

## ESSAY

# The Murder of Black Males in a World of Non-Accountability: The Surreal Trial of George Zimmerman for the Killing of Trayvon Martin

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*“Nothing predicts future behavior as much as past impunity.”<sup>1</sup>*

*“[N]othing makes you feel more black in America than experiencing police mistreatment. Very few modern oppressions convey the permanence of racism—individual and institutional—like the ritual of unpunished police abuse.”<sup>2</sup>*

In the face of the ugly violence against civil rights protesters in Birmingham, Alabama, broadcast nightly on the TV network news throughout the long hot summer of 1963, President John F. Kennedy gave an impassioned speech to the nation:

We are confronted primarily with a moral issue. It is as old as the Scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated.<sup>3</sup>

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1. Jane Mayer, *Torture and the Truth*, NEW YORKER (Dec. 22, 2014), <http://www.newyorker.com/magazine/2014/12/22/torture-truth> (quoting Darius Rejali, professor of political science at Reed College and an expert on torture regimes).

2. David Dante Troutt, *Imagining Racial Justice in America*, NATION, Dec. 29, 2014, at 17.

3. John F. Kennedy, Civil Rights Address (June 11, 1963).

Those words retain their impact in our times, in so many ways, but particularly in light of recent events in Ferguson, New York, Cleveland, Charleston, Baltimore, and other cities where unarmed black men have been killed by white police officers. It has been reported that a black male is killed by police (or security guard) at the rate of once every two days.<sup>4</sup> As staggering as that statistic is, more shocking is the *almost total* lack of accountability—either by criminal or civil litigation, or even internal disciplinary action—following these killings. It was just such indifference to the extinguishing of black lives that led to the formation of the National Association for the Advancement of Colored People (NAACP) over one hundred years ago.<sup>5</sup>

This Essay will explore one of the rare killings that actually went to indictment and trial. But it does not involve a duly-sworn police officer. George Zimmerman was a “wannabe” cop,<sup>6</sup> a “neighborhood watch” civilian enrolled in criminal justice courses, armed with a semi-automatic handgun, who profiled 17-year-old Trayvon Martin, stalked him, and shot him to death.<sup>7</sup> It took 42 days for local authorities to finally arrest and charge Zimmerman, and only in response to tremendous pressure from civil rights groups and marches and rallies around the country.<sup>8</sup> He was “prosecuted,” and ultimately acquitted on July

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4. See Monica Davey & Manny Fernandez, *Security in Ferguson is Tightened after Night of Unrest*, N.Y. TIMES (Nov. 25, 2014), <http://www.nytimes.com/2014/11/26/us/ferguson-missouri-violence.html>. An analysis by the news organization Pro Publica concludes that black males are at 21 times the risk of being shot dead by police than their white counterparts. See Brent Staples, *Race and Death in Police Shootings*, N.Y. TIMES (Oct. 10, 2014), <http://takingnote.blogs.nytimes.com/2014/10/10/whos-killing-all-those-black-men-and-boys/>. We have witnessed the fatal shootings of Michael Brown in Ferguson, twelve-year-old Tamir Rice (playing with a toy gun in a playground) in Cleveland, Akai Gurley in a darkened stairway in a Brooklyn housing project, Walter Scott in Charleston, and Eric Garner choked to death on a Staten Island street corner. Not one of these victims posed any real threat to the officer.

5. NAACP: 100 Years of History, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, <http://www.naacp.org/pages/naacp-history> [https://perma.cc/W855-CLLQ]. The “impunity for the murder of black men remain[s] America’s great, though mostly invisible, race problem.” Jennifer Gonnerman, *Jill Leovy’s ‘Ghettoside,’* N.Y. TIMES (Jan. 21, 2014), <http://www.nytimes.com/2015/01/25/books/review/jill-leovys-ghettoside.html> (quoting JILL LEAVY, GHETTOSIDE). We’ve allowed black lives to become “cheap. . . . Where the criminal justice system fails to respond vigorously to violent injury and death, homicide becomes endemic.” *Id.*

6. It was revealed at trial that Zimmerman was working towards a criminal justice degree and unsuccessfully applied to at least one police force for appointment as an officer. Video [WFTV 9 in Sanford recorded the entire trial & it available on its website], Day 16, Part 11. <https://www.youtube.com/watch?v=F4a006Yo2Jo&index=35&list=PLYEBn4w1XOIeEsllyfTohqC6BQLI81vx&spfreload=5>.

7. Greg Botelho, *What Happened the Night Trayvon Martin Died*, CNN, <http://www.cnn.com/2012/05/18/justice/florida-teen-shooting-details/> [https://perma.cc/X4MM-LHQC].

8. Wil Haygood, Brady Dennis & Sari Horwitz, *Trayvon Martin’s Killing Galvanizes Florida Community, Civil Rights Groups*, WASH. POST (Mar. 21, 2012), <https://www.washingtonpost.com>

13, 2013, setting off protests across the nation.<sup>9</sup> The quotation marks set the theme of this piece—that the prosecutors committed the most inexplicable strategic and evidentiary blunders of a type that experienced prosecutors would very likely not commit in a more *earnest* effort to convict the accused.<sup>10</sup>

Trayvon Martin's murder and the subsequent trial have been identified as "a turning point" in the evolution of what is now known as the Black Lives Matter movement.<sup>11</sup> Parallels were drawn to the infamous case of Emmett Till, an African American teenager from Chicago visiting relatives in Mississippi in 1955, brutally murdered after reportedly flirting with a white woman.<sup>12</sup> Some trace the modern civil rights movement to the outcry over the acquittal of Till's killers by an all-white jury.<sup>13</sup>

President Barack Obama spoke publically about the Trayvon Martin case in deeply personal terms: "If I had a son, he'd look like Trayvon."<sup>14</sup>

#### POLICE USE OF LETHAL FORCE

Police (like Ian Fleming's James Bond) have a license to kill, and in the case of African-Americans, it is exercised with some frequency. As a matter of law, it is a *limited* license—an officer may use deadly force *only* when necessary to prevent the escape of a person whom the officer has probable cause to believe poses a significant threat of death or serious physical injury to the officer or others, or when the officer *reasonably believes* the subject is an imminent lethal threat to himself or others.<sup>15</sup>

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.com/politics/trayvon-martins-killing-galvanizes-florida-community-civil-rights-groups/2012/03/21/gIQAbQslSS\_story.html.

9. See Mychal Denzel Smith, *How Trayvon Martin's Death Launched a new Generation of Black Activist*, NATION (Sept. 15, 2014), <http://www.thenation.com/article/how-trayvon-martins-death-launched-new-generation-black-activism/>.

10. Lisa Bloom, in her insightful book *SUSPICION NATION*, writes the "overlooked evidence, lack of witness preparation, and poor strategic choices made by the state's attorneys were nothing short of astonishing." LISA BLOOM, *SUSPICION NATION* 175 (2014).

