, the phrase "innocent people" does not appear anywhere in the statutory scheme—it is neither defined nor used—but insight as to what Representative Baxley meant can be derived from the case that prompted passing of the bill. The case involved James Workman, an elderly Caucasian man who, "protecting his castle," shot and killed Rodney Cox, a thirty-five-year-old FEMA worker who was in Florida providing disaster relief following Hurricane Ivan. Although Workman was never arrested or charged for murdering Cox, Baxley described


18 Martin et al., supra note 15 ("Let's be clear,' said Alfreda Coward, a black Fort Lauderdale lawyer whose clients are mostly black men. 'This law was not designed for the protection of young black males, but it's benefiting them in certain cases.'").

19 See Amy Sherman, Homicides of Blacks Have Tripled Since 'Stand Your Ground' Was Passed in Florida, Jesse Jackson says (Wednesday July 24, 2013, 4:42 PM), http://www.politifact.com/florida/statements/2013/jul/24/jesse-jackson/homicides-blacks-have-tripled-stand-your-ground-wal/.

20 Montgomery, supra note 16, at 2; see FLA. STAT. ANN. §§ 776.012-.13, 776.032 (West 2005).

Workman as being "in legal limbo for weeks." According to Baxley, the purpose of the law was to let "citizens . . . know that if they are attacked, the presumption will be with them."  

Workman did not need Stand Your Ground to be safe and secure in Florida, as evidenced by the fact that he was not charged for contributing to Cox's death. Yet his story created a powerful narrative instigating a revolutionary change in the law. His story remains influential, though many may not know or recall any specific details. In fact, it is powerful enough to drown out the voices of opposition and other counter-narratives warning of the dangers of an expansive permission to kill.

The following section examines the power of narrative through the lens of cognitive theory and embodied rationality. By detailing the principles of narrative and describing its processes, it provides the foundation for demonstrating its influence on the passing of the 2005 self-defense statutory scheme. Subsection B provides an explanation of the current status of the law, along with historical context to illustrate the influence of narrative on the law. It also highlights the law's impact on individual behavior, legislative decisions, and the investigation and prosecution of incidents involving use of force.

A. Cognitive Theory, Embodied Rationality, and Narrative Frameworks

For the purposes of this Article, law is understood to "define[] categorically the limits of the permissible or, more often, of the impermissible." Yet, paradoxically, not only does the law influence social norms

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22 Id.
23 Id.
24 See id.
25 Id.
by defining the limits of permissible and impermissible behaviors, but legal categories are also created as a result of social standards and norms. Thus, "one characteristic dynamism in American culture . . . is a collective way of thought disposed to all-or-none judgments" that interferes with our ability to accept legal changes. This also "[is] extracted from some larger-scale, more encompassing . . . theory about the world or from a narrative about the human condition and its vicissitudes."

Just how do these larger-scale theories and narratives influence law? As a technical matter, the concepts of "theories" and "narratives" are rooted in cognitive theory, and more particularly the concept of embodied rationality. "[C]ognitive theory indicates that the human brain does not effectively process abstract rules. According to cognitive psychologists, humans understand concepts expressed in the form of 'stories' or 'narratives' better than they understand concepts explained as abstract principles." That is, "[a] person's ability to reason and formulate thoughts and concepts is grounded in physical experiences within the world." Physical experiences, coupled with learned information, create memories in the brain that provide a contextual lens for filtering new life experiences and information. Categories and narratives are part of the

28 See id. at 11-12, 16.  
29 Id. at 16.  
31 STEVEN L. WINTER, A CLEARING IN THE FOREST 36 (2001) ("[T]he brain thinks in terms of its situation, forms its categories in contact with its experience, and modifies that situation and that experience by the meaning it thus constitutes.").  
34 Barbara A. Spellman & Simone Schnall, Embodied Rationality, 35 QUEEN'S L.J. 133, 147 (2009). "The brain is neither a passive recorder of external stimuli nor a mere
contextual lens that assists the brain in attributing meaning to the world and aiding individuals in navigating and participating in it. Through this process, "the brain constructs rather than mirrors the reality with which it interacts." 

Categories are a cognitive tool that individuals use to process new experiences and navigate the outside world. Once formed, categories can become entrenched in practice yet can also be transformed through the evolution of habits and culture. Formation of categories is a fundamental cognitive process that establishes the building blocks for other more sophisticated styles of perception and reasoning like narrative.

Categories and narratives affect the law through the creation of new legal categories and also through embedding existing legal categories into the fabric of society. The authority and power of the law over a constituency lies in its ability to both reflect and affect the values and norms of its people. Notably, in a democracy the majority voice will be used as the measure of society's norms and values while the minority voices are generally unheard or undervalued. As cultures evolve, the processor of symbols, but a dynamic associative mechanism whose active correlations shape what we perceive and how we think." WINTER, supra note 31, at 27.

AMSTERDAM & BRUNER, supra note 27, at 19 ("Categories are ubiquitous and inescapable in the use of mind. Nobody can do without them—not lawyers or judges, Hottentot farmers or school children, not even iconoclasts. Categories are badges of our sociopolitical allegiances, the tools of our mental life, the organizers of our perception.").

WINTER, supra note 31, at 33.

AMSTERDAM & BRUNER, supra note 27, at 36-37.

See id. at 46-47.

Id. at 36-37.

Winston P. Nagan, Contextual-Configurative Jurisprudence: The Law, Science and Policies of Human Dignity 82-83 (2013); see Williams, supra note 30, at 67 ("Laws become described and enforced in the spirit of our prejudices.").

Nagan, supra note 40, at 69 ("When we consider that effective political participation is uneven, even in a democracy, then the idea of law accounting for all the social participants (gender deprived, racially deprived, economically deprived, etc.) represents the radical idea of legal and social inclusion."); see also Williams, supra note 30, at 43 ("[Stuart] Mill feared what he called the 'tyranny of the majority' and cautioned, "[p]rotection . . . against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and
law may become asynchronous with cultural expectations and putative categories, causing the law to lose power and authority over its members.\textsuperscript{42} If the law loses its authority and power, it must regain it by redefining the category to coincide with society's developed expectations.\textsuperscript{43} This is so because

both minds and cultures change under conducive conditions. When those conditions come about, categories crumble; Supreme Courts render landmark decisions; paradigm shifts (in the fashionable terminology) happen; all of us manage to see things differently—even when it hurts. And categories, together with other canons and conventions of any culture, are perpetually under threat of excavation or sapping by those at its fringes, by those less privileged, by the culture's parodists, its playwrights, its comics . . . [C]ategories are made, not found . . . Neither habit nor culture has the final word on how we categorize things in our worlds.\textsuperscript{44}

By way of example, consider how the law in Texas evolved with respect to killing an adulterer. Prior to 1973, killing an adulterating spouse or her paramour was considered a man's right; uncontrollable rage was understood and accepted in this circumstance.\textsuperscript{45} Since 1973, however, the law has not so readily excused such killings.\textsuperscript{46} An inverse trend has occurred with respect to battered women.\textsuperscript{47} Years ago, battered women who killed their abusers were not easily excused for their actions because it was believed they could have escaped their circumstances.\textsuperscript{48} “Now, however, we have a better understanding of domestic violence than previous generations had, and we have decided to focus on it as a

practices as rules of conduct on those who dissent from them . . . how to make the fitting adjustment between individual independence and social control—is a subject on which nearly everything remains to be done.”).\textsuperscript{42}

NAGAN, supra note 40, at 82-83.

\textsuperscript{43} Id. at 82-84.

\textsuperscript{44} AMSTERDAM & BRUNER, supra note 27, at 37.

\textsuperscript{45} Id. at 46-47

\textsuperscript{46} See id. (“Presumably the public does not doubt the genuineness or the intensity of the rage of the betrayed husband. People object, rather, to the judgment that this emotion is reasonable, the sort of emotion a reasonable man would have.”).

\textsuperscript{47} See id. at 45

\textsuperscript{48} See id. at 44.
social problem of great importance." As a result, homicides committed by battered women against their abusers are more easily excused.

These are just two examples of how the culture-law-culture cycle perpetuates. Society's values and norms are expressed through appraisal of emotions, and as the acceptability of certain emotions shifts, so too do society's norms and values. Society will exert pressure on the legislature to pass laws, the laws will exert influence over society's behaviors and belief systems, and as society's behaviors and belief systems change over time, they will exert new pressures on the legislature to modify laws to reflect the newly-held beliefs, created in part through the influence of prior versions of the law.

Within this cycle, narratives represent the complex relationships of cultural categories in that they "do not simply reflect expectations; they confront expectations with dangers and obstacles." By their nature, they conjure mental images. In the law, narratives are ubiquitous, and because they "evoke an emotional response from the reader" they can generate significant legal changes. They drive legislation through lobbying efforts—laws are enacted, amended, and repealed because of narratives. Statutory narratives put citizens on notice as to legal expectations because "ordinary linguistic competence depends upon imagistic capacities rather than propositional truth as might be expressed

49 Id. at 47.
50 See generally id.
51 MARTHA C. NUSSBAUM, HIDING FROM HUMANITY 46-47 (2004) ("When a society asks what cases of fear and anger it should deem reasonable, the emotions that the hypothetical reasonable man would have in such a situation, it implicitly asks what is reasonable to value deeply, and the answer to that question is typically given in terms of prevailing normative standards. Such normative appraisals are, then, likely to shift as society's norms undergo change.").
52 See id. at 47.
53 AMSTERDAM & BRUNER, supra note 27, at 46. "Most of our category systems are inherited . . . from our culture. . . . These categories direct attention to what a culture deems important for one reason or another, often quite local." Id. at 27.
54 See NUSSBAUM, supra note 51, at 47.
55 Chestek, supra note 32, at 134.
56 Id. at 135-38.
57 Id.
in a set of necessary and sufficient conditions." Narratives also influence judicial decisions of individual cases as judges wrestle with applying general laws to specific client stories, and they fuel strikes, petitions, rallies, and other grassroots-style movements that demand changes in the law. Typically, the narrative of the dominant voices in a culture governs the scope of the law enacted. The law will reflect the norms and values held by those advancing the more powerful narrative. The mental imagery of narrative is powerful because of its ability to channel emotions into legal changes for society. Thus, as the members of the dominant group shift, the narrative will demand the law adapt to reflect the values and norms encompassed by the transformed group and expressed through cultural narratives as the life of the law.

B. Florida’s Self-Defense Statutory Scheme: History and Context

In 2005, the Florida legislature passed three new laws to convert from a “duty to retreat” to a “stand your ground” state. These amendments have been described as an “extension . . . of the power to kill.” The first amendment changed Florida Code section 776.012 to provide that a person may use “deadly force and does not have a duty to retreat if: . . . He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.” Effectively, this statute permits individuals to stand their ground if they are anywhere

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58 Winter, supra note 31, at 38.
59 Chestek, supra note 32, at 135-38.
60 Patricia J. Williams, Commercial Right and Constitutional Wrongs, 49 Md. L. Rev. 293, 300 (1990).
61 Oliver Wendell Holmes, Jr., The Common Law 1 (Little, Brown & Co. 1946) (1881) (“The life of the law has not been logic: it has been experience.”).
62 Megale, supra note 3, at 113-14.
they have a right to be and to use deadly force to prevent or defend against an imminent attack.\textsuperscript{65}

The second amendment changed section 776.013 to expand the castle doctrine by stating that, in the home or a vehicle, "[a] person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another."\textsuperscript{66} Though the statute clearly states this presumption is available only when a forcible entry to the castle has occurred and the person claiming self-defense has reason to believe there has been a forcible entry, the statute has been interpreted more expansively.\textsuperscript{67}

For example, John Tabutt was not charged for shooting and killing his live-in fiancée the night before their wedding, even though he had no reason to believe she was an intruder.\textsuperscript{68} In Daytona, a part-time law enforcement officer arrived home to find three burglars leaving his home through a side door.\textsuperscript{69} Of the three, one was killed (age seventeen), one was critically injured (age sixteen), and the third escaped.\textsuperscript{70} Brothers Peter and Anthony Julien ambushed burglars they discovered when they arrived home.\textsuperscript{71} Before going inside, they armed themselves with guns and then entered the home killing one and injuring the other.\textsuperscript{72} Only after shooting the suspects did the brothers call 911.\textsuperscript{73} As a matter of practice,

\textsuperscript{65} Megale, supra note 3, at 114-15.
\textsuperscript{66} § 776.013(1).
\textsuperscript{67} Megale, supra note 3, at 116-18.
\textsuperscript{69} Sarah Lundy et al., Wounded Police Officer Mourns Teen Suspect Killed During Burglary, ORLANDO SENTINEL (January 19, 2008), http://www.orlandosentinel.com/community/orl-copshot1908jan19,0,7187340,full.story.
\textsuperscript{70} Id.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
the few exceptions to the presumption of reasonable fear are rarely applied, and often not uniformly, in the context of castle cases.

