

# FLORIDA'S STAND YOUR GROUND REGIME: LEGISLATIVE DIRECTION, PROSECUTORIAL DISCRETION, PUBLIC PRESSURES, AND THE LEGITIMIZATION OF THE CRIMINAL JUSTICE SYSTEM

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## I. INTRODUCTION

Headline trials—those that attract major public attention<sup>1</sup>—are of “high[] social importance,”<sup>2</sup> and may be categorized along social, political, or other grounds.<sup>3</sup> Such trials are one vehicle through which the media can frame the country’s social and political climate as part of a “larger American drama[,]” particularly in trials that implicate race relations.<sup>4</sup> Notably, the shooting of Trayvon Martin, a black teenager, by George Zimmerman, a Hispanic male, initiated a national narrative concerning systemic disparities among races.<sup>5</sup> Zimmerman’s subsequent prosecution became

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1. Lawrence M. Friedman, *Front Page: Notes on the Nature and Significance of Headline Trials*, 55 ST. LOUIS U. L.J. 1243, 1245 (2011).

2. *Id.* at 1245 (defining “major public attention” as “basically[] newspaper and other media coverage—including books, movies, TV shows, and the like”).

3. For example, the “tabloid trial” is a species of headline trial that “titillate[s] the public” and gains attention to its proceedings because of the nature of the crime itself. *Id.* On the other hand, a “celebrity trial” is notorious less because of the crime itself, than because either the “victim or the defendant is or was a famous public figure.” *Id.* at 1257. A “political trial” is a trial that either has or appears to have political overtones; however, this meaning—as well as a trial’s political significance—varies from trial to trial. *Id.* at 1249. Yet, in the broadest sense, a trial may be considered political when it raises some important or polarizing issue of policy or principle. *Id.* at 1251. Political trials and those closely linked to political trials are arguably the most significant kind of headline trial. *Id.* at 1255. A separate category of headline political trials are those labeled political “only in the sense that anything that creates a stir[.]” *Id.* In that sense, political trials may be categorized along a spectrum, ranging from overtly political on one end to pure entertainment without a clear social meaning at the other. *Id.* at 1255-56. Tabloid and celebrity trials fall along the entertainment side, characterized generally as trials that “create a stir, [] fascinate the public, and command [media attention], even though they seem to have no impact other than on the immediate parties.” *Id.* at 1256. There are no bright-lines establishing the preceding categorizations, however, as the types of trials often overlap and/or fall into several of the categories. *Id.* at 1248.

4. *Id.* at 1267.

5. See Tamara F. Lawson, *A Fresh Cut in an Old Wound-A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors’ Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL’Y 271, 310 (2012) (“Race played a role in each major part of this case: the public’s outcry, the prosecutors’ discretion, and the self-defense law. Race is salient in the discussion of discretionary charging decisions. . . Racial stereotypes are still part of American culture, and, by default, part of the American criminal justice system.”).

the headline to that narrative, and Florida's self-defense laws and procedure became a channel of public attention.<sup>6</sup>

High-profile cases, such as Zimmerman's, place the prosecutor amidst a convergence of interests.<sup>7</sup> Prosecutors generally have a duty to present the State's case with earnestness and vigor, to give the defendant a fair and impartial trial, and to further the interests of the public at large.<sup>8</sup> Put simply, the prosecutor must rigorously enforce the law and simultaneously ensure that any criminal charges filed can be proven beyond a reasonable doubt.<sup>9</sup> Prosecutors face additional ethical constraints in high-profile cases with regard to publicity and media relations, charging decisions and pretrial discovery, and actual courtroom conduct.<sup>10</sup> These added considerations significantly influence and complicate the prosecutor's handling of headline criminal trials.<sup>11</sup> One need not look further than the Zimmerman trial to see this interplay under Florida's Stand Your Ground ("SYG") regime.<sup>12</sup>

Section 776.032 of Florida's SYG Law provides immunity from criminal prosecution and civil action to one who uses force as justified under §§ 776.012, 776.013, or 776.031.<sup>13</sup> The Court in *Dennis v. State*<sup>14</sup> concluded that "the plain language of section 776.032 grants defendants a substantive right to assert immunity from prosecution and to avoid being subjected to a trial."<sup>15</sup> This encompasses immunity not only from trial proceedings, but also from arrest, detention in custody, and possible charges brought as a result of the use of legally justified force.<sup>16</sup> Thus, the Sanford Police did not—and indeed, under the statutory language, *could* not—arrest or charge

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6. See generally George C. Thomas III, *Criminal Trials as Morality Plays: Good and Evil*, 55 ST. LOUIS U. L.J. 1405 (2011) (presenting opinions and information concerning the relationship between criminal trials and cultural morality).