11. Mychal Denzel Smith, *The Rebirth of Black Rage*, NATION (Aug. 31, 2015), <http://www.thenation.com/article/the-rebirth-of-black-rage/>.

12. Haygood, Dennis & Horwitz, *supra* note 8.

13. *Id.*

14. Krissah Thompson & Scott Wilson, *Obama on Trayvon Martin: 'If I Had a Son, He'd Look Like Trayvon'*, WASH. POST (Mar. 23, 2012), [https://www.washingtonpost.com/politics/obama-if-i-had-a-son-hed-look-like-trayvon/2012/03/23/gIQApKPPVS\\_story.html](https://www.washingtonpost.com/politics/obama-if-i-had-a-son-hed-look-like-trayvon/2012/03/23/gIQApKPPVS_story.html).

15. See generally *Tennessee v. Garner*, 471 U.S. 1, 12 (1985).

Not surprisingly, the Supreme Court case that established this standard in 1985, *Tennessee v. Garner*, involved the police killing of a fifteen-year-old black male fleeing a suburban home he was suspected of having burglarized (ten dollars and a purse from the house were found on his body).<sup>16</sup> Tellingly, it has been revealed that the Ferguson grand jury that cleared officer Darren Wilson in the death of Michael Brown were misinformed about the correct standard to apply to his actions—the district attorney instructed the jurors that all that was required of a police officer was *his own belief* that he was in danger.<sup>17</sup>

The *reality* of the police license to kill is something very different. Prosecutors stubbornly refuse to hold officers to this standard, or any standard. And even when they pursue criminal charges, jurors, bombarded by the media with a constant barrage of “scary black men” stories, often refuse to convict. Police can become quite well rehearsed in the “exoneration narrative”<sup>18</sup> that will be their get-out-of-jail-free card: the black male suddenly developed demonic super-human strength, intent on the immediate demise of the officer, leaving the latter no choice but to kill.<sup>19</sup> The stories are spiced with what the officers probably imagine as ghetto profanities like “MF” and

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16. *Id.* at 4.

17. Frank Vyan Walton, *Missouri AG Confirms Michael Brown Grand Jury Mislead by St. Louis DA*, DAILY KOS (Dec. 4, 2014 4:54PM), <http://www.dailykos.com/story/2014/12/04/1349421/-Missouri-AG-Confirms-Michael-Brown-Grand-Jury-Misled-by-St-Louis-DA#>.

18. See Troutt, *supra* note 2, at 18.

The following is from *The Wire*, the highly acclaimed real-life HBO drama about policing in Baltimore. The lieutenant has just arrived on the scene where a black teenager has been brutally assaulted by a white officer using his service weapon handle, in the total absence of any justification.

Lieutenant: Now tell me, who cold-cocked the kid?

Officer: Me.

Lieutenant: Why?

Officer: He pissed me off.

Lieutenant. No, Officer Pryzbylowski, he did not piss you off. He made you fear for your safety and that of your fellow officers. I’m guessing now, but maybe he was seen to pick up a bottle and menace officers Hauk and Carver both of whom had already sustained injury from flying projectiles. Rather than use deadly force in such a situation maybe you elected to approach the youth, ordering him to drop the bottle. Maybe when he raised the bottle in a threatening manner you used a Kel-Light, not the handle of your service weapon to incapacitate the suspect. *Go practice.*

*The Wire: The Detail* (HBO television broadcast June 9, 2002). Any perceived disrespect or challenge to their authority, dubbed “contempt of cop,” may result in the use of brutal force. Farah Stockman, *Trigger-Happy Ferguson Police, Trigger-Shy Secret Service*, BOS. GLOBE (Oct. 7, 2014), <https://www.bostonglobe.com/opinion/2014/10/06/trigger-happy-ferguson-police-trigger-shy-secret-service/RSjHRwEALPHuIiyqxxhOO/story.html>.

19. Michael Brown, according to the officer’s account, reacted with profanities and threats when asked to walk on the sidewalk, and then exploded like “Hulk Hogan,” with “the most intense and aggressive face, like a demon.” Bruce A. Singal, *Was the Ferguson Grand Jury Riggged?*, MASS. LAW. WKLY. (Dec. 15, 2014).

“homey.”<sup>20</sup> What is missing is any sense of regret or remorse, as the shooters invariably state publicly that their consciences are quite clear.<sup>21</sup>

The Supreme Court has played its part as well in maintaining a regime of non-accountability. In *Plumhoff v. Rickard*, decided only months before Ferguson, the Court overturned two lower court decisions denying summary judgment on the qualified immunity defense in a § 1983 action.<sup>22</sup> It found no fault with the officers, who in six pursuing cruisers had fired fifteen shots at the fleeing motorist, initially stopped for a headlight violation, killing him and his passenger.<sup>23</sup> Writing for a rare unanimous Court, Justice Alito held that “[i]t stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.”<sup>24</sup> A passenger’s presence in the vehicle does not bear on the reasonableness of the officer’s use of lethal force, according to the decision.<sup>25</sup>

Years before, in *Scott v. Harris*, the Court also reversed two lower courts and itself granted summary judgment to a county deputy who had ended a car chase by ramming the pursued vehicle, overturning it down an embankment, and leaving the motorist a quadriplegic.<sup>26</sup> Viewing a videotape of the events, the Court (over Justice Stevens’ dissent)<sup>27</sup> determined that the danger posed by the fleeing vehicle jus-

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20. The unfortunate phenomenon of police “testilying” has been documented in other contexts. See Alan Dershowitz, *Controlling the Cops; Accomplices to Perjury*, N.Y. TIMES (May 2, 1994), <http://www.nytimes.com/1994/05/02/opinion/controlling-the-cops-accomplices-to-perjury.html>; *Testimony of Alan Dershowitz Before the H. Rep. Judiciary Comm.*, 105th Cong. (1998), [http://www.constitution.org/lrev/dershowitz\\_test\\_981201.htm](http://www.constitution.org/lrev/dershowitz_test_981201.htm); Anthony Flint, *Bratton Calls ‘Testilying’ by Police a Real Concern*, BOS. GLOBE, Nov. 15, 1995, at 1.

21. Daryl Wilson, killer of Michael Brown, told ABC News his conscience was clear. See Darryl Pinckney, *In Ferguson*, N.Y. REV. BOOKS (Jan. 8, 2015), <http://www.nybooks.com/articles/2015/01/08/in-ferguson/>. In a July 20, 2012 interview with Sean Hannity on FOX News (introduced at trial by the state on Day 16), George Zimmerman described his killing of Trayvon Martin as “part of God’s plan,” about which he had no regrets. Robert Schlesinger, *George Zimmerman and God’s ‘Plan’ to Kill Trayvon Martin*, U.S. NEWS (July 19, 2012, 5:20 PM), <http://www.usnews.com/opinion/blogs/robert-schlesinger/2012/07/19/george-zimmerman-and-gods-plan-to-kill-trayvon-martin>.