The third change added section 776.032 and created immunity for a person "who uses force as permitted in § 776.012, § 776.013, or § 776.031." When a presumption of reasonable fear, as codified in section 776.012, is coupled with immunity, a virtually irrefutable case of self-defense is legislatively established. Moreover, immunity applies even in those cases where reasonable fear is not presumed as long as the defendant reasonably fears suffering death or great bodily harm.

Immunity creates a barrier to prosecution in numerous cases of violence, particularly homicides, because the deceased is unavailable to refute the defendant's claim of reasonable fear, and other objective, verifiable evidence is rarely available. In addition, because of the lack

74 The Florida statute states:

The presumption [of reasonable fear] does not apply if: (a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or (b) The person or persons sought to be removed is a child or a grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or (c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or (d) The person against whom the defensive force is used is a law enforcement officer, as defined in [section] 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

75 Megale, supra note 3, at 121-22; see also Study, supra note 8; see also Susan Martin & Kris Hundley, State Will Use Newspaper's Analysis for 'Stand Your Ground' Review, TAMPA BAY TIMES (June 4, 2012, 10:05 PM), http://www.tampabay.com/news/state-will-use-newspapers-analysis-for-stand-your-ground-review/1233646.

76 § 776.032(1).

77 Megale, supra note 3, at 109, 129 (offering a more robust exploration of the implications of this combination).

78 § 776.012.

of procedural guidelines and the limitations on investigations, the law is vulnerable to irregular application. Disparities arise primarily for two reasons.

First, law enforcement and prosecutors exercise broad and unbridled discretion in investigating and charging these cases. Often, acts of violence are not investigated or prosecuted at all, and the decision to investigate rests solely with law enforcement. Even when law enforcement does an investigation though, the prosecutor has sole charging authority. The decision not to charge depends on the personal discretion of each individual prosecutor. The lack of procedural guidelines creates the potential for inconsistent application across cases and jurisdictions.

Second, if charges are filed, the defendant often encounters considerable procedural difficulties asserting immunity and is frequently precluded from making such a claim, even if the statute would support it. Thus, in those cases where the State has made the decision to prosecute, the defendant encounters trouble in asserting immunity because the procedural mechanisms, namely the filing of a (c)(4) motion to dismiss, are not designed for the assertion of immunity as an affirmative defense. The (c)(4) motion to dismiss is designed for asserting the

to dismiss a case where a videotape offered disputable evidence regarding the defendant’s claims of fear related to the shooting death of his son).

Martin et al., supra note 15 ("A Tampa Bay Times analysis of nearly 200 cases—the first to examine the role of race in ‘stand your ground’—found that people who killed a black person walked free 73[%] of the time, while those who killed a white person went free 59[%] of the time"); see also Task Force, supra note 26 (Protection, Letter from Reverend Dr. R.B. Holmes, Jr., Vice-Chair Governor’s Task Force on Citizen Safety and Protection, and Letter from Katharine Fernandez Rundle, State Attorney, Eleventh Judicial Circuit).

Megale, supra note 3, at 130.

§ 776.032(2).


Megale, supra note 3, at 105-07 (citing Hair v. State, 17 So. 3d 804, 808 (Fla. Dist. Ct. App. 2009) (per curium)).

FLA. R. CRIM. P. 3.190 (2012). Rule 3.190(c)(4) provides:

Time for Moving to Dismiss. Unless the court grants further time, the defendant shall move to dismiss the indictment or information either before or at arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based on
lack of proof as to an element of the crime charged, not for asserting an affirmative defense.\textsuperscript{86}

To illustrate, consider a typical (c)(4) motion to dismiss involving constructive possession.\textsuperscript{87} In such a case, the prosecution may have evidence that drugs were discovered in a vehicle occupied by three people, but no one has claimed ownership and there is no other independent evidence linking the drugs to anyone.\textsuperscript{88} A defendant may file a motion to dismiss admitting that drugs were located in the car, but as a matter of law, the state cannot establish possession because the circumstantial evidence of possession is consistent with theories of both guilt and innocence.\textsuperscript{89} Therefore, as a matter of law, the defendant is entitled to dismissal.\textsuperscript{90} The crux of the motion is a lack of proof as to ownership.\textsuperscript{91}

With regard to self-defense, the (c)(4) motion asserts a position fundamentally different.\textsuperscript{92} Here, the defendant must admit that the homicide occurred, but rather than claiming the state lacks evidence with regard to a particular element (similar to the lack of evidence as to fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time hereinabove provided shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

\begin{quote}
\ldots There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.

The facts on which the motion is based should be alleged specifically and the motion sworn to.
\end{quote}

\textit{Id.}\textsuperscript{93}

\textit{Id.}\textsuperscript{94}

\textsuperscript{86} \textit{See} Byers v. State, 17 So. 3d 825, 828 (Fla. Dist. Ct. App. 2009); \textit{see also} Evans v. State, 32 So. 3d 188, 190 (Fla. Dist. Ct. App. 2010).

\textsuperscript{87} \textit{See J.A.C. v. State, 816 So. 2d 1228, 1229} (Fla. Dist. Ct. App. 2002) (a similar scenario in which three people occupied a vehicle).

\textsuperscript{88} \textit{J.A.C.}, 816 So. 2d at 1228-29 (citing Brown v. State, 428 So. 2d 250, 252 (Fla. 1983) (holding the prosecution cannot establish the element of dominion and control when the possession is constructive in a group setting where no statements of ownership are made and no other evidence links to ownership)).

\textsuperscript{89} \textit{See} State v. Kalogeropolous, 758 So. 2d 110, 111-12 (Fla. 2000) (providing the Florida Supreme Court's standard for a 3.190(c)(4) motion to dismiss).

\textsuperscript{90} \textit{See Kalogeropolous}, 758 So. 2d at 111-12.

\textsuperscript{91} \textit{See Dennis v. State, 51 So. 3d 456, 462-63} (Fla. 2010); \textit{see also} Peterson v. State, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. 2008).
ownership in the example above), the defense must offer a justification. Proving a justification in defense of a violent act is the functional equivalent of asserting an affirmative defense, and the (c)(4) motion is not designed to facilitate such claims because it permits dismissal in the face of undisputed material facts. Affirmative defenses, on the other hand, have historically been evaluated by a jury under circumstances where the prosecution has the opportunity to disprove the defense beyond a reasonable doubt.

To the extent self-defense has become legal homicide and ceased to function as an affirmative defense in Florida, the (c)(4) motion itself might seem an appropriate vehicle for asserting immunity since it permits dismissal of a case where "there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt." Nevertheless, the only way to effectively claim immunity is by establishing proof of fear as if asserting an affirmative defense. For all these reasons, the (c)(4) is not an effective tool for asserting immunity.

Additionally, assertion of immunity via a (c)(4) motion is not ideal considering the purpose of section 776.032 is to insulate a defendant from prosecution altogether. By the time a defendant files a (c)(4) motion to dismiss, the case has necessarily proceeded far into prosecution. Moreover, a defendant bears a burden of proof not borne by someone who is never investigated, detained, or charged by prosecutors.

This burden is higher than that required at trial where the defendant is presumed innocent and bears no burden of proof. At trial, to assert

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93 FLA. R. CRIM. P. 3.190(c)(4) (2012); see also Dennis, 51 So. 3d at 462.


95 FLA. R. CRIM. P. 3.190(c)(4) (2012).

96 See Dennis, 51 So. 3d at 462; see also Peterson v. State, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. 2008).

97 FLA. STAT. ANN. § 776.032 (West 2005); see also Dennis, 51 So. 3d at 462.

98 Florida Standard Jury Instructions provide:

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to
an affirmative defense, a defendant need only establish a prima facie case, which the State is then required to disprove beyond a reasonable doubt. Thus, the preponderance of the evidence standard increases the burden of proof for a defendant seeking to claim pretrial immunity, which undermines the very purpose of immunity. So, for obvious reasons, criminal defendants who are prosecuted for using force are significantly disadvantaged when compared to those who are not charged at all.

The cultural message created by the shift in these laws has been significant, and many view them as “a free-for-all to execute people.”

As a historical matter, this law passed in response to a swift and fierce lobby by the National Rifle Association (NRA), seeing little opposition between its filing January 10, 2005, and its passage on March 31, 2005, by the Senate and on April 5, 2005, by the House. It was passed unanimously in the Senate, though it initially failed in the House with a vote of thirty to eighty-five on March 31, 2005. The House re-voted days later and it passed by a landslide of ninety-four to twenty. As

Florida Standard Jury Instructions in Criminal Cases § 3.7 (West 2011).


Id.
a result, a powerful group, the NRA, succeeded in passing a law that protected them from prosecution if gun owners killed another person claiming "[fear of] imminent death or great bodily harm." These laws have initiated a culture shift through the creation of a broad license to use force. As a result, a person who might have stopped short of killing another in the past now has no reason to restrain from using violence. Even when functioning as the legislature originally intended, the laws are more likely to encourage violence than they are to prevent it. Because they rationalize and justify the use of force, they necessarily encourage violent reactions, ultimately making the state of Florida less safe. The laws benefit individuals who engage in violent actions while harming the victims of violence who are unable to vindicate themselves through the legal process.

Though its intent may have been to draft a statute applicable to a narrowly defined group, such as "the innocent," "the law provides a larger umbrella than simply the homeowner that's protecting his house." Limiting the applicability to innocent homeowners, moreover, would certainly be proscribed by the Constitution as a violation of equal protection, at least if "innocent" means Caucasian homeowners like James Workman. But in reality, despite the legislative intent, the result in many cases has been that the laws benefit drug dealers, gang members, and others who are not necessarily "innocent homeowners" in the state of Florida. The problem with the statute is not necessarily that its scope is too narrowly constrained in practice. Rather, the law too broadly protects and immunizes violent behavior without sufficient avenues for

104 Strupp, supra note 101, at 1.
105 FLA. STAT. ANN. § 776.012(1) (West 2005).
108 Hundley, supra note 15.
109 See Montgomery, supra note 16.
110 See Study, supra note 8.
judicial review. Because investigative and charging decisions are left to individuals without procedural guidelines to ensure uniformity, the statute raises concerns about the fairness and appropriateness of Florida’s Stand Your Ground statutes.