7. See generally Paul R. Wallace, *Prosecuting in the Limelight*, 22 WTR DEL. LAW. 20, 20 (2005) ("The multifaceted duties of the prosecutor—to represent the state with a level of professionalism and ethics unequalled in other attorneys' experiences—become even more demanding when the prosecution of a high-profile case is undertaken."). Wallace identifies two types of "high profile" criminal cases: (1) extraordinary individuals committing ordinary offenses, referencing Winona Ryder's shoplifting as an example; and (2) ordinary people committing extraordinary crimes, referencing Andrea Yates drowning her five children. *Id.* at 20. Zimmerman's case inevitably falls within the latter category. See also Nirej Sekhon, *The Pedagogical Prosecutor*, 44 SETON HALL L. REV. 1, 1-6 (2014) (analyzing and discussing the "binary opposition between politics and discretion" in the context of the Zimmerman case).

8. Wallace, *supra* note 7, at 21.

9. Lawson, *supra* note 5, at 284.

10. Wallace, *supra* note 7, at 21.

11. *Id.*

12. See generally Sekhon, *supra* note 7, at 18 ("Prosecutors have the capacity to do more than just obtain convictions—they have the power to stir social and political meaning around contested social issues. Criminal laws generally, and Stand Your Ground in particular, afford prosecutors considerable latitude with regard to bringing (or declining) cases."). See also, Wrobleski, *infra* note 17, at 113-14 ("Public pressure undoubtedly played a role in Angela Corey's decision to quickly end and re-frame an investigation that conclusively pointed toward a legitimate act of self-defense. The probable cause affidavit used to charge Zimmerman on April 11, 2012 was rife with rushed conclusions that were tenuously supported at best by the results of the investigation to date.") (internal footnotes omitted); Lawson, *supra* note 5, at 272-73 ("Fundamentally, the Martin killing is . . . about how one killing can trigger provocative issues so that public outcry and media coverage combine to ignite intense passion across the country and throughout the world.").

13. FLA. STAT. § 776.032(1) (2014).

14. 51 So. 3d 456 (Fla. 2010).

15. *Id.* at 462.

16. *Id.* ("The statute does not merely provide that a defendant cannot be *convicted* as a result of legally justified force.") (emphasis added).

Zimmerman in the weeks following the fatal confrontation without evidence disputing his claim of self-defense.<sup>17</sup> The State Attorney for the Eighteenth Judicial Circuit then received the case and prepared to send it to a grand jury.<sup>18</sup> However, that State Attorney was recused and a special prosecutor appointed pursuant to Executive Order 12-72.<sup>19</sup> On April 11, 2012, special prosecutor Angela Corey charged George Zimmerman with second-degree murder by information.<sup>20</sup> In light of this timeline, it is apparent that the decision to bring charges against Zimmerman was political—brought only after a “national uproar erupted over Martin’s death[.]”<sup>21</sup>

The politically motivated prosecution of George Zimmerman demonstrates the influence that public pressures can have on a prosecutor’s exercise of discretion.<sup>22</sup> It further represents the public’s “punitive impulse” to redress a perceived social or cultural harm through imposition of harsher penalties against the individual most easily connected to that harm.<sup>23</sup> Thus, I argue that when a prosecutor succumbs to these emotionally incited pressures, it undermines her expertise, experience and exercise of discretion, and undercuts the legitimacy of the criminal justice system as a whole.<sup>24</sup>

This Note seeks to examine the tripartite relationship between legislative delegation, prosecutorial discretion, and public pressures in the context of Florida’s SYG regime. Part I traces the origins of Florida’s SYG Laws from the modern castle doctrine through its legislative history. Part II lays out the statutory scheme and relevant language. Part III explores the contours of prosecutorial discretion under the SYG

17. See *Ex-Sanford Police Chief Tells Local 6 Why He Didn’t Arrest George Zimmerman*, CLICK ORLANDO (July 10, 2013, 6:37 PM), <http://www.clickorlando.com/news/exsanford-police-chief-tells-local-6-why-he-didnt-arrest-george-zimmerman/1637132/20923726/-/f0eymsz/index.html>. See also Brandon T. Wroblewski, Note, *Calling the Court of Public Opinion to Order: A Critical Analysis of State of Florida v. George Zimmerman*, 27 REGENT U. L. REV. 103, 111 (2014-2015) (“On March 13, 2012, the [Sanford Police Department] decided not to charge Zimmerman, citing a lack of probable cause to refute self-defense.”).

18. Wroblewski, *supra* note 17, at 111.

19. See Fla. Exec. Order No. 12-72, at pmb1, § 1 (2012), [http://www.flgov.com/wp-content/uploads/orders/2012/12-72-martin\\_10-2.pdf](http://www.flgov.com/wp-content/uploads/orders/2012/12-72-martin_10-2.pdf). See also *Trayvon Martin Shooting Fast Facts*, CNN (last updated Feb. 11, 2015, 2:38 PM), <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html>.