22. *Plumhoff v. Ricard*, 134 S. Ct. 2012 (2014).

23. *Id.* at 2024.

24. *Id.* at 2022.

25. *Id.*

26. *Scott v. Harris*, 550 U.S. 372 (2007).

27. The Court “used its observation of the video as an excuse for replacing the rule of law with its ad hoc judgment. . . . Whether a person’s actions have risen to a level warranting deadly force is a question of fact best reserved for a jury.” *Id.* at 394–95 (Stevens, J., dissenting).

tified the officer's actions, clothing him in qualified immunity, and thus there was no need to proceed to a jury trial on the matter.<sup>28</sup>

In short, use of lethal force by police officers is not meaningfully subject to judicial review, and certainly will rarely be assessed by a jury. The Supreme Court has facilitated the summary dismissal of police misconduct civil actions based on the qualified immunity defense, and has also placed additional procedural obstacles like standing to sue<sup>29</sup> in the path of possible redress for victims.

Police officers are even more rarely subjected to the criminal process, and almost never held accountable when they are. The Los Angeles officers who brutally beat Rodney King following a high-speed chase in 1991 were acquitted of assault charges even though an onlooker's videotape clearly showed the unprovoked attack by five officers surrounding the helpless victim on the ground.<sup>30</sup> The New York City officers who fired 41 shots at unarmed African immigrant Amadou Diallo in the vestibule of his Bronx apartment in 1999 were indicted and tried for his murder, but the trial was moved to Albany, where the officers were cleared of all charges.<sup>31</sup>

Police in Massachusetts have reportedly shot to death 73 people in the past twelve years, with only three having been presented to a grand jury.<sup>32</sup> Typically, a New York grand jury declined to indict the officer who killed Eric Garner with an illegal chokehold while attempting to arrest him for illegal sale of loose cigarettes, *all caught on video*.<sup>33</sup>

Whatever benefit of the doubt sworn police officers have under law and practice, however, obviously does not inure to a civilian like George Zimmerman in his use of lethal force.

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28. *Id.* at 386.

29. See e.g., *City of Los Angeles v. Lyons*, 461 U.S. 95, 105–06 (1983).

30. Seth Mydans, *The Police Verdict*, N.Y. TIMES, [http://www.nytimes.com/1992/04/30/us/the-police-verdict-los-angeles-policemen-acquitted-in-taped-beating.html?rref=collection%252Ftimestopic%252FKing%252C%20Rodney%20Glen&action=click&contentCollection=timestopics&region=stream&module=stream\\_unit&version=search&contentPlacement=2&pgtype=collection](http://www.nytimes.com/1992/04/30/us/the-police-verdict-los-angeles-policemen-acquitted-in-taped-beating.html?rref=collection%252Ftimestopic%252FKing%252C%20Rodney%20Glen&action=click&contentCollection=timestopics&region=stream&module=stream_unit&version=search&contentPlacement=2&pgtype=collection). A subsequent federal civil rights trial resulted in guilty verdicts against two of the officers. CNN Wire Staff, *A Timeline of Events in Rodney King's Life*, CNN, <http://www.cnn.com/2012/06/17/us/rodney-king-timeline/>.

31. Jane Fritsch, *The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting Are Acquitted Of All Charges*, N.Y. TIMES (Feb. 26, 2000), <http://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html?pagewanted=all>.

32. Jack Sullivan, *Clearing the Cops*, COMMONWEALTH, 2014, at 29, 33.

33. Lauren Gambino, *Eric Garner: Grand Jury Declines to Indict NYPD officer Over Chokehold Death*, THE GUARDIAN (Dec. 3, 2014, 5:43 PM), <http://www.theguardian.com/us-news/2014/dec/03/eric-garner-grand-jury-declines-indict-nypd-chokehold-death>.

## THE KILLING OF TRAYVON MARTIN

On the evening of February 26, 2012, Trayvon Martin, a seventeen-year-old African American, was returning from a convenience store to the townhouse of his father's fianc\_e in a gated community in Sanford, Florida.<sup>34</sup> Martin caught the eye of George Zimmerman, who had organized a neighborhood watch program and was armed with a 9 mm semiautomatic handgun.<sup>35</sup> Zimmerman called 911 (non-emergency) and described Martin as a guy who "looks like he's up to no good or he's on drugs or something. It's raining and he's just walking around looking about."<sup>36</sup> Referring to the black teen in the context of previous burglaries and home invasions in the area, Zimmerman complained to the 911 dispatcher "These assholes. They always get away," and later referred to "these f-ing punks."<sup>37</sup>

It was later revealed that all three previous "suspicious person" 911 calls Zimmerman had made also identified young black males.<sup>38</sup> Somehow, however, the prosecutors were unable to convey to the trial jury this simple narrative of racial profiling and stalking by a vigilante not acting under color of law.

Zimmerman reported on the 911 call that the subject was running away, but against the explicit instructions of the dispatcher *not* to follow him, he pursued Martin, ending in a confrontation in which Zimmerman shot the unarmed youth once in the heart, killing him instantly.<sup>39</sup>

Police investigators concluded that Martin, who was not involved in any criminal activity at the time and had no criminal record (his body could not be identified by any fingerprints in police files), was "running generally in the direction of where he was staying as a guest in the neighborhood," and "[t]he encounter between George Zimmerman and Trayvon Martin was ultimately avoidable, if Zimmerman had remained in his vehicle and awaited the arrival of law enforcement, or

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34. Botelho *supra* note 7.

35. Botelho *supra* note 7; Campbell Robertson & John Schwartz, *Shooting Focuses Attention on a Program That Seeks to Avoid Guns*, N.Y. TIMES, <http://www.nytimes.com/2012/03/23/us/trayvon-martin-death-spotlights-neighborhood-watch-groups.html> (article about Zimmerman starting the neighborhood watch).

36. *Audio: Calls from Zimmerman, Neighbor Capture Last Minutes of Martin's Life*, WASH. POST (May 20, 2012), <http://www.washingtonpost.com/wp-srv/special/nation/last-minutes-trayvon-martin-911-calls/>.

37. *Id.*

38. William M. Welch, *Police: Trayvon Martin Shooting 'Avoidable'; Large Cache of Evidence Released in Zimmerman Case*, USA TODAY, May 18, 2012, at 3A.

39. *Calls from Zimmerman*, *supra* note 34; Welch, *supra* note 36.

conversely if he had identified himself to Martin as a concerned citizen and initiated dialog in an effort to dispel each party's concern."<sup>40</sup>

Six minutes had transpired from Zimmerman's call to 911 and his firing of the shot into Martin's heart. Police arrived less than a minute later.<sup>41</sup> There were no eyewitnesses to the events, although some neighbors had seen the two men scuffling on the ground and heard one calling for help, but could not agree on which one it was.