Recently, the Tampa Bay Times conducted a study of over 200 self-defense cases in Florida. The results showed some inconsistencies in the handling of cases, but no conclusive determinations could be made as to the cause of those disparities. For example, “[t]he Times analysis found no obvious bias in how black defendants have been treated,” even though “people who killed a black person walked free 73% of the time, while those who killed a white person went free [only] 59% of the time.” In response to the study, criminologist Kareem Jordan noted that he did not think that judges or prosecutors or whoever works in the field of criminal justice is consciously saying black life is worth less than that of other ethnicities . . . . But at the end of the day, it could be something that’s subconscious going on if you look at how the media depicts black life.

The personal experiences of each officer and prosecutor influence this subconscious response particularly in the investigation and charging stages. Individuals process all new experiences through their prior life experiences as the notion of embodied rationality explains. As a result, law enforcement’s investigative decisions and prosecutorial charging determinations are necessarily influenced by the personal experiences of the people involved. The potential for abuse, intentional or not, is exacerbated by the fact that the statutes provide no procedures or guidelines for investigative and charging decisions.

111 FLA. STAT. ANN. § 776.012 (West 2005).
112 Megale, supra note 3, at 130-31.
113 Id.
114 Martin et al., supra note 15.
115 Id.
116 Id.
117 See supra note 32 and accompanying text.
118 Megale, supra note 3, at 130-31.
At least one member of the Florida legislature has recognized, as reflected in her proposal of various amendments, that the Stand Your Ground statutory scheme may be too broad.\textsuperscript{119} Since 2005, the legislature has reviewed the statutory scheme on at least three separate occasions.\textsuperscript{120} Each time, the proposed amendments died in committee.\textsuperscript{121}

In 2007, Florida House Representative Dorothy Bendross-Mindingall proposed House Bill 371, which would have added language to Florida Statute 776.013 requiring proof of an overt act to support a belief as to the necessity of the use of deadly force, and it defined “unlawful activity” as “activity undertaken by a person that is prohibited by the laws of this state.”\textsuperscript{122} House Bill 371 also included language to amend section 776.032 precluding immunity from civil suit brought by injured children and bystanders unaffiliated with the overt act.\textsuperscript{123} Senate Bill 878 mirrored the proposed language.\textsuperscript{124} House Bill 371 was submitted for consideration by the Safety and Security Council.\textsuperscript{125}

Cumulatively, these changes would have chipped away at the protective armor created by the 2005 self-defense statutory scheme. One effect of the proposed amendment would have been to shift the subjective

\begin{footnotes}
\footnote{120} H.R. 371, 109th Leg., Reg. Sess. (Fla. 2007); S. 878, 109th Leg., Reg. Sess. (Fla. 2007); H.R. 49, 110th Leg., Reg. Sess. (Fla. 2008); S. 968, 110th Leg., Reg. Sess. (Fla. 2008).
\footnote{122} H.R. 371, 109th Leg., Reg. Sess. (Fla. 2007).
\footnote{123} Id.
\footnote{125} H.R. 371, 109th Leg., Reg. Sess. (Fla. 2007).}

\end{footnotes}
fear analysis to a more objective one. Under the proposed amendment, a defendant would be required to show an overt act supporting any claim of fear to justify the violent act as self-defense. Increasing the defendant's burden to prove an overt act when claiming self-defense undoubtedly makes it more difficult for that person to wear the cloak of immunity and avoid prosecution or civil suit. This is consistent with the principles of immunity since the whole point of immunity is that the defendant need not justify the violent actions at all. A requirement of proof, therefore, necessarily calls for justification of some sort. The amendment also would have increased the likelihood that a jury would hear the evidence to determine whether certain violent acts were justifiable uses of force. Finally, the amendment defined the term "unlawful activity," which would have arguably led to more consistent judicial interpretation of the statute since the term was not defined in 2005, when the statutes were enacted. These bills both "[died in Safety & Security Council on Friday, May 04, 2007]."

The following year, in 2008, Representative Bendross-Mindingall proposed nearly identical amendments in House Bill 49. Senate bill

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126 Megale, supra note 3, at 129 ("The reasonableness of any perceived threat, though, is a matter of opinion and subject to interpretation. Moreover, since and individual acting pursuant to § 776.032 is entitled to immunity from prosecution pursuant to section 776.032, courts will become much more likely to find an alleged threat reasonable to ensure compliance with the statute.").


128 Id. supra note 3, at 119.

129 Id. (Immunity functions to protect individuals that are not blameworthy because they responded as any reasonable person would to an imminent threat. Immunity should not function as a vehicle for those to rationalize the use of force when there was no overt act that placed them in imminent danger of severe bodily harm).

130 See generally H.R. 371, 109th Leg., Reg. Sess. (Fla. 2007); S. 878, 109th Leg., Reg. Sess. (Fla. 2007) ("requiring an overt act to support a belief that the use of deadly force for specified purposes is necessary").

131 H.R. 371, 109th Leg., Reg. Sess. (Fla. 2007); S. 878, 109th Leg., Reg. Sess. (Fla. 2007); FLA. STAT. ANN. § 776.013 (West 2005) (The term remains undefined in the current statutes as section 776.013 only defines the terms dwelling, residence, and vehicle).


968 provided virtually identical language. This time, the Committee on Homeland Security & Public Safety considered the proposals, but again each “[d]ied in Committee on Homeland Security & Public Safety on Friday, May 02, 2008.”

Recent amendments were proposed in 2013. Some were nearly identical to those proposed in 2007 and 2008. House Bill 123 and Senate Bill 362, similar bills that would have both required an overt act to support the belief that the use of force was necessary and prohibited a claim of immunity for certain uses of deadly force resulting in injuries to children and bystanders, died in the Criminal Justice Subcommittee on May 3, 2013.

The most recent attempt to dismantle Stand Your Ground was considered on November 7, 2013. House Bill 4003, which would have repealed section 776.013 and amended sections 776.012, 776.032, and 790.015, died in the House Criminal Justice Committee by a vote of eleven-to-two after a five-hour hearing attended by almost 300 people, with “scores sign[ing] up to give their opinion on the controversial law.”

A number of the amendments would have expanded the scope of Florida’s self-defense statutory scheme in a variety of ways. Two proposals included provisions eliminating the duty to retreat in cases of defense of property. One proposal authorized the use of deadly force.

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140 McGrory & Van Sickler, supra note 138.
141 S. 136, 115th Leg., Reg. Sess. (Fla. 2013); H.R. 331, 115th Leg., Reg. Sess. (Fla. 2013). Stand Your Ground currently applies only to the defense of persons, so a person would have a duty to retreat in cases involving defense of property.
The other authorized the use of non-deadly force. Two bills proposed language to the effect that the display of a weapon or firing of a warning shot is not deadly force as a matter of law. Three bills addressed the legal exposure of a person who justifiably uses force by strengthening the protections of immunity to prosecution and civil suit and extending them to those cases where one acts to defend life, home, and property. Others proposed amendments related to the use of weapons. One would have created exemptions for minimum sentence requirements for the use of a weapon in self-defense or the defense of others as well; another would have authorized a departure from the minimum sentence requirements for the use of a weapon by a convicted felon who otherwise is not immune from prosecution.

Several bills addressed the use of force by primary aggressors and sought to limit the scope of immunity in this regard. House bills 331 and 799 would completely prohibit any claim of justifiable use of force by a primary aggressor who provoked the use of force. Senate bill 930 would have permitted primary aggressors to assert a justifiable use of force only in certain delineated circumstances.

Several bills attempted to limit the reach of the self-defense statutory scheme—a few going so far as to repeal Stand Your Ground and the presumption of reasonable fear in the castle doctrine. Two bills addressed law enforcement specifically by requiring investigation into cases...
involving the use of force. One of these proposals eliminated prohibitions on arresting a person for using force. Two other bills proposed to restrain the use of force by law enforcement and corrections officers. Yet another would have required local law enforcement to issue guidelines for neighborhood watch programs.

The most neutral of all these proposals would have created a system to track use of force cases through the development and maintenance of a centralized database that documented all incidents involving the justifiable use of force. Though many of the proposals would have addressed the major problems the current statutory scheme causes, including the vast reach and unbridled discretion of law enforcement in making arrests and pursuing prosecution, none of these proposed bills survived.

About the same time the legislature was considering these various bills, Governor Rick Scott appointed a task force to evaluate the Stand Your Ground statutes in response to the shooting death of Trayvon Martin. Various legislators (including Dennis Baxley, the original sponsor of the bill), attorneys, citizens, and law enforcement served as members.

Its mission was to evaluate the statutory scheme and make recommendations "to ensure the rights of all Floridians and visitors, including the right to feel safe and secure in our state." During its tenure, seven public meetings were held around the state of Florida. The final report

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159 Task Force, supra note 26, at 3.
160 Id. at 4.
indicated that the members of the task force did not recommend changing the substance of Stand Your Ground because it concurred “with the core belief that all persons, regardless of citizenship status, have a right to feel safe and secure in our state.”

The task force did ultimately recommend the legislature examine the term “unlawful activity” to provide clarification to the citizenry, law enforcement, and the judiciary. During those conversations, most of the recommended definitions would have excluded minor illegal acts, such as ordinance violations, from the definition of “unlawful activity.”

One recommendation suggested that the unlawful activity needed to be related temporally to the use of force. This idea seemed to drive at some of the underlying tension related to the death of Trayvon Martin, in particular the question of whether Zimmerman had been engaged in unlawful activity when he followed Martin against the 911-operator’s advice. Nearly all the definitions proposed by task force members would have ensured Zimmerman’s protection under the statute by firmly excluding his actions from the definition of “unlawful activity.”

Of the other recommendations, none addressed the substantive language of Florida’s self-defense statutory scheme. The task force did not propose specific language with regard to any recommendation, but rather suggested the legislature consider or evaluate certain topics. The most prevalent topics for consideration were the training of law enforcement, providing standards for neighborhood watch groups, permitting

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162 Id. at 5.
163 Id.
164 Id. at 5.
165 Id.
167 Task Force, supra note 26, at 5. Task force member State Attorney Katherine Fernandez Rundle proposed the definition of “unlawful activity” should exclude noncriminal violations as defined in FLA. STAT. ANN. § 775.08(3). Task force member Judge Krista Marx proposed that the definition should include temporal proximity of the unlawful activity to the use of force. Task force member Public Defender Stacy Scott proposed that the definition of “unlawful activity” should exclude some county and municipal ordinance violations. Task force member Edna Canino proposed that the definition exclude citizenship status.
law enforcement to investigate use of force cases, and creating a database for tracking use of force cases, among others.¹⁶⁸

Of all the members, only two documented their disagreement with the scope and range of Florida’s Stand Your Ground statutory scheme in writing: Vice-Chair Reverend Dr. R.B. Holmes, Jr. and State Attorney Katherine Fernandez Rundle of Florida’s Eleventh Judicial Circuit.¹⁶⁹ Their criticism of the law substantially mirrors the problems outlined earlier in this section: “the nature of the law’s presumptions, immunity provisions, and protection afforded to initial aggressors.”¹⁷⁰ Rundle’s suggested changes, which were much more detailed than any other recommendation of the task force, would have converted self-defense back into an affirmative defense.¹⁷¹ Additionally, Rundle’s suggested changes would have eliminated presumptions afforded individuals using force in the castle and limited the ability of an initial aggressor to claim use of force.¹⁷² Holmes supported Rundle’s proposals and also provided data evidencing the fact that the law has been abused through its inconsistent and somewhat unpredictable application.¹⁷³ Holmes also provided data to show that Florida’s death toll has risen 192% since 2005, this rise being largely attributed to the “shoot first” mentality cultivated by the statute.¹⁷⁴

Even so, the majority of the task force found that the citizens “have a right to feel safe and secure in our state. To that end, all persons who are conducting themselves in a lawful manner have a fundamental right to stand their ground and defend themselves from attack with proportionate force in every place they have a lawful right to be.”¹⁷⁵ In other words, the task force agreed that the best way for people to feel safe and secure

¹⁶⁸ Id. at 6.
¹⁶⁹ Id. at 33-35. Three letters were included at Appendix E; two expressed disagreement generally with Florida’s Stand Your Ground laws and one by State Attorney Stacy Scott of Florida’s Eighth Judicial Circuit expressed agreement with the law but sought clarification as to procedures and certain definitions. Id. at 42-43.
¹⁷⁰ Id. at 33-34.
¹⁷¹ Id.
¹⁷² Id. at 34.
¹⁷³ Id. at 33.
¹⁷⁴ Id.
¹⁷⁵ See id. at 5.
was to have the right to stand their ground and defend themselves against an attack in places where they have a lawful right to be.¹⁷⁶

Most members of the task force seemed reticent to reject and redefine the category originally created by the Workman narrative supporting the “need” to protect the “innocent.”¹⁷⁷ Moreover, the task force appeared unwilling to acknowledge the magnitude of the statute’s impact on the safety and security of Florida’s citizenry, in particular the fact that the statute seems to make the state less, not more, safe. In the end, the calls for change fell on deaf ears.