Zimmerman claimed he acted in self-defense: that Martin jumped on top of him, tried to smother him, repeatedly slammed his head into concrete (twenty times), said he would kill him, and finally reached for his holstered gun.<sup>42</sup> Notwithstanding the lack of any physical evidence to support this story – the absence of any of Martin's DNA on the gun or holster, the absence of any of Zimmerman's DNA under Martin's fingernails,<sup>43</sup> the absence of injuries consistent with his assertion of Martin's violence against him –<sup>44</sup> and the fact that Zimmerman's gun was hidden in a back holster that could not have been seen by Martin, as well as Zimmerman's considerable size advantage over the 158-pound (described as skinny in testimony during the trial) unarmed teen, the local authorities accepted his version of events at face value, with no independent investigation.

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40. Eyder Peralta, *New Evidence Released: Trayvon Martin Had Traces of Pot in System*, NPR (May 17, 2012, 10:06 PM), <http://www.npr.org/sections/thetwo-way/2012/05/17/152948727/new-evidence-released-trayvon-martin-had-traces-of-pot-in-system>.

41. SANFORD POLICE DEP'T, SPD MAJOR CRIMES: REPORT OF INVESTIGATION (2012), <http://i2.cdn.turner.com/cnn/2012/images/05/17/zimmerman.investigation.reports.pdf>.

42. SANFORD POLICE DEP'T, NARRATIVE REPORT (2012), [http://i2.cdn.turner.com/cnn/2012/images/06/21/written\\_statement\\_0226.pdf](http://i2.cdn.turner.com/cnn/2012/images/06/21/written_statement_0226.pdf).

43. DNA analysis excluded Martin from the grip of the weapon, and results from the trigger, slide, and holster were inconclusive. FLORIDA DEPARTMENT OF LAW ENFORCEMENT, LABORATORY REPORT, March 26, 2012; *George Zimmerman Trial – Day 8 – Part 3*, YOUTUBE (July 3, 2013), <https://www.youtube.com/watch?v=Zq006zh3e08&index=37&list=PLY-EBn4w1XOIeEsjIiyfTohqC6BQLI81vx> (testimony of DNA Expert Anthony Gorgone).

44. The assessment by the EMT's of the Sanford Fire Department on the night of the shooting records abrasions to Zimmerman's forehead, a small laceration to the back of the head, and a bloody nose, with no treatment required, clearly contradicting his complaint that he had been assaulted and his head struck repeatedly on concrete pavement. SANFORD POLICE DEP'T, INCIDENT NUMBER 2-1372 (Feb. 26, 2012), <http://www.axiomamnesia.com/TrayvonMartinFiles/TwinLakesShootingInitialReport.pdf> [hereinafter SANFORD POLICE DEP'T, INCIDENT REPORT]. Trayvon Martin was noted to have a single gun-shot wound to the center of the chest. Botelho *supra* note 7.

Testifying at trial, Medical Examiner Valerie Rao described Zimmerman's injuries as insignificant and requiring no treatment other than band aids. *George Zimmerman Trial – Day 7 – Part 3*, YOUTUBE (July 2, 2013), <https://www.youtube.com/watch?v=qqpDdDw-3Y&index=31&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx>. Zimmerman was in no way incapacitated after the events. *Id.* In her opinion, he suffered between one and three impacts of his head onto a rough surface, and one blow to the face. *Id.* She discounted that Zimmerman's head had been "slammed" into concrete. *Id.*



Zimmerman was finally charged (after nationwide protests) with second-degree murder by a special state prosecutor on April 11.<sup>45</sup> The case was assigned to a veteran prosecutor who claimed an 80-1 win/loss record going into the Zimmerman trial.<sup>46</sup> Had he tried the other cases the way he did Zimmerman's, that record would almost certainly have been reversed.

#### THE TRIAL<sup>47</sup>

Zimmerman's self-defense claim required him to show that he *reasonably believed* shooting Martin was necessary to prevent *imminent* death or bodily harm to himself. The scales would seem to be significantly tipped in favor of the prosecution in several regards:

- Martin was unarmed, and considerably outweighed (nearly 30 pounds) by Zimmerman.
- Zimmerman's own report to the police operator had him *chasing* (and Zimmerman's out-of-breath voice confirms this) a "running" Trayvon Martin, against the explicit instructions of the operator not to follow the subject.
- Zimmerman suffered only minor scrapes from what he described as a struggle to the death that included Martin repeatedly pounding Zimmerman's head into the concrete.
- Zimmerman's history of racial profiling in his prior "suspicious" persons reports, and his use of questionable language to describe Martin in his 911 report.
- Zimmerman never identified himself as a neighborhood watch volunteer to explain his pursuit to Martin.
- Martin was on his cell phone with a friend at the time he was confronted by Zimmerman, and he reported (as a present sense impression) being followed by a "crazy and creepy" man. The call ended in Martin screaming "Get off! Get off!"<sup>48</sup>

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45. CNN Library, *Trayvon Martin Shooting Fast Facts*, CNN, <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/>.

46. LISA BLOOM, *SUSPICION NATION: THE INSIDE STORY OF THE TRAYVON MARTIN INJUSTICE AND WHY WE CONTINUE TO REPEAT IT* 38 (2014).

47. In the absence of a written transcript, the cost of which was prohibitive, I have viewed the video coverage "Gavel to Gavel" by WFTV Channel 9 and on YouTube. See *Gavel to Gavel*, WFTV, <http://www.wftv.com/news/news/local/george-zimmerman-video-blog-archive/nYHg/> (last visited Apr. 26, 2016). There is also a day-by-day account by the New York Times. See *The Zimmerman Trial, Day by Day*, N.Y. TIMES, <http://www.nytimes.com/interactive/2013/07/12/us/zimmerman-highlights.html?action=click&contentCollection=U.S.&module=RelatedCoverage&region=Marginalia&pgtype=article> (last visited Apr. 8, 2016).

48. Serge F. Kovaleski, *Martin Spoke of 'Crazy and Creepy' Man Following Him, Friend Says*, N.Y. TIMES, <http://www.nytimes.com/2012/05/19/us/trayvon-martins-friend-tells-what-she-heard-on-phone.html>.

All of this was set out by prosecutor John Guy in his compelling and moving opening for the State.<sup>49</sup> In contrast, defense counsel Don West's opening was halting, meandering, and sometimes incoherent.<sup>50</sup> And he began, remarkably, with an offensive knock-knock joke demeaning the jurors.<sup>51</sup> When both counsel had sat down, viewers of the Channel 9 live coverage tweeted in that Zimmerman's case had already been lost.<sup>52</sup>

Yet the prosecution allowed Zimmerman's highly implausible version of events to become the dominant narrative at trial. Most notably and shockingly, *it was the State* that introduced into evidence the audio and video recordings of Zimmerman's uncross-examined, unchallenged, self-serving statements to police, as well as his video reenactment at the crime scene the next day.<sup>53</sup>

The defendant's account of events has the ring of fabrication,<sup>54</sup> what one might concoct to exploit racist stereotypes: The skinny youth who had successfully evaded his stalker inexplicably returns, jumps the considerably bulkier Zimmerman from "out of nowhere," and (using what Zimmerman no doubt perceived as typical ghetto language) threatens "You got a f-ing problem, homie?" and "You're gonna die tonight, MF [expletive omitted]." Martin then punches Zimmerman, knocks him to the ground, slams his head repeatedly into the concrete sidewalk (but somehow the two ended up on the soft wet grass), and grabs for his firearm (which is actually hidden under his shirt in a rear

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49. *George Zimmerman Trial – Day 1 – Part 1*, YouTube, <https://www.youtube.com/watch?v=qsgtFBN8uKs&index=1&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx> (Day 1, part 1).

50. *George Zimmerman Trial – Day 1 – Part 2*, YouTube, <https://www.youtube.com/watch?v=ktQ9mgjH-9w&index=2&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx>.

51. *Id.*

52. Andrew Gatto (@andrewgatto), TWITTER (June 24, 2013, 7:48 AM), <https://twitter.com/AndrewGatto/status/349177333707587584>; Jerry Jones (@jerryjonesr), TWITTER (June 24, 2013, 10:33 AM), <https://twitter.com/jerryjonesr/status/349218821044846593>; Willie O'Say (@wordzofwill), TWITTER, (June 24, 2013, 11:44 AM), <https://twitter.com/WordzofWill/status/349236506281508864>.

53. *George Zimmerman Trial – Day 6 – Part 3*, YouTube, (July 1, 2013) [https://www.youtube.com/watch?v=4r2TUf\\_Efx4&index=26&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx](https://www.youtube.com/watch?v=4r2TUf_Efx4&index=26&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx).

54. Zimmerman's story is reminiscent of Boston's Charles Stuart case, in which the husband diverted attention from his fatal shooting of his pregnant wife by falsely reporting to police that a black man in a hooded sweatshirt had robbed them at gunpoint and fired the shot. Fox Butterfield, *Charles Stuart's Brother Indicted in Murder Case*, N.Y. TIMES (Sept. 27, 1991), <http://www.nytimes.com/1991/09/27/us/charles-stuart-s-brother-indicted-in-murder-case.html>. Testimony at Zimmerman's trial established that he had taken criminal justice courses including topics of the elements of self-defense. Crimesider Staff, *George Zimmerman Trial: Prosecutors May Introduce Zimmerman's School Records, Judge Rules*, CBS NEWS, (July 23, 2013, 2:38 PM), <http://www.cbsnews.com/news/george-zimmerman-trial-prosecutors-may-introduce-zimmermans-school-records-judge-rules/>.

holster), at which point Zimmerman shoots him at point blank range in the heart. Zimmerman remarkably claimed Martin, fatally wounded, sat up and continued to speak, saying “You got me!,” a feat the medical experts viewed as quite impossible.<sup>55</sup> Zimmerman later professed to police his complete surprise that the young man was dead, though his body was covered with a tarp by police at the scene.

Sanford police officer Doris Singleton had conducted the first interview with Zimmerman on the night of the shooting and admitted at trial (where tellingly she referred to the defendant, as all the police witnesses for the state did, as “George”) that at the time, she had not been to the murder scene, “essentially knew nothing going in to speak to him,” and was thus not able (even inclined) to challenge Zimmerman on anything he claimed occurred.<sup>56</sup> During her testimony for the state, the prosecution compounded this departure from usual police protocol by placing the audio recording of Zimmerman’s self-serving narrative before the jury *as its own exhibit 178*.<sup>57</sup> (Singleton testified she did not videotape the interview, even though the equipment was available, because she did not know how to use it. The other officers viewing the interview through the one-way mirror apparently thought nothing of this omission). The prosecutor even had Singleton *read to the jury* Zimmerman’s written statement, corroborating his oral interview and referring to Trayvon Martin as “the suspect.”<sup>58</sup>

Singleton testified that Zimmerman told her at the time that as a Catholic he was taught that all killing is wrong, and he bowed his head.<sup>59</sup> Without objection, the defense lawyer reiterated this point on cross-examination, and then elicited the officer’s *opinion that it signified sincere regret*.<sup>60</sup> The prosecution thus evoked sympathy from the jurors as well as courtroom observers before the defense even put on its case. The officer told the jurors that she assured Zimmerman he had acted properly in self-defense.<sup>61</sup> An odd prosecution witness, who exonerates the man in the dock. But just the first of many.

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55. See *George Zimmerman Trial – Day 9 – Part 2*, YOUTUBE, <https://www.youtube.com/watch?v=sg0Tlyswcm4&list=PLYEBn4w1XOIeEsjliyFTohqC6BQLI81vx&index=40> (Testimony of Medical Examiner Dr. Shiping Bao).

56. *Id.*

57. *Id.*

58. *Id.*

59. *George Zimmerman Trial – Day 6 – Part 3*, *supra* note 53.

60. *Id.*

61. *Id.*

In his cross-examination, defense attorney O'Mara merely built on the direct examination, asking, *again without objection*, whether Singleton observed any anger<sup>62</sup> or ill will in Zimmerman towards Martin that night—to which she assured the jury there was none.<sup>63</sup> O'Mara got her to testify that Zimmerman's statements were all consistent, thus undercutting the prosecution's later rationale that it was introducing Zimmerman's many statements to point out inconsistencies. The uniformed officer simply put the official stamp of police approval on Zimmerman's dubious defense.

Singleton was followed to the stand by Sanford police officer Chris Serino, the lead detective, through whom the prosecutor *again* put in evidence two more friendly (sometimes joking and bantering) interviews with Zimmerman later the night of the killing (audio-recorded) and two days later (video-recorded), as well as a video of Zimmerman's own re-enactment the next day,<sup>64</sup> in which bandages prominently appear on the back of Zimmerman's head and he is allowed to describe (clearly hearsay) his doctor's diagnosis of the wounds.<sup>65</sup>

Rather than challenging Zimmerman's version of events, as police interrogators routinely do, Serino simply repeated what Zimmerman had told Singleton and had him acknowledge the statements.<sup>66</sup> The jurors then heard Serino conclude the interview by sympathetically telling Zimmerman before he allowed him to leave the station: "You're going to have anxiety, nightmares, a hard time with this— but I'm here for you, and I'll get you help."<sup>67</sup> He added that he wanted to prepare Zimmerman for the reaction of Trayvon's family and the public to the killing of the unarmed teenager.<sup>68</sup>

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62. Since the killing of Martin, Zimmerman has been involved in several domestic assaults with his gun or other weapon, clearly evidencing anger management issues. Jessica Mendoza, *Why George Zimmerman Was Arrested in Florida— Again*, THE CHRISTIAN SCI. MONITOR (Jan. 10, 2015), <http://www.csmonitor.com/USA/USA-Update/2015/0110/Why-George-Zimmerman-was-arrested-in-Florida-again-video>; see also Niccole Hensley, *Where are they Now: The Players of George Zimmerman's Trial*, N.Y. DAILY NEWS (July 13, 2014 7:51 PM), <http://www.nydailynews.com/news/crime/george-zimmerman-article-1.1865317>.