II. Competing Narratives

The shooting death of Trayvon Martin sparked nationwide debate and nearly tore a small Florida town apart.¹⁷⁸ Numerous themes emerged as various commentators sought to inform the public about the true nature of the case.¹⁷⁹ For many, no explanation could be sufficient—a young black teenager was killed because he was wearing a hoodie.¹⁸⁰ Martin was just an innocent boy hunted down like prey by an overzealous, racist killer.¹⁸¹ The competing narrative illuminated another perspective. This was a gated community plagued by increasing crime and vandalism, and a black boy walking through it did not seem to belong.¹⁸² The boy had

¹⁷⁶ Id.
¹⁷⁷ Task Force, supra note 26, at 5.
somehow infiltrated the sanctity of the wall—a stranger who had no right to be on this side of the gate.\textsuperscript{183}

Both narratives are powerful, and they provide insight into how the conflict escalated between George Zimmerman and Trayvon Martin. The narratives embedded in each of them, based on their personal life experiences along with the comforting protection of Stand Your Ground, drove them to “stand their ground” against each other. The narratives also influenced the progression of the case by pressuring law enforcement, attorneys, and even the judge.

The attention received by this case indicates that the embedded category created by the Workman narrative is no longer accepted by at least a portion of the population. The outrage about the investigative and prosecutorial decisions as well as the verdict might very well be a signal that society is shifting its view regarding the permissible and impermissible as they relate to self-defense.

To the extent Martin’s death has triggered a call for legislative change, lawmakers have so far been unresponsive. This suggests that the minority voice, reflected by Martin’s narrative, is not yet powerful enough to overcome the majority’s entrenched category created by the Workman narrative.\textsuperscript{184}

The following subsections identify and analyze the various narratives surrounding the tragic death of Trayvon Martin and the trial and acquittal of George Zimmerman.

A. The Statutory Scheme That Contributed to the Narrative That Caused Trayvon Martin’s Death

Upon their passage in 2005, Florida’s Stand Your Ground statutes were described as a “Wild West revival.”\textsuperscript{185} This phrase evokes the

\textsuperscript{183} See id.

\textsuperscript{184} The Workman narrative stands for the proposition that if citizens are attacked, the presumption will be with them. See supra notes 20-26 and accompanying text.

The image of two burly cowboys on a dusty dirt road drawing their guns in a race to shoot the other first, all for some truly noble purpose like protecting their pride. After all, only a yellow-bellied coward would walk away from a fight in the Wild West, right?

The impact of the statutory scheme was subtle yet striking in the two to three years following its enactment.186 As Jacksonville attorney Russell Smith, president-elect of the Florida Association of Criminal Defense Lawyers, explained,

[W]e expected the larger impact to be in trials, with people jumping into court because of shootings and lots of shouting from the rooftops. That’s not happening. The real impact has been that it’s making filing decisions difficult for prosecutors. It’s causing cases to not be filed at all or to be filed with reduced charges.187

And of course, this result is just as the legislature intended—to let “citizens . . . know that if they are attacked, the presumption will be with them.”188 The message to the public translated into a free-for-all as news of numerous shootings and deaths are resolved with no arrests made or charges brought against the last man standing.189 In fact, the shooting of another is revered by some as a laudable and noble act, even an entitlement. But the vast protections created by the 2005 statutory amendments were unnecessary to provide citizens with the presumption of innocence and protection in use-of-force cases.190 A brief analysis of James Workman’s case, the impetus for enacting the 2005 laws, so illustrates.

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188 Montgomery, supra note 16.


James Workman was a seventy-seven-year-old man who had moved from Missouri to Florida after retiring. When Hurricane Ivan partially destroyed his home in 2004, Workman and his wife worked to repair it for a time, but eventually left Florida for a visit to North Georgia. While they were gone, neighbors informed the Workmans that criminals were plaguing the devastated area so, on November 2, 2004, they returned to their house in Florida and stayed in an R.V. parked in the driveway. That night, Mrs. Workman saw a man approaching the door to their home, a short twenty feet from the R.V. Mr. Workman went to investigate and, after an altercation, eventually shot and killed Rodney Cox, a husband and father who had come to Florida to work with FEMA after Hurricane Ivan.

The facts surrounding Cox’s presence on the Workman’s property in the middle of the night are not entirely clear. It is possible Cox was just looking for a place to sleep—though the police encountered him earlier and he seemed disoriented or drunk. Mr. Workman waited three months before learning that the State of Florida would not charge him in the shooting death of Rodney Cox. This decision was made under a prior version of Florida’s self-defense statute that recognized a more limited castle doctrine, which also required a duty to retreat when violence erupts outside the castle. Even though Workman was never arrested or charged for shooting Cox, the legislature used this case to support expanding the law to eliminate the duty to retreat and amplify the castle doctrine. State legislators distorted the facts of the case to convince themselves and others that the amendments were necessary to

191 Montgomery, supra note 16.
192 Id.
193 Id.
194 Id.
195 Id.
196 Id.
197 Id.
198 Id.
199 See generally id.
200 Id.
201 Id.
protect “innocent” people who defend themselves. For example, Greg Evers stated support for the bill because an elderly couple was attacked in their sleep by an intruder. He thought Workman shot the intruder without killing him, and also stated he believed Workman waited six months before learning he would not be charged. One of the bill’s sponsors, Durell Peaden, erroneously reported that Workman had been forced to hire a lawyer to defend himself. In fact,

in the various accounts, the politicians erred on several facts, the Workman’s ages, 77 and 56, being the least of them. It was less than three months. Workman went outside to confront Cox and fired a warning shot into the ground before Cox ran into the trailer. When Workman chased Cox into the trailer, Cox didn’t strike him. He bear-hugged Workman, pinning his arms to his sides.

The great injustices the bill sought to remedy were police investigation and consideration by the state attorney about whether to charge Workman with a crime. To the extent the current version of the self-defense statutory scheme is intended to protect innocent people from having to defend themselves after they have acted in self-defense, the amendments were unnecessary as evidenced by the fact that Workman was not charged. Not only that, but the narrative created by this legend is that no one should be questioned, much less investigated, for shooting and killing someone so long as that person claims self-defense.

Interestingly, the Workmans did not lobby for passage of this law, and Mr. Workman is still disturbed by the fact he had Cox’s blood on his chest. Shortly after Trayvon Martin’s death, Mrs. Workman stated she and her husband had not pushed for the law because they “didn’t want any of this to happen.” Even back in 2005, shortly after his incident,
Mr. Workman was not an enthusiastic supporter of the law because he could “see some pitfalls if you make it too loose.” Based on the laws’ application since 2005, it appears a “loose” law is precisely what the legislature created.

Traditionally, the self-defense statutory scheme required a level of consideration for human life. It forced someone to think twice before shooting another because the police would be investigating and charges could follow. Self-defense was an affirmative defense to be asserted at trial before a jury; a shooter’s fate, therefore, would lie precariously in the hands of the members of the jury. People were more hesitant to kill others in self-defense because there was no guarantee a jury would believe it. There was still a risk that the State would charge or a jury would convict an “innocent” person. Even so, the law would protect justifiable uses of force, as demonstrated by the result in the Workman case. That is really the heart of the matter: under self-defense, no shooter was really innocent per se. Rather, it required admitting responsibility for the shooting, an admission of guilt in other words, but one accompanied by a justification. In other words, it was an affirmative defense.

The legislature has now redefined self-defense—its nature has fundamentally changed. It is no longer an affirmative defense requiring the admission of guilt before claiming the use of force was justified. Rather, the law decriminalizes homicide and other violent acts by declaring certain actors innocent and therefore not culpable for their violent behavior. A shooter need not justify plausibly defensible actions anymore because violent acts are not guilty acts—the legality of the violent act is automatically established through the immunity shield. Florida’s statutory scheme has decriminalized certain categories

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211 Id.
212 Megale, supra note 3, at 111.
213 Id. at 107-08.
214 Id. at 116.
215 Id. at 112-13.
216 Id. at 115.
217 Id. at 116; see also Task Force, supra note 26, at 33-44 (Rundle’s recommendations support the notion that Florida does not have an affirmative defense statute, but rather a legalization one. Her redlined suggestions would have converted the protections back to affirmative defenses rather than blanket immunity.).
218 Megale, supra note 3, at 119.
of violence entirely.\textsuperscript{219} Homicide and other violent acts are no longer justifiable; they are legal in many circumstances.\textsuperscript{220}

Since 2005, this new narrative has infected the culture of Florida. "Don’t dial 911—Use .357" has practically become a motto.\textsuperscript{221} Now, self-defense is treated as a right to kill another rather than as a protective defense in the unfortunate event that violence becomes necessary to preserve life.\textsuperscript{222} The belief that the use of force is a right has affected the cultural narrative regarding the appropriate boundaries and limits of civilized behavior. It is particularly dangerous in a time when individuals are becoming increasingly isolated from one another.\textsuperscript{223}

The culture-law-culture cycle provides some explanation for how Florida’s current statutory scheme was both influenced by and continues to influence society. Research confirms an increase in trends of isolation among members of society.\textsuperscript{224} People tend to be more comfortable in more isolated forms of communication, such as emailing or texting rather than speaking on the phone or in person.\textsuperscript{225} Many people spend a significant amount of time commuting or working in isolation. Some live far from extended family and do not even know their neighbors’ names. Some have a hard time relating to others.\textsuperscript{226} This "lack of social connectedness, trust, and reciprocity is eroding community ties."\textsuperscript{227}

Hallmark elements of communities include "shared territory, shared values, shared public realm, shared support structures, and shared destiny."\textsuperscript{228} As community relationships erode, however, these elements begin to disappear.\textsuperscript{229} As a result, individuals necessarily become more

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{219} Id.
\item\textsuperscript{220} Id. at 121.
\item\textsuperscript{221} Id. at 105.
\item\textsuperscript{222} See supra notes 58-64 and accompanying text.
\item\textsuperscript{223} SETHA LOW, BEHIND THE GATES: LIFE, SECURITY, AND THE PURSUIT OF HAPPINESS IN FORTRESS AMERICA 56 (2003) (Increased isolation and a decline in community relationships “is a historical concern of social scientists.”).
\item\textsuperscript{224} Id.
\item\textsuperscript{225} Id. ("[T]he more hours people use the Internet, the less time they spend with real human beings, creating even greater social isolation.").
\item\textsuperscript{226} Id.
\item\textsuperscript{227} Id.
\item\textsuperscript{228} Id. at 57.
\item\textsuperscript{229} Id. at 56.
\end{enumerate}
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isolated and distrustful of others because they do not know their neighbors or understand the values held by them. Moreover, the notion of embodied rationality would suggest that as individuals experience the world in increasing isolation, the capacity of a person to relate to or identify with others in society will be diminished because the individual experience has no connection to shared values, support structures, or destinies.

Eventually, a dualistic method of thinking emerges "to cope with anxiety and fear" by oversimplifying cultural norms, values, and expectations to distinguish the self from the other. This dualistic mentality is referred to as social splitting, and it "is often used to project social fears onto a more vulnerable group." Fear and anxiety about the unknown "Other" create a need for increased space and individual security, and these "needs" have contributed to the rise in gated communities across North America.

Curiously, fear of crime has increased with the advent and rise of gated communities, and those who live in homogeneous communities have greater fears of crime than those who live in heterogeneous ones. Within gated communities, social splitting explains the "us-versus-them thinking employed by the gated community residents to rationalize their fears of those outside the gates." Gates provide visible and psychologically salient boundaries to increasingly purified homogeneous environments, making it easy "to identify any deviant individuals who should not be there." They provide little more than an illusion of safety,

230 Id. at 57.
231 Id. at 138.
232 Id. at 139.
233 Id. at 137 ("Social splitting offers a strategy that is reinforced by cultural stereotypes and media distortions, allowing people to psychologically separate themselves from people who they perceive as threatening their tranquility and neighborhood stability. The walls and gates of the community reflect this splitting physically as well as metaphorically, with 'good' people (the good part of us) inside, and the 'bad' remaining outside.").
234 Low, supra note 223, at 113-15.
235 Id. at 123 ("Social integration reduces fear of crime and increases [a] resident's sense of wellbeing... [while] taking precautions against crime actually may increase rather than reduce a person's fear of crime.").
236 Id. at 137.
237 Id. at 141.
however, and “crime statistics suggest that [people] would be quite safe in traditional ungated suburbs.”238 What is more, “[g]ating . . . involves the ‘racialization’ of space, in which the representation and definition of ‘other’ is based on human biological characteristics—particularly racial categories.”239 Thus, the gating of communities has justified social prejudice and unfounded fears “leading to greater social isolation, which in turn produces greater perceived vulnerability and more fear—which residents deal with by taking even greater precautions and thus becoming even more isolated socially.”240

The discourse of fear advanced by residents of gated communities mirrors the discourse of fear used by the NRA and the Florida legislature in enacting the 2005 amendments to the self-defense statutes.241 The self-defense amendments have effectively endorsed the same dualistic us-versus-them mentality apparent in gated communities.242 Us-versus-them thinking is apparent in the original justifications for the amendments, the rejection of the proposed amendments in the years since, and the refusal of the task force to propose any changes to the statutory scheme. Society has been told to arm itself against the “Other” and to shoot the “Other” in the face of fear, which is subjectively measured.243

The mandate to take precautions against crime has led to greater fear of the “Other” because “taking precautions against crime [tends to] increase rather than reduce a person’s fear of crime.”244 As individuals become more isolated, their personal fears will objectively seem more rational as fear of the “Other” increases among members of society as a whole.245 In turn, society’s willingness to accept certain acts of violence as rational in the face of articulated fears is related to society’s acceptance of the rationality of the fear itself.246 Conversely, if the fear is considered

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238 Id. at 120.
239 Id. at 141.
240 Id. at 121-23.
241 See supra notes 100-06 and accompanying text.
242 Strupp, supra note 101; O’Neill, supra note 101.
243 See generally Low, supra note 223, at 141.
244 Id. at 121.
245 NUSSBAUM, supra note 51, at 46-47.
246 Id.
irrational, then the violent reaction is less likely to be tolerated as an appropriate response.\textsuperscript{247}

Under the current law, a person can shoot and kill another, usually without having to explain why.\textsuperscript{248} The image conjured is one of youthful immortality: "I have a right to be here, I don't like what you are doing in my space, so now I will eliminate you from my space." It is becoming increasingly rare for one to consider the "Other's" purpose of humanity.\textsuperscript{249} Media distortions, social stereotypes, and the legislature have all contributed to the social splitting that allows us to separate ourselves from the "Other."\textsuperscript{250} Isolated within personal space, it is difficult if not impossible to see little more than the differences in the "Other" who represents a threat. Now the law in Florida permits individuals to eliminate that threat.\textsuperscript{251}

Each year since the statutes were enacted in 2005, Florida's rates of legal homicide have steadily increased.\textsuperscript{252} As individuals take more precautions against crime, fear of the "Other" grows together with their acceptance of the notion that violence is legal in certain circumstances. Not only is it justifiable for a person to act in self-defense, it is that person's right to kill the "Other." Additionally, by codifying a subjective standard for determining reasonability of fear (as opposed to a reasonable man standard), the legislature may have effectively eliminated the ability for society to appraise and reflect society's norms.\textsuperscript{253} Generally, when society asks what cases of fear and anger it should deem reasonable, the emotions that the hypothetical reasonable man would have in such a situation, it implicitly asks what it is reasonable to value deeply, and the

\begin{itemize}
  \item \textsuperscript{247} \textit{Id.}
  \item \textsuperscript{248} \textsc{Fla. Stat. Ann.} § 776.032 (West 2005).
  \item \textsuperscript{249} Low, \textit{supra} note 223, at 147.
  \item \textsuperscript{250} \textit{Id.}
  \item \textsuperscript{251} See §§ 776.012, 776.013 & 776.032.
  \item \textsuperscript{252} Michael George, \textit{Justifiable Homicides Double Since "Stand Your Ground"}, \textsc{ABC Action News} (Mar. 27, 2012), http://www.abcactionnews.com/dpp/news/local_news/investigations/i-team-justifiable-homicides-double-since-stand-your-ground. In 2007, the number of justifiable homicides by private citizens jumped from twelve (in 2006) to forty-two. \textit{Id.} Since 2007, there have been forty or more justifiable homicides in Florida every year. \textit{Id.}
  \item \textsuperscript{253} \textsc{Nussbaum}, \textit{supra} note 51, at 46.
\end{itemize}
answer to that question is typically given in terms of prevailing normative standards.\textsuperscript{254}

Under Florida's self-defense statutory scheme, however, the reasonable man standard does not apply.\textsuperscript{255} Therefore, society's ability to express disagreement with the values espoused by the law has been crippled.\textsuperscript{256} The danger is, thus, twofold: first, as society becomes increasingly isolated, fear of the "Other" increases to rationalize violence against the "Other," making violence of this nature acceptable; second, even if society begins to reject fear of the "Other" or the rationalization of such violence, the subjective statutory standards prevent the expression of such opposition.

The fact that the news frequently reports non-arrests in shooting deaths furthers the law's narrative impact on the citizenry.\textsuperscript{257} It reinforces that the public's presumption that an individual will not have to justify the use of force, especially if it results in death. Since 2012, though, the minority voice on the other side of violent acts has begun to gain strength through various media outlets. Notwithstanding, the traditional legal medium for measuring societal norms, the reasonable man standard, is not available to the minority position. The legal narrative climaxed on February 26, 2012, with the tragic death of Trayvon Martin, a seventeen-year-old boy walking from a convenience store to the townhouse where he was staying in Sanford, Florida.\textsuperscript{258} George Zimmerman, captain of the neighborhood watch team for The Retreat at Twin Lakes, a gated townhouse community in Sanford, Florida,\textsuperscript{259} saw Martin walking through the neighborhood and became suspicious of him.\textsuperscript{260} Zimmerman's reactions are consistent with that of an individual living in a gated

\textsuperscript{254} \textit{Id.} at 47.

\textsuperscript{255} \textsc{Fla. Stat. Ann.} \textsection{} 776.012 (West 2005). This assertion is more fully explained in subsection II(B)(1).

\textsuperscript{256} \textsc{Nussbaum, supra} note 51, at 47 ("Normative appraisals are . . . likely to shift as society's norms undergo change.").

\textsuperscript{257} \textsc{Low, supra} note 223, at 114 ("Reporters often need to overstate the actual threat of an incident just to get coverage in the news.").

\textsuperscript{258} Zimmerman Case File 36-7 (June 10, 2013) (on file with author).

\textsuperscript{259} \textit{Id.}

\textsuperscript{260} 911 Call Audio, \textit{supra} note 166.
community. He was hyper-vigilant and paranoid about crime. Living in a gated community paradoxically increased his fears because “taking precautions against crime . . . increase[s] . . . fear of crime.” Zimmerman was also a member of a privatized security group, the neighborhood watch—a common feature of gated communities. Neighborhood watch groups permit the state to relinquish responsibility for ensuring community safety and pass those duties onto the residents. Zimmerman, thus, believed he was responsible for protecting his neighborhood.

Notably, Martin was not committing a crime and he belonged in that locale because he was temporarily living in one of the townhouses in the gated community. But to Zimmerman, Martin did not look like he belonged, dressed in his hoodie in the dark. He looked like the “Other” to Zimmerman, so Zimmerman pursued Martin. At some point, Zimmerman apparently lost sight of Martin, which forced Zimmerman to end the pursuit. Martin, however, reappeared and surprised Zimmerman by yelling at him and perhaps physically attacking him. According to Zimmerman, Martin overpowered him and forced him to the ground where Martin proceeded to punch him in the face, bashing his head against the ground and breaking his nose. Zimmerman apparently called for help, but ultimately pulled out his gun and shot Martin in the chest.

It appears that both Zimmerman and Martin were feeling empowered and justified in their actions. They both seemed to believe they had a right to be where they were, and neither tolerated the threat posed by the “Other.” Zimmerman saw Martin as an invader of his gated community,

261 See Low, supra note 223, at 122
262 Id. at 123.
263 Zimmerman Case File, supra note 258, at 150-80.
264 Low, supra note 223, at 187.
265 Zimmerman Case File, supra note 258, at 36-37.
266 911 Call Audio, supra note 166.
267 Id.
268 Id.
269 Zimmerman Case File, supra note 258, at 86-103.
270 Id. at 14-15, 42, 86-103.
271 Id. at 86-103.
the "Other" whose presence alone threatened his community's safety and security. Martin believed he did belong because he was living there, temporarily, at his father's girlfriend's townhouse. Martin thought he had a right to walk down the street without someone pursuing him, and Zimmerman represented "stranger danger" to Martin. Though the psychological impact of walls and gates might have been sufficient to trigger their fear of each other, the self-defense statutes justified their belief in the right to confront each other. In light of the social splitting that occurs among residents of gated communities, their fear of each other as "Others" was practically inevitable. Their behavior indicates recklessness in the face of fear, which is the prototypical result of Florida's Stand Your Ground law. The safest thing for both of them would have been to walk away, but they did not. Although troublesome in and of itself, the fear of "Other" alone was not the sole cause of Martin's death. Florida's statutes inflate the irrational fear of "Other" by justifying the use of force based on a subjective fear. This inflation leads to reckless behavior. Both Zimmerman and Martin exhibited actions consistent with exaggerated irrational fears. Zimmerman, who was armed with a gun, pursued Martin; Martin returned to confront Zimmerman even though Zimmerman had already lost sight of Martin. Then, Martin circled back, engaged Zimmerman, and physically beat him by pounding his head into the ground and breaking his nose, and Zimmerman shot Martin at close range, killing him. Without some sort of security that such a violent encounter would be permissible under the law, the fear created by social splitting likely would have prevented them from confronting each other at all. In other words,

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272 "Strangers by virtue of their race or unconventionality are singled out as 'suspicious' even if they are merely walking down the street" in a gated community." Low, supra note 223, at 141.