63. *George Zimmerman Trial – Day 6 – Part 3*, *supra* note 53.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

In the eyes of the police witnesses, Zimmerman had apparently performed a public service, ridding the neighborhood of a threatening menace—doing their job for them.<sup>69</sup>

The government thus put *five unchallenged*<sup>70</sup> versions of Zimmerman’s self-defense story before the jury, with sympathetic nods and helpful prompts from the police witnesses. In each, Zimmerman was permitted to connect Martin to previous burglaries in the neighborhood, even though he admitted in a later interview that Martin was not the same person who had been arrested for those break-ins (the only connection being their race).<sup>71</sup>

At some points the police interviewers actually helped Zimmerman with gaps in his story, as when officer Singleton says: “I don’t want to put you on the spot, but these are the questions they’re going to ask you,”<sup>72</sup> or when Serino tells Zimmerman after an obvious contradiction: “You see where the obstacle is here. I want you to think about that. I’m speaking for you. *I’m trying to protect you the best I can.*”<sup>73</sup> Officer Serino actually tells Zimmerman: “*I’m here working for you.*”<sup>74</sup>

In the video interview, Serino inquires if there was any racial profiling regarding Martin, and when Zimmerman assures him there was not, the officer confirms: “So you would have done the same thing if Martin had been white.”<sup>75</sup> The lead detective even corrects Zimmerman regarding one of the crucial issues contested at trial—whose voice is crying for help on the 911 recording, Martin’s or the defendant’s.<sup>76</sup> Serino, who never heard Martin’s voice, unequivocally tells Zimmerman “That’s you” after Zimmerman himself admitted “That doesn’t even sound like me.”<sup>77</sup> That portion of the tape was played over and over again before the jury.<sup>78</sup>

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69. At one point in the interview reviewing Zimmerman’s 911 call, where Zimmerman uses the word “f-ing punk” to describe Martin, officer Serino appears to say: “He was a “f-ing punk.” *Id.* The sound quality of the recording precludes a precise transcription. *Id.*

70. The prosecutors stood mute while defense counsel repeatedly referred to these “challenge interviews.” *George Zimmerman Trial – Day 6 – Part 5*, YouTube, (July 1, 2013) <https://www.youtube.com/watch?v=rBv3hhnNnYs&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=28>.

71. *George Zimmerman Trial – Day 6 – Part 3*, *supra* note 53.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. FBI sound experts were unable to identify the voice because of the poor quality of the 911 recording.

77. *Id.*

78. *Supra George Zimmerman Trial – Day 6 – Part 3* note 53.

The state's defense-friendly presentation continued when it called Mark Osterman, best friend of Zimmerman and a law enforcement officer who authored a book about the case completely exonerating Zimmerman.<sup>79</sup> On the stand Osterman repeated Zimmerman's story of the killing in all its detail, replete with the defendant's claim that Martin was suffocating him and grabbed his gun, but adding new embellishments like placing Martin in front of a lighted townhouse peering through the window right before Zimmerman confronted him, and that Zimmerman did not know his point-blank shot into Martin's heart had actually hit him!<sup>80</sup> Osterman assured the jurors that Zimmerman's insistence that Martin spoke after being shot through the heart was typical for shooting victims.<sup>81</sup>

What prosecution strategy could possibly explain calling such a witness? Or again, without objection, permitting defense counsel on cross-examination to have Osterman repeat Zimmerman's story *for the seventh time*, testify to Zimmerman's stunned state of mind after the shooting and his wife's grief over the events, and elicit more sympathy by describing how as a nurse she tended to her husband's wounds.<sup>82</sup>

The prosecution's admission into evidence of Sean Hannity's (Fox News) soft-ball interview with Zimmerman gave the jury its eighth dose of the defense.<sup>83</sup> This time Zimmerman claimed Martin broke his nose,<sup>84</sup> clearly contradicted by the EMT report of a bloody nose requiring no treatment.<sup>85</sup>

The only time the jury heard Zimmerman's voice<sup>86</sup> was in these recordings introduced by the government—the only evidence of Zimmerman's self-defense came from the *state's own witnesses*. At no time during the interviews did Zimmerman express any regret or re-

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79. Frances Robles, *George Zimmerman's Friend's Book Offers Starkly Different Account of Trayvon Martin's Death*, (Sept. 21, 2012), <http://www.mcclatchydc.com/news/crime/article24737374.html>.

80. *George Zimmerman Trial – Day 7 – Part 2*, YouTube, <https://www.youtube.com/watch?v=ISVMogzRw6A&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=30>.

81. *Id.*

82. *Id.*

83. *George Zimmerman Trial – Day 7 – Part 3*, YouTube, (July 3, 2013), <https://www.youtube.com/watch?v=qqpnDdDw-3Y&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=31>

84. *George Zimmerman Trial – Day 7 – Part 3*, YouTube, (July 2, 2013), <https://www.youtube.com/watch?v=qqpnDdDw-3Y&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=31>.

85. SANFORD FIRE DEP'T, INCIDENT REPORT, *supra* note 42.

86. Indeed, Zimmerman was the most impassive and expressionless of defendants—confering with counsel only a handful of times throughout the course of the long trial, and looking quite bored.

morse for killing the teenager, nor did the interrogators ever treat Zimmerman as if he might have committed a crime.

A defendant's own statements are of course inadmissible hearsay when offered *by him* at trial (in contrast with a confession by the accused offered by the government).<sup>87</sup> False or misleading statements may be used to demonstrate consciousness of guilt.<sup>88</sup> But the admission of *exculpatory* narratives of this sort, as state exhibits, is as bizarre as it is unprecedented.

What defendant has ever been given such a free ride at a murder trial? Had Zimmerman been required to take the witness stand to spin his wild tale, the jury would have had the benefit of observing his demeanor under oath, and, most important, during cross-examination, exposing the obvious flaws in the story as well as his race-profiling, demonstrated by his reference to Martin as "one of them."<sup>89</sup> He would have had to confront the facts that he marked Martin as a suspicious person apparently based on nothing other than his race; that he followed him (against instructions from the 911 operator) and never once identified himself as a neighborhood watch volunteer, explaining why Martin may have been suspicious of Zimmerman.<sup>90</sup> He would have had to explain how he came out of the "life-or-death struggle" with the slight teenager absent any injuries other than superficial abrasions.<sup>91</sup>

With a prosecution like this, the defense lawyers were nearly superfluous. They merely reinforced the state's witnesses. There was no prosecution objection when counsel asked the lead detective whether Zimmerman's version was consistent with what *other* witnesses (who did not testify) had reported, although that amounted to the functional equivalent of hearsay from those declarants.<sup>92</sup> There was no objection when defense counsel asked whether the defendant's statements were consistent with the physical evidence, or the coroner's report.<sup>93</sup> There was no objection when counsel asked if Zimmerman had been straightforward, cooperative, and non-evasive with the po-

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87. FRE 801(d)(2)(A). (the statement must be offered "against an opposing party.")

88. *See, e.g.*, Mark S. Brodin & Michael Avery, *Handbook of Massachusetts Evidence* (2016 ed.), § 4.2.1, at 123.

89. *Id.*

90. *Id.*

91. SANFORD POLICE DEP'T, INCIDENT REPORT, *supra* note 42.

92. The term refers to testimony that functions as hearsay, i.e., the witness did or did not do something in response to what an act of court declarant said to him.

93. *George Zimmerman Trial – Day 6 – Part 5*, *supra* note 73.

lice.<sup>94</sup> There was no objection when counsel elicited that police had no basis to challenge Zimmerman's narrative,<sup>95</sup> or that Zimmerman was being honest when he denied Martin's race had anything to do with this encounter,<sup>96</sup> or that Zimmerman's reaction to the possibility of a surveillance video of the event that night — "Thank God, I was hoping there was a video" — indicated to the experienced detective that Zimmerman was telling the truth.<sup>97</sup>

The state's attorneys also stood quiet when the defense counsel elicited from a detective that Zimmerman had been traumatized by "having had to shoot someone;"<sup>98</sup> when counsel elicited that Zimmerman did not appear cavalier or uncaring about the event;<sup>99</sup> when counsel had Serino connect Martin to previous burglaries committed by a tall thin black male who had been arrested and sentenced;<sup>100</sup> and when an officer described a burglar's tool found five days after the killing in an area where Martin "might have been,"<sup>101</sup> even though it turned out to be part of a broken awning.<sup>102</sup> There was not even a motion to strike detective Serino's description of Zimmerman as the possible victim here.<sup>103</sup>

All this happened on Trial Day 15. *On Day 16*, the prosecutor finally made a belated objection to the opinion testimony, citing several Florida Supreme Court cases making it crystal clear (as is universally recognized) that the entire line of questions vouching for Zimmerman's credibility was improper.<sup>104</sup> But all the prosecutor

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94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *George Zimmerman Trial – Day 5 – Part 3*, YOUTUBE, <https://www.youtube.com/watch?v=ILefNHbAi-k&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx&index=23>.

100. *George Zimmerman Trial – Day 7 – Part 1*, YOUTUBE, <https://www.youtube.com/watch?v=erVzhz-OsYc&index=29&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx>.

101. *Id.*

102. *Id.*

103. *George Zimmerman Trial – Day 6 – Part 5*, YOUTUBE, <https://www.youtube.com/watch?v=rBv3hhnNnYs&list=PLYEBn4w1XOIeEsjIlyfTohqC6BQLI81vx&index=28>.

104. *See Tumblin v. Florida*, 29 So. 3d 1093 (Fla. 2010). In *Tumblin*, the Court reversed a murder conviction because a police witness was permitted to testify about the veracity of another witness. *Id.* at 1104. Even though the judge in *Tumblin* had sustained an objection to the testimony and instructed the jury to disregard it, the Florida Supreme Court found the error so egregious that a mistrial should have granted, as the prejudice was so great that it was impossible to "unring the bell." *Id.* at 1102.

Allowing one witness to offer a personal view on the credibility of a fellow witness is an invasion of the province of the jury to determine a witness's credibility. It is clearly error for one witness to testify as to the credibility of another witness. Moreover, it is especially harmful for a police witness to give his opinion of a witnesses' [sic] credibility because of the great weight afforded an



asked the court to do was to give a curative instruction— *a day after the jury had heard and digested all the police testimony absolving the defendant of guilt.*<sup>105</sup> The judge accommodated by simply recalling detective Serino, having the court reporter repeat the question seeking his opinion on Zimmerman’s veracity, and instructed the jury that the question was improper and they should disregard the answer.<sup>106</sup> No mention was made of all the other highly prejudicial evidence that preceded it. The jury was credited with the unique ability to “unring the bell,” a feat the *Johnson* Court recognized is impossible; and the trial proceeded in its own surreal way, with Serino continuing to support Zimmerman’s veracity, again without objection.<sup>107</sup>

No first-year law student would have sat idly by while these clearly objectionable questions were repeatedly asked and answered. What follows is a transcript of the cross-examination of detective Serino that would be expected in an adversary proceeding:

*Defense counsel:* Did you note any inconsistencies in the various versions of the events Mr. Zimmerman offered to you?

*Prosecutor:* Objection, that is for the jury to decide.

*Judge:* Sustained.

*Defense counsel:* Did you have any reason to doubt his version of the events?

*Prosecutor:* Same objection.

*Judge:* Sustained.

*Defense counsel:* Did you note any inconsistencies between Mr. Zimmerman’s versions of events and those provided by other witnesses?

*Prosecutor:* Objection your honor. That’s a backhanded way of presenting the hearsay statements of third parties.

*Judge:* Sustained.

*Defense counsel:* Did you note any inconsistencies between Mr. Zimmerman’s versions of events and the physical evidence?

*Prosecutor:* Objection, again that is for the jury to decide.

*Judge:* Sustained.

*Defense counsel:* Did you find Mr. Zimmerman to be straightforward, non-evasive, and honest with you?

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officer’s testimony. Police officers, by virtue of their positions, rightfully bring with their testimony an air of authority and legitimacy. A jury is inclined to give great weight to their opinions. *Id.* at 1101 (brackets and citations omitted). *See also* Jackson v. Florida, 107 So. 3d 328, 330 (Fla. 2012) (reversing another murder conviction for the same reason).

105. *George Zimmerman Trial – Day 7 – Part 1*, YOUTUBE, <https://www.youtube.com/watch?v=erVzhz-OsYc&list=PLYEBn4w1XOIeEsjliyFTohqC6BQLI81vx&index=29>.

106. *Id.*

107. *Id.*

*Prosecutor:* Objection, Your Honor, no witness can testify to the credibility of another.

*Judge:* Sustained.

*Defense counsel:* As an experienced police officer, is it your opinion Mr. Zimmerman was telling you the truth?

*Prosecutor:* Same objection, Your Honor.

*Judge:* Sustained.

*Defense counsel:* Did you have any reason to think George was lying to you?