274 "Stranger danger" refers to the fear that an "unknown person [will] commit[] an unpredictable and violent attack on a vulnerable and innocent citizen going about routine daily activities. The perceptions that the attacker is indiscriminate in his selection of the victim and that the victim can do little to avoid attack or protect himself also elicit fear in society." Marc Riedel, Stranger Violence: Perspectives, Issues, and Problems, 78 J. CRIM. L. & CRIMINOLOGY 223, 223 (1987).

275 FLA. STAT. ANN. § 776.012 (West 2005).

276 Zimmerman Case File, supra note 258, at 37.

277 Id.
the legal narrative is what caused them both to believe they could stand
their ground and use deadly force against each “Other.”

B. The Media’s Contribution to the Trial Strategies
Employed in the Zimmerman Case

When George Zimmerman shot and killed Trayvon Martin, two
competing narratives emerged almost immediately. On the one hand,
Zimmerman was reported by law enforcement as a victim who had
defended himself from great bodily harm.278 Zimmerman had been
pinned to the ground with Martin on top of him pummeling his face and
repeatedly pounding his head against the cement sidewalk.279 Zimmer-
man apparently called for help repeatedly, but eventually shot Martin at
close range, fatally wounding him.280

The competing story, as told by the media, was that of a teenage boy
who was doing nothing wrong.281 Dressed casually in a hooded sweat-
shirt to shield himself from the light drizzle, Martin was leisurely
returning from a nearby convenience store where he had bought a pack
of Skittles and a can of Arizona Iced Tea.282 Zimmerman, a zealous
captain of the neighborhood watch, called 911 to report Martin as a
suspicious person in the neighborhood.283 Despite admonitions from the
911 operator to stop following Martin, Zimmerman pursued him
anyway.284 Spurned by recent vandalism and thefts in the neighborhood,

278 Id.
279 Id. at 38, 86.
280 Id. at 38-40.
281 See Dan Barry et al., Race, Tragedy and Outrage Collide After a Shot in Florida,
shooting-prompts-a-review-of-ideals.html?pagewanted=all; Botelho, supra note 179;
Adam Weinstein et al., The Trayvon Martin Killing, Explained, MOTHERJONES.COM
(Mar. 18, 2012, 10:42 AM) (online article includes links to multiple updates since ori-
ginal posting), http://www.motherjones.com/politics/2012/03/what-happened-trayvon-
martin-explained.
282 Botelho, supra note 179; Weinstein et al., supra note 281.
283 Weinstein et al., supra note 281.
284 William M. Welch et al., Police Report: Trayvon Martin’s Shooting Was ‘Avoid-
nation/story/2012-05-17/zimmerman-trayvon-shooting-report/55046944/1 (“On NBC’s
Today show Friday Benjamin Crump, the lawyer for the Martin family, reiterated that
Zimmerman was on a mission to prevent a potential thief from getting away with it again. This pursuit understandably frightened Martin, and Martin eventually confronted Zimmerman. The confrontation is what ultimately resulted in Martin’s death.

The strongest media narrative advanced the theme that Martin was shot because he was a black youth walking in a gated community and wearing a hoodie. It was premised on a familiar stock story of pursuit characterizing Martin as the innocent prey of the deranged Zimmerman who was on a mission to kill. This narrative framed Zimmerman as the primary aggressor against a completely innocent boy. On the opposite end of the spectrum, the narrative as related in witness statements and police reports communicated a theme common in Florida since 2005—shoot first and ask questions later. The narrative embraced a different stock story—that of mutual combat where the last one standing wins, no matter the cost.

Despite the jury verdict acquitting Zimmerman, the strength of the social narrative as told by the media in this case bore a greater influence on the resolution of the case than the law itself. Prosecutors, defense attorneys, and the court were all influenced by this narrative in the following ways: (1) prosecutors charged George Zimmerman with manslaughter; (2) the defense team did not file a motion to dismiss or otherwise claim immunity; (3) the court excluded evidence and testimony as to Martin’s character; and (4) both sides argued this case was not about Stand Your Ground. Each of these strategic decisions is addressed in turn below.

285 Barry et al., supra note 281; 911 Call Audio, supra note 166 (recording of the 911 non-emergency operator telling Zimmerman not to follow Martin, but never ordering Zimmerman to return to his vehicle).

286 Barry et al., supra note 281; Botelho, supra note 179.

287 Dierdre Walsh, Lawmaker Wearing Hoodie Removed from House Floor, CNN.COM (Mar. 28, 2012, 10:12 PM), http://www.cnn.com/2012/03/28/politics/congressman-hoodie/index.html (reacting to reports that Martin had been killed because he was wearing a hoodie, Rush stated “racial profiling has to stop.”). Shortly after Martin’s death, Congressman Bobby Rush wore a hoodie to the floor of the United States House of Representatives and stated, “Just because someone wears a hoodie does not make them a hoodlum.” Id.

288 See generally Barry et al., supra note 281; Botelho, supra note 179.

289 See generally Barry et al., supra note 281; Botelho, supra note 179.
1. The Decision to Charge George Zimmerman

Although Zimmerman was taken away from the scene in handcuffs, the police reports make it fairly obvious law enforcement had no intention of arresting him. Zimmerman’s wife was allowed to meet Zimmerman at the police station, where he had been taken for questioning, and bring him a change of clothes. Because numerous witness statements corroborated Zimmerman’s account that he had been attacked, and those accounts were consistent with his physical injuries, Officer Serino ordered Investigator Singleton to remove Zimmerman’s restraints during the interview. These actions demonstrate law enforcement’s mindset not to arrest Zimmerman. If he had been under arrest, his wife likely would not have been permitted to come to the police station with a change of clothes because there would not have been any need for him to change into street attire. Additionally, if law enforcement had intended to arrest Zimmerman, Investigator Serino would not have had the handcuffs removed.

When Zimmerman was not immediately arrested, the media expressed outrage that George Zimmerman was “getting away” with murdering a seventeen-year-old boy. In little more than a week following the shooting, an online petition demanded Zimmerman’s arrest. Within days, national organizations began mobilizing protests and rallies demanding justice for Trayvon Martin through the arrest and prosecution of George

291 Id. at 37.
292 Id. at 80.
293 Id. at 37.
At first, the State of Florida resisted, but the civil unrest for the next two months was so significant, even the Department of Justice got involved. The unavoidable message from society, or at least a segment of society, vigorously demanded that Zimmerman be arrested and charged with murdering Trayvon Martin.

The public pressure was so intense then-Police Chief Bill Lee stepped down from his position and was ultimately fired for refusing to arrest Zimmerman. In an interview with CNN, the former police chief described how members of the Sanford City Council insisted he arrest George Zimmerman even though the chief did not have probable cause to do so. The reason he did not have probable cause to arrest Zimmerman is because all of the witness statements taken immediately following the incident described Martin as being on top of Zimmerman and punching him in the face. Additionally, Zimmerman’s physical injuries

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296 Holt, supra note 294; Black Militia Group, supra note 294; Al Sharpton, supra note 294.


298 Patrick Howley, Docs: Justice Department Facilitated Anti-Zimmerman Protests, DAILY CALLER (July 10, 2013, 12:59 PM), http://dailycaller.com/2013/07/10/doj-provided-security-for-anti-zimmerman-protests/#ixzz2Ymb6PzXK.


301 Id. Specifically, Former Sanford Police Chief Lee told CNN:

I had one of the city commissioners come to me on two different occasions and say, “All we want is an arrest.” And I explained to them, “Well, you just can’t do that, you have to have probable cause to arrest somebody.” And it was related to me that they just wanted an arrest, they didn’t care if it got dismissed later. And you don’t do that.

Id.

302 See also Zimmerman Case File, supra note 258, at 90.
(a broken nose and lacerations to the back of the head) were consistent with Zimmerman’s and other witnesses accounts that Martin had been on top of him punching him in the face. Furthermore, evidence revealed that Zimmerman did not shoot Martin right away; rather, he called for help approximately fourteen times in twenty seconds before finally shooting Martin to escape. Thus, all the evidence appeared to support Zimmerman’s claim that he reasonably believed the use of force was required to prevent great bodily harm. As such, he was entitled to immunity under Florida Statute 776.032.

Under current Florida law, a person is entitled to immunity from prosecution when acting in self-defense to prevent death or great bodily harm. Florida statutes do not define great bodily harm, and, in aggravated battery cases, it generally is a jury question whether a person has suffered great bodily harm. Cases of self-defense, however, do not require proof of great bodily harm; the belief that great bodily harm might occur is sufficient. Thus, while broken bones and lacerations would support a jury finding of great bodily harm, such conclusive evidence would be unnecessary to support a claim of self-defense.

Moreover, since 2005, the reasonable belief as to the necessity of using force to prevent great bodily harm has generally been measured subjec-

\[\text{Id. at } 42.\]

\[\text{Id. at } 39.\]

\[\text{FLA. STAT. ANN. } \S\S \text{ 776.012, 776.032 (West 2005).}\]

\[\text{Owens v. State, 289 So. 2d 472, 474 (Fla. Dist. Ct. App. 1974) (emphasis added). In Owens, the court described great bodily harm as:}\]

"Great bodily harm defines itself and means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises as are likely to be inflicted in a simple assault and battery . . . . Whether the evidence describing such harm or injury is within the meaning of the statute . . . is generally a question of fact for the jury."


\[\text{Section 776.012 requires the defendant reasonably believe a use of force is necessary to prevent imminent death or great bodily harm and section 776.013 requires the defendant reasonably believe a use of force is necessary to prevent death or great bodily harm. } \S\S \text{ 776.012, 776.013.}\]

\[\text{See Owens, 289 So. 2d at 474; } \S \text{ 776.012.}\]
Florida statute 776.013 even requires a presumption of reasonable fear when force is used in the castle. 

Prior to the 2005 amendments, reasonableness was measured using an objective standard, but this interpretation hinged on the requirement that "a combatant . . . 'retreat to the wall' using all means in his power to avoid" the use of force. Post-2005, however, a combatant need not avoid the use of force, but rather may meet force with force. In other words, a person claiming self-defense now does not need to explain why the confrontation was unavoidable because there is no duty to retreat. Thus, it is irrelevant whether a reasonably prudent person would have avoided the violence. The appropriate inquiry is whether the defendant was reasonable in subjectively believing, based on the known circumstances, that the use of force was necessary. The objective truth regarding the facts and circumstances is irrelevant, and it matters not whether a reasonably prudent man would have believed the same thing under the circumstances.

Certainly, the codification of a subjective standard for evaluating uses of force was reflective of the increasing acceptance of fear of "Other" as rational in the years preceding the statutes' enactment. As society's norms change, its willingness to value particular fear responses also

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30 Megale, supra note 3, at 115-16; see Martin v. State, 110 So. 3d 936, 939 (Fla. Dist. Ct. App. 2013) (permitting the defendant to argue self-defense and present subjective fear "[e]vidence that Appellant's delirium arguably caused him to believe his life was in danger"). But see Chaffin v. State, No. 4D11-4572, 2013 WL 4081082, at *3 (Fla. Dist. Ct. App. Aug. 14, 2013) ("The law does not ascribe a subjective standard as to a defendant's state of mind, but concerns a reasonably prudent person's state of mind.") (quoting Reimel v. State, 532 So. 2d 16, 18 (Fla. Dist. Ct. App. 1988))). The rationale in Chaffin is flawed in that it relies on an interpretation of the reasonable belief standard as codified in a prior version of the statute that imposed a duty to retreat.

31 § 776.013.