*Prosecutor:* Same objection, Your Honor.

*Judge:* Sustained.

*Defense counsel:* Do you have any basis to challenge Mr. Zimmerman's claim of self-defense?

*Prosecutor:* Objection, that's what the jury is here to decide.

*Judge:* Sustained.

*Defense counsel:* Do you have any basis to challenge Mr. Zimmerman's claim that Trayvon Martin's race had nothing to do with this tragic event?

*Prosecutor:* Same objection, Your Honor.

*Judge:* Sustained.

*Defense counsel:* Detective, did you observe that Mr. Zimmerman had been traumatized by being put in fear of his life and having to shoot and kill Trayvon Martin?

*Prosecutor:* Objection, Your Honor. The question assumes facts that the jury will have to decide, and calls for an opinion this witness is not qualified to render. Would the Court please admonish defense counsel that this entire line of questioning is highly objectionable?

*Judge:* Yes, sustained. And so admonished.

Zimmerman's trial was an Alice-In-Wonderland proceeding, where the prosecution's witnesses served only *to support* the defense (*all* witnesses, whether called by the state or Zimmerman, became defense witnesses in the hands of this prosecution team<sup>108</sup>), where the defense exploited the prosecution's no-objection approach by admitting clearly inadmissible evidence, where the murder victim became

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108. The state for example called Zimmerman's former professor to testify that the defendant was familiar with the requirements to make out a self-defense from the class he took with him (and so, it would be argued, could have concocted his narrative of being put in fear accordingly). *George Zimmerman Trial – Day 7 – Part 1*, YouTube, <https://www.youtube.com/watch?v=F4a006Yo2Jo&index=35&list=PLYEBn4w1XOIeEsljyfTohqC6BQLI81vx>. But the prosecutors stood mute as defense counsel turned their witness into an expert *for the defense* on cross, leading him through what would ultimately be the defense closing argument. *Id.*

the accused and vice versa (in fact, defense counsel several times referred to the state's case as the defense case<sup>109</sup>).

Not once did George Zimmerman have to take the stand in Courtroom 5D, nor raise his right hand to take the oath, nor be challenged on cross-examination. State witnesses referred to the defendant in the familiar as George in their testimony, including Zimmerman's professor at Seminole State College who addressed him directly from the stand with a friendly—"Hi George, how you doing?"<sup>110</sup> The result was to signal the jurors that there was no real disagreement about the legitimacy or credibility of Zimmerman's self-defense. How could the jurors return any other verdict than "not guilty"?

Could this collection of blunders have been mere "missteps" by a veteran prosecutor with a nearly 100% conviction rate in 80 murder trials?

Throughout the trial, Trayvon Martin's parents sat up front, watching impassively as their murdered son was portrayed as a violent thug who deserved his fate. Perhaps they concluded early on that the government was merely going through the motions of pursuing their son's killer.

The jury's acquittal on all charges—second-degree murder and manslaughter—came after 16 hours of deliberation over two days.<sup>111</sup> The six women jurors bought the defendant's story—told solely through prosecution witnesses—that he had no choice but to kill Martin, for otherwise he would have been killed. Trayvon's parents were not in the courtroom for the verdict.

When Trayvon's family (mother, brother, and father) testified, at the end of the state's case, it was clear to everyone in the courtroom that the victim came from "a good family," educated, well-spoken, hard-working, and loving.<sup>112</sup> No objective observer could square this with the thuggish, violent, gangsta brute that Zimmerman's defense

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109. See, e.g., Video, Day 17, Part 1, 4:00 Minutes.

110. *George Zimmerman Trial – Day 8 – Part 1, 25:40 minutes*, YouTube, <https://www.youtube.com/watch?v=F4a006Yo2Jo&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=35>.

111. Lizette Alvarez & Carla Buckley, "Zimmerman Is Acquitted In Trayvon Martin Killing," New York Times, July 13, 2013.

112. *George Zimmerman Trial – Day 9 – Part 1*, YouTube, [https://www.youtube.com/watch?v=qN\\_16PWph94&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=39](https://www.youtube.com/watch?v=qN_16PWph94&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=39); see *George Zimmerman Trial – Day 10 – Part 3*, YouTube, <https://www.youtube.com/watch?v=VQTuxhWtWRY&list=PLYEBn4w1XOIeEsjIiyfTohqC6BQLI81vx&index=46>.

(with the prosecution's assistance) portrayed young Trayvon Martin as.

## CONCLUSION

The matter of race has been with us since the day African-Americans involuntarily first set foot upon this land. It has penetrated every generation since, and has preoccupied the attention of some of our greatest thinkers and writers—W.E.B. Dubois, William Faulkner, James Baldwin, Martin Luther King, John Hope Franklin, and now Ta-Nehisi Coates. The “color line,” as Dubois named it in 1903, is very much with us today, reflected in the staggering incarceration rate among black males,<sup>113</sup> the ever widening wealth gap,<sup>114</sup> and the abandonment and deterioration of our inner cities. We learn from social science research that race is registered unconsciously in the brain of the observer within milliseconds of an encounter.<sup>115</sup>

In cases like Trayvon Martin, it matters not that the killer substantially outweighs the victim, that the victim had no history of crime or violence, or that the story of his sudden inexplicable and unprovoked aggression against an armed officer lacks all plausibility. Even when there is a clear video revealing the officer's complete lack of justification and excessive use of force, as in the cases of Rodney King<sup>116</sup> and Eric Garner,<sup>117</sup> the police walk free. And these cases appear almost daily in the news media.

President Barack Obama's remark that “if I had a son, he would look like Trayvon Martin,” testifies to the universality of the experience in the black community. George Zimmerman's trial represented a unique, but tragically missed, opportunity to begin to hold these killers — be they police or vigilantes — accountable. Zimmerman has

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113. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

114. See generally JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (2013).

115. See generally L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 IND. L.J. 1144 (2012) (collecting studies); Tiffany A. Ito & Geoffrey R. Urland, *Race and Gender on the Brain: Electrocortical Measures of Attention to the Race and Gender of Multiply Categorizable Individuals*, 85 J. PERSONALITY & PSYCHOL., 616 (2003).

116. See Seth Mydans, *Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES, Apr. 30, 1992, at A1.

117. See generally David Goodman & Al Baker, *New York Officer Facing No Charges In Chokehold Case*, N.Y. TIMES, Dec. 4, 2014, at A1.

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predictably gone on to other assaultive conduct,<sup>118</sup> and police officers have been green-lighted in however they choose to deal with young black males in our troubled nation.

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118. See, e.g., Carimah Townes, *Why George Zimmerman Keeps Getting Away With It*, THINKPROGRESS, (Jan. 30, 2015 11:23 AM), <http://thinkprogress.org/justice/2015/01/30/3617493/assault-charges-dropped-against-george-zimmerman/>.