32 See Reimel v. State, 532 So. 2d 16, 18 (Fla. Dist. Ct. App. 1988) ("Both real necessity for taking a life and a situation causing a reasonably prudent person to believe that danger is imminent [had to] be demonstrated in order to justify homicide as self-defense.").

33 Reimel, 532 So. 2d at 18.

34 See § 776.012.

35 Id.

36 Id.

change. For example, in Texas, killing an adulterous spouse or her paramour was once commonly rationalized. In 1973, however, society cried out against the rationalization of such a violent act, evidencing that the underlying values had changed and such behavior would no longer be tolerated. In response, legal standards were forced to adapt to reflect the new values and norms in order to regain authority and power over the people.

Similar evolutions have occurred with regard to battered spouses and in the context of civil rights. Florida’s 2005 self-defense amendments reflected a dominant cultural norm—the right to use deadly force in the face of a threat. Since 2012, however, the minority voice has gained traction (similar to the 1973 response to the Peacock case in Texas) in asserting that unfettered violence against the “Other” is irrational and inconsistent with desirable cultural norms and values. This minority voice demanded changes to the legal standards, and though the statutes have yet to be amended, some success was achieved as evidenced by Zimmerman’s prosecution.

Responding to society’s demand for legal change, Governor Scott appointed Angela Corey as special prosecutor to evaluate the Zimmerman case and make a charging determination. Despite the police reports and witness statements supporting Zimmerman’s claim of fear, the special prosecutor filed criminal charges against George Zimmerman. The
decision to prosecute was not supported by Florida statute 776.032\textsuperscript{325} because Zimmerman’s subjective fear was reasonable under the circumstances as evidenced by the independent witness statements and Zimmerman’s own account.\textsuperscript{326} Moreover, the decision to prosecute was inconsistent with charging decisions made in similar, and even more egregious, cases from around Florida.

For example, Evio Landa was not charged for shooting Nicholas Pastor.\textsuperscript{327} Landa, upset that Pastor had thrown a used tissue at his car, confronted Pastor in a restaurant where he was eating.\textsuperscript{328} Pastor followed Landa outside and continued the confrontation.\textsuperscript{329} Landa warned Pastor to leave him alone because he had a gun, but Pastor persisted.\textsuperscript{330} Landa ultimately shot and non-fatally wounded Pastor but was not charged with a crime.\textsuperscript{331}

Another example involved the shooting death of Brandon Patrick Baker by Seth Browning.\textsuperscript{332} Baker had apparently been tailgating Browning when Browning pulled over to confront him.\textsuperscript{333} The confrontation escalated resulting in the shooting death of Baker.\textsuperscript{334} Browning was not charged.\textsuperscript{335} Many other examples abound as reflected in the study conducted by the \textit{Tampa Bay Times}.\textsuperscript{336} In nearly half of the reported cases of violence, charges are not ever filed.\textsuperscript{337}

The fact that Zimmerman’s criminal prosecution was an aberration as compared to other similar cases from around the state evidences
society’s influence, as expressed through the media, on the prosecutor’s choices. Had it not been for the demands from the NAACP and the increasing civil unrest during the Spring of 2012, law enforcement likely would not have arrested Zimmerman at all.\textsuperscript{338} Without the media attention, Governor Scott likely would not have even known of the case or appointed a special prosecutor. The oppositional narrative of the minority reflects shifting society values with regard to acts of violence and fear of the “Other.”\textsuperscript{339} The fact that Zimmerman was prosecuted demonstrates a small step the law has taken toward adapting to reflect the changing norm. The majority position, however, remains dominant as expressed by the task force in its recommendation not to amend the statutes.\textsuperscript{340}

2. The Defense Team’s Decision to Not Claim Immunity

Although the special prosecutor determined enough cause existed to charge George Zimmerman with manslaughter for the shooting death of Trayvon Martin, Zimmerman still could have claimed immunity under section 776.032 by filing a motion to dismiss under Florida Rule of Criminal Procedure 3.190(c)(4).\textsuperscript{341} Such a motion would have required he submit an affidavit swearing to the facts as outlined in the affidavit and then detailing his argument supporting his entitlement to immunity.\textsuperscript{342}

Because the witness statements supported Zimmerman’s assertion that he feared great bodily harm, as a matter of law he would have been entitled to dismissal of his case under either section 776.012 or section 776.013(3).\textsuperscript{343} That reasonable belief was based on the fact that he had been pinned to the ground by Trayvon Martin, who was on top of him and punching him in the face.\textsuperscript{344} As explained in Section II(B)(1), above, Zimmerman only needed to subjectively believe that great bodily harm

\begin{footnotesize}
\begin{enumerate}
\item Howerton, supra note 300.
\item Low, supra note 223.
\item Task Force, supra note 26.
\item Fla. R. Crim. P. 3.190(c)(4).
\item Id.
\item Zimmerman Case File, supra note 258, at 86-103.
\end{enumerate}
\end{footnotesize}
might occur in order to claim immunity. In this case, the proof was
even stronger because great bodily harm actually did occur, as evidenced
by Zimmerman's broken nose and the lacerations to his head.

The discovery materials filed by the State of Florida in the Zimmer-
man case reflect a remarkably homogenous account of the events
immediately preceding the shooting incident. Rarely are witness state-
ments so consistent as to provide such a detailed and uniform account
of an event seen and heard by so many people.

The physical encounter between Zimmerman and Martin occurred in
a common area surrounded by townhouses. A number of those residents either saw or heard the event. Eyewitnesses described the
encounter as Zimmerman being pinned to the ground underneath Martin
as Martin punched Zimmerman relentlessly. Some also stated that
Zimmerman was the individual calling for help. The accounts as to
the calls for help were corroborated by Martin's own father on February
28, 2012, when he met with Investigator Serino at the Sanford Police
Department. Tracy Martin, Trayvon's father, was meeting with
Investigator Serino to obtain an update on the case involving his son's
depth. Investigator Serino decided to play the six 911 calls for Mr.
Martin "to provide a better understanding . . . as to why the individual
who shot his son was not arrested and charged with homicide." One
of the tapes captured a voice "yelling for help multiple times." When
Investigator Serino asked him if that voice belonged to his son, "Mr.
Martin, clearly emotionally impacted by the recording, quietly responded,
'No.'"

§§ 776.012, 776.032.

Great bodily harm may be established through proof of broken bones, scarring,
As he was being punched in the face and his head pounding the ground, Zimmerman
reasonably believed he was in imminent danger of suffering great bodily harm.

Zimmerman Case File, supra note 258, at 14.

Id. at 80-103.

Id.

Id.

Id.

Id.

Id.

Id. at 56.
Nevertheless, the media narrative included controversy over the calls for help and some media outlets asserted that Martin was the person crying for help.\footnote{355} In fact, analysis of the voice on the recording became an issue at trial and was hotly debated, with the mothers of both Zimmerman and Martin claiming they heard their son’s voice on the tape.\footnote{356} Additionally, part of the media narrative painted Zimmerman as the initial aggressor\footnote{357} although conflicting positions did emerge regarding Florida’s initial aggressor law and its applicability.\footnote{358} The argument that Zimmerman acted as the initial aggressor was based on the recording of the non-emergency call placed by Zimmerman.\footnote{359} On that recording, when Zimmerman confirms that he is following Martin, the operator says, “We don’t need you to do that.”\footnote{360} That statement was later reported as an order that Zimmerman did not follow.\footnote{361} According to Zimmerman, he


\footnote{359} Zimmerman Ignored Dispatcher, supra note 357.

\footnote{360} 911 Call Audio, supra note 166.

\footnote{361} William A. Jacobson, Soap in a Sponge: The Enduring Myth That George Zimmerman Was Told Not to Get out of His Car, LEGAL INSURRECTION (July 17, 2013,
lost track of Martin and was heading back to his vehicle when Martin suddenly confronted him. The media coverage, on the other hand, reported that Zimmerman continued his pursuit of Martin despite the admonishment not to do so. Prosecutors relied on the “initial aggressor” theory in charging Zimmerman, but at trial the jury was not instructed regarding initial aggressors. The court’s refusal to instruct the jury on initial aggressors has been identified as the most influential factor in the acquittal.

Considering the theory of embodied rationality and the personal life experiences of both Zimmerman and Martin, they both could have reasonably believed the other was the initial aggressor. Through both the media and law enforcement narratives, Trayvon Martin was legally justified in confronting Zimmerman because he could have reasonably perceived Zimmerman as an aggressor. Martin could have reasonably believed it was necessary to use force to defend against death or great bodily harm as a result of being followed by Zimmerman, who was a stranger to him. Based on the fact that Florida law does not require


362 Martin, supra note 357.


364 “Zimmerman got out of his vehicle and followed Martin. When the police dispatcher realized Zimmerman was pursuing Martin, he instructed Zimmerman not to do that and that the responding officer would meet him. Zimmerman disregarded the police dispatcher and continued to follow Martin who was trying to return to his home. Zimmerman confronted Martin and a struggle ensued.” State of Florida v. George Zimmerman, N.Y. TIMES (Apr. 12, 2012), http://www.nytimes.com/interactive/2012/04/12/us/13shooter-document.html.


366 See supra note 365 and accompanying text.
a duty to retreat, Martin would have been justified in “standing his ground” and confronting Zimmerman. Additionally, because Zimmerman had lost sight of Martin before the physical encounter began, Zimmerman also could have reasonably believed it was necessary to use force to prevent great bodily harm once Martin punched him in the face.367 Furthermore, at whatever point in the physical encounter that Zimmerman could no longer safely escape, he would have been authorized by law to use deadly force.368

The question whether Zimmerman pursued Martin, and to what extent, speaks directly to whether Zimmerman was the initial aggressor by provoking a use of force by Martin. As an initial aggressor, Zimmerman would have had more difficulty asserting immunity for the shooting, though it would not necessarily have precluded it entirely.369 Notwithstanding, even if Zimmerman was the initial aggressor, Florida statutes still would have recognized his justified use of deadly force under these circumstances.370 Section 776.041 provides that a claim of self-defense is not available to anyone who

initially provokes the use of force against himself or herself, unless: (a) Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant.371

In other words, if someone is an initial aggressor, that person is required to retreat, if reasonably possible, before using deadly force.372 If safe retreat is not an option, the initial aggressor may use force to prevent death or great bodily harm.373

Furthermore, nothing in the immunity statute precludes immunity for a person justified in using force even if that person acted as the initial

367 See, e.g., Martin, supra note 357.
369 See id.
370 Id.
371 Id.
372 Id.
373 See id.
aggressor. The immunity statute specifically mandates immunity for any person justified in using force pursuant to sections 776.012, 776.013, and 776.031. For the initial aggressor justified in using force, the statutory language of the exception tracks word-for-word the language of Florida Statute 776.012. Therefore, it is reasonably arguable that even an initial aggressor could claim immunity for a justified use of force so long as the aggressor has attempted retreat or established that safe retreat was not possible.

Based on the facts available, it is unclear precisely why the defense team did not file a motion to dismiss claiming immunity in this case. Not only did the police reports and witness statements support Zimmerman’s reasonable belief that the use of force was necessary to prevent great bodily harm, the defense never accepted the assertion that Zimmerman might have been the initial aggressor. In fact, early on, the defense team foreshadowed that Stand Your Ground would be a “facet” of the defense, and because of the defense’s successful arguments that Zimmerman was not the initial aggressor, the judge ruled against instructing the jury on that law.

Because of the flashpoint effect of this case, the national attention, and the related civil rights issues, the defense team exercised caution throughout the entire process. At the first hearing, defense attorney Mark O’Mara stated, “[Zimmerman] has a lot of hatred focused on him right now, ’... I’m hoping that the hatred settles down now that we’re moving forward.” The hatred did not settle down, though, and the defense team likely had it in mind when considering possible defense strategies. As a matter of law, a motion to dismiss could have been filed and, had it been filed, it probably should have been granted.

374 See id. § 776.032.
375 See id.
376 See id. § 776.041(2)(a) (justifying the use of deadly force by an aggressor when “such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm”); see also id. § 776.012(1) (justifying the use of deadly force when a person “reasonably believes that such force is necessary to prevent imminent death or great bodily harm”).
377 Zimmerman Case File, supra note 258, at 80-103.
378 Hornsby, supra note 358.
379 Zimmerman Ignored Dispatcher, supra note 357.
380 Aboise, supra note 365.
381 Zimmerman Ignored Dispatcher, supra note 357.
That said, the potential societal backlash was significant. The Zimmerman case had already deeply divided the community of Sanford, Florida. In fact, "Civil rights leader Al Sharpton [even] warned commissioners that Sanford risked becoming a 21st century version of civil rights struggle in the South during the 1960s." To win on Stand Your Ground would have seemed like a technicality, even though legal experts predicted dismissal was likely. The defense, therefore, likely only contemplated whether the motion to dismiss should be filed rather than whether it could be.

3. Excluded Evidence as to the Victim's Character Might Have Supported Self-Defense

A strong feature of the media narrative portrayed Trayvon Martin as an innocent child, though admittedly some media outlets confronted this portrayal as a myth and sought to demonize Martin as a thug or gang-banger. Thus, when defense attorneys sought to introduce character evidence showing Martin's propensity for violence, the court strongly resisted and ultimately excluded any such evidence.

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382 Martin Was the Aggressor, supra note 299.
Generally, character evidence and specific prior acts of the victim are inadmissible to show behaviors in conformity with the character at a given time.\textsuperscript{387} Notwithstanding, when a defendant claims self-defense, section 90.401(1)(b) permits “evidence of prior specific acts of violence by the victim . . . to reveal the reasonableness of the defendant’s apprehension at the time of the incident.”\textsuperscript{388} Furthermore, evidence as to reputation is admissible to corroborate any testimony showing a victim’s propensity toward violence.\textsuperscript{389}

The distinction between character and reputation is delicate. Evidence as to the victim’s reputation would tend to show that the defendant’s description of the victim’s violent acts is likely to be true.\textsuperscript{390} On the other hand, character evidence is “only admissible to prove the reasonableness of the defendant’s apprehension,” and therefore goes directly to the defendant’s state of mind.\textsuperscript{391} Thus, it is imperative that the defendant have knowledge of the character or specific acts prior to eliciting that evidence at trial.\textsuperscript{392}

The evidence as to Martin’s character and reputation that the defense sought to introduce included information collected from social media sites and behavior reports from Martin’s school.\textsuperscript{393} According to this information, Martin might not have been as innocent as he was portrayed by some. He posted information about obtaining a gun, fighting, and otherwise engaging in violent behavior.\textsuperscript{394} He also posted about drug

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\bibitem{387} FLA. STAT. ANN. § 90.404(1) (West 2012).


\bibitem{389} Id. at 1002.

\bibitem{390} Id.

\bibitem{391} Id. (quoting Grace v. State, 832 So. 2d 224, 226 (Fla. Dist. Ct. App. 2002)).

\bibitem{392} “While reputation evidence may be offered to corroborate the defendant’s testimony by showing the victim’s propensity toward violence, specific act evidence is only admissible to prove the reasonableness of the defendant’s apprehension.” Savage, 99 So. 3d at 1002 (internal quotation marks omitted).


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use.\textsuperscript{395} In general, Trayvon Martin portrayed himself as a gangster, drug dealer, and thug.\textsuperscript{396} Although some of this information would have been irrelevant as related to any reputation for violence (such as smoking marijuana), at least some of the information regarding fighting and obtaining a gun would have tended to show a predisposition for violence, and thus, admissible as to reputation to supporting Zimmerman's theory of defense—that Martin violently attacked him.\textsuperscript{397} Notably, this evidence would not have been admissible to show character since Zimmerman had no prior knowledge of Martin.

Because a defendant is entitled to present evidence to support an asserted defense, the ruling to exclude evidence consistent with Martin's reputation for violence seems erroneous.\textsuperscript{398} The defense's efforts to present the evidence, however, were muddied and blended the issues of character and reputation, which also likely contributed to the exclusion of the evidence. By discussing irrelevant character evidence (such as drug use) with relevant reputation evidence, the defense team did not effectively distinguish between the appropriate uses of character and reputation evidence. The complexity of the arguments became so overwhelming that any person in the judge's position would have likely seen the evidence as tending to confuse the jury on the issues or mislead the jury entirely.

Additionally, confusion in the media as to the true nature of Martin likely influenced the decision to exclude the evidence. Any reputation evidence offered by the defendant would likely have been countered by the prosecution, and based on the media narratives, that counterargument would have portrayed Martin as a normal, innocent teenager. The potential for biased, incorrect, and misleading information to be presented to the jury was too great, and the judge likely considered that there was no need to disparage the character or reputation of the deceased. So even though Florida Rules of Evidence would have allowed admission of reputation evidence related to violence, social pressures coupled with the

\textsuperscript{395} Id.

\textsuperscript{396} Feldman, \textit{supra} note 385.

\textsuperscript{397} See Savage, 99 So. 3d at 1002 (quoting Grace, 832 So. 2d at 226).

confusion of the legal issues influenced the application of the law and the legal decisions made by the judge.\(^{399}\)

4. Both Prosecution and Defense Agree the Case Was Not About Stand Your Ground

Perhaps the most perplexing aspect of the trial was the insistence by both sides that Zimmerman’s case was not about Stand Your Ground.\(^{400}\) By the time this case got to trial, the media narrative vilified Stand Your Ground. The prosecution and defense’s characterizations of the nature of the case revealed that they both wanted to distance themselves from this monster of a statute.\(^{401}\)

The primary reason the attorney’s characterization makes little sense is that Florida’s self-defense statutes do not exist outside of Stand Your Ground.\(^{402}\) In both Florida statutes 776.012 and 776.013, a person does not have a duty to retreat and is justified in using deadly force to prevent death or great bodily harm.\(^ {403}\) The duty to retreat is not separate from self-defense anywhere in Florida’s statutory scheme; in fact, the duty to retreat is codified in the same sentence as self-defense.\(^{404}\) For that reason, saying Zimmerman’s case was not about Stand Your Ground is perplexing.

But unpacking the significance of that statement does shed light on the attorneys’ intentions. By the time of the trial, Stand Your Ground had come to be depicted as a technicality offering a “get out of jail free” card to criminals. Truth be told, it often works out that way, which is one of the significant problems with the statutes. Based on the Tampa Bay

\(^{399}\) See Savage, 99 So. 3d at 1002-03 (quoting Smith v. State, 606 So. 2d 641 643 (Fla. Dist. Ct. App. 2008)).


\(^{401}\) Id.; Sean Davis, No, George Zimmerman Wasn’t Acquitted Because of Florida’s “Stand Your Ground” Law, MEDIATRACKERS (July 22, 2013), http://mediatrackers.org/florida/2013/07/22/no-george-zimmerman-wasnt-acquitted-because-of-floridas-stand-your-ground-law.

\(^{402}\) See FLA. STAT. ANN. §§ 776.012, 776.013 (West 2005).

\(^{403}\) Though the statutory language bears slight differences between the two statutes, the general protection is substantially the same. See §§ 776.012, 776.013.

\(^{404}\) § 776.012.
Times study, described more fully above, the self-defense statutory scheme in fact does often work to the advantage of criminals with violent histories. Had the defense claimed this was a Stand Your Ground case, then, the client would have automatically become that criminal looking for a break on a technicality. It was much better, as far as strategy, to portray Mr. Zimmerman as the “innocent man” originally envisioned by the Florida legislature. By refusing to characterize his story as a Stand Your Ground narrative, the defense made a statement that Zimmerman would have been entitled to an acquittal even under the prior version of the statute. In this way, the jury could feel good about acquitting him because it was based on true self-defense, not just a technicality.

For the prosecution, the decision not to qualify this case under Stand Your Ground sent a very different message. As more fully explained above, the Stand Your Ground statutory scheme offers broad protections to anyone using force based on a reasonable belief it is necessary to prevent death or great bodily harm. The broadest protection offered is that of immunity from prosecution. Had the prosecution asserted that this was a Stand Your Ground case, it would have had to concede that Zimmerman was entitled to immunity (based on his physical injuries). It would have undermined the prosecution’s credibility, and it would have called into question the decision to charge Mr. Zimmerman at all. Thus, the decision to argue this case was not about Stand Your Ground resulted from the pressure initially exerted by the media to charge Zimmerman for killing Trayvon Martin. Once that happened, the prosecution had a difficult position in terms of how to classify the case. Ultimately, saying the case was not about Stand Your Ground played into the defense’s portrayal of Zimmerman as just an innocent man justified in protecting himself.

Conclusion

Societal norms are both reflected in and influenced by the media. Once Zimmerman shot Martin, various narratives emerged that both

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405 Study, supra note 8.
406 §§ 776.012, 776.032.
407 Id.
408 Boey, supra note 400.
conveyed and attempted to sway existing societal values and norms. One clear revelation is that a growing minority is no longer willing to accept the racialization of the “Other.” In other words, a value is being expressed that fears related to the “Other” are illegitimate when the basis for classification of “Other” is race or visible ethnic identity.

Another obvious message relates to the manipulation by both the majority and minority voices on this issue to garner support. Both sides tapped into the media to advance competing narratives about the reasonability of Zimmerman’s actions in shooting and killing Trayvon Martin. Currently, Florida law reflects the values expressed by endorsers of Stand Your Ground, many whom argue Martin was a thug, or at least appeared to be. These attitudes are reflective of typical American all-or-none judgments; they are the same types of judgments Zimmerman and Martin embraced regarding each other as “Other” when they both stood their ground.

The strength of the opposition voice throughout the Zimmerman investigation and trial evidences a changing cultural tide. The tide was strong enough to pressure the state into charging Zimmerman in the shooting death even though the statutory law suggests he probably should not have been. It was also strong enough to influence defense trial strategies and court rulings. This tide was so powerful that it even influenced the entire characterization of the case. Although not strong enough to effect legislative change yet, the opposition voice does reflect evolving societal norms that signal a decline in Stand Your Ground’s power and authority over the people. To maintain power and authority, statutory law must eventually progress to prevent wholly or permanently losing power and authority.

Although the Florida legislature may be wise to consider the potential for manipulation of societal norms and values through the media and exercise caution when considering amendments to the self-defense statutory scheme, the failure to heed demands to bring the law in line with progressing societal norms and values may result in loss of sovereign power. Reliable data and evidence support the conclusion that the current statutory scheme in Florida promotes, if not outright encourages, the use of violence to resolve disputes. It permits conflicts to escalate, even to the point of death because it empowers each person to stand ground in the face of fear of death or imminent bodily harm. Not only does the law permit such behavior, it immunizes violent offenders from prosecution
under such circumstances, eliminating any accountability whatsoever for the loss of life in a given circumstance. This type of statutory endorsement of violence brands society with immense bravado shielded by a false hope of immortality.

The cultural message as expressed through the Zimmerman case media reports indicates Florida’s statutory scheme is inconsistent with the values held by a majority of its citizens. Because the law is controversial and poorly received by many, little consensus can be reached regarding how it should apply or be administered in particular circumstances. Presently, the minority voice is challenging the categories created by Florida’s Stand Your Ground statutory scheme and its imagistic endorsement of unfettered violence against the “Other.” The message is not unclear, but until the tension between the values expressed in the law and the values expressed by society is resolved, violence will likely escalate.