20. Information, *State v. Zimmerman*, No. 1712F04573, 2012 WL 1207410 (Fla. Cir. Ct. Apr. 11, 2012). See also *infra* notes 124-29 and accompanying text; *Trayvon Martin Shooting Fast Facts*, CNN (last updated Feb. 11, 2015, 2:38 PM), <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html>.

21. Sekhon, *supra* note 7, at 2. See also Wroblewski, *supra* note 17, at 113; Lawson, *supra* note 5, at 272-73.

22. See Charles E. MacLean & Stephen Wilks, *Keeping Arrows in the Quiver: Mapping the Contours of Prosecutorial Discretion*, 52 WASHBURN L.J. 59, 60 (2012).

23. See Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 967-68 (2014).

24. See, e.g., Hon. J. Harvie Wilkinson III, *In Defense of American Criminal Justice*, 67 VAND. L. REV. 1099, 1132 (2014) (“Limits on prosecutorial resources require that some crimes go unpunished so that prosecutors can attend to other, more troubling ones. Not every violation of law merits pressing charges. Prosecutors need the discretion to forego cases with slim evidentiary foundations, those with mitigating circumstances, or those with minimal adverse public consequences. . . . Because elected officials recognize that inflexible rules can lead to unjust results and an unwise allocation of prosecutorial time and energy, these officials properly delegate substantial enforcement discretion to prosecutors[.]”) (internal citations omitted). See also Sekhon, *supra* note 7, at 3 (“Politics is a toxic force impelled by the public’s taste for vengeance. By this account, a fearful and easily manipulated public readily embraces the ‘tough on crime’ rhetoric that politicians feed it. This dynamic, in turn, impels the creation of not just more criminal laws, but *broader and harsher ones*. Legislators are perfectly willing to pass these laws knowing that prosecutors will have the final say on what sort of cases are actually brought. In other words, prosecutorial discretion is *the check* on politics’ punitive excesses.”) (emphasis added) (internal citations omitted).

regime, and places that discretion in the Zimmerman trial setting. Lastly, Part IV analyzes the relationship between legislators, prosecutors and public pressures in the context of headline criminal trials involving Florida's SYG regime.

When a prosecutor allows public pressures to affect her exercise of discretion, the resulting decision becomes a political one. While she necessarily must consider the greater public good in performance of her duties, and may be subject to some form of political accountability,<sup>25</sup> her decision should be influenced by her own experience and expertise rather than by public opinion. To give in to an emotionally aroused public in an effort to appear "tough on [*this*] crime [or situation]" not only leads to an inefficient allocation of resources, but also undermines the discretion delegated to her by the legislature. In turn, these political moves undermine the legitimacy of the criminal justice system.

This is not to say that public outrage at some law or circumstance should not play any role in our criminal justice system. Indeed, the cornerstone of United States governance is that it be one "of the people, by the people, and for the people."<sup>26</sup> Rather, my argument proceeds under the assumption that decisions in response to public outcry should come from legislators rather than prosecutors. After all, in exercising her discretion, a prosecutor simply carries out a legislative directive. Thus, the prosecutor's initial declination to bring charges against Zimmerman was proper under the regime established by the Florida legislature.

## II. ORIGINS AND LEGISLATIVE HISTORY

The broad self-defense rights granted under Florida's SYG Law are consistent with the principles embodied in the castle doctrine.<sup>27</sup> The modern castle doctrine originates from the common law defense of habitation doctrine.<sup>28</sup> However, defense of habitation was a separate doctrine from that of self-defense under the English common law system.<sup>29</sup>

Common law recognition of the general privilege of self-defense as a justification for one's use of deadly force was limited by the doctrine of necessity.<sup>30</sup> As such, one maintained a duty to retreat before resorting to the use of deadly force.<sup>31</sup> However, an exception was established to the duty to retreat—one had the right to stand

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25. See, e.g., FLA. CONST., Art. V § 17 ("In each judicial circuit a state attorney shall be *elected* for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law[.]") (emphasis added). See also Sekhon, *supra* note 7, at 29 (noting that "most district attorneys are elected in municipal or county elections" and "local head prosecutors typically owe their jobs to local voters").

26. Abraham Lincoln, *Gettysburg Address*, ABRAHAM LINCOLN ONLINE, <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm> (last visited Feb. 1, 2015).

27. See Christine Catalfamo, *Stand Your Ground: Florida's Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J. L. & PUB. POL'Y 504, 504-05 (2007) (identifying the "underlying principles of the privilege of non-retreat and protection of life, liberty, and property embodied in the original castle doctrine"). Catalfamo further notes that the "right to stand one's ground flows from notions of honor, chivalry, and the right to freedom from attack and violation entrenched in Southern society." *Id.* at 505.

28. *Id.* at 506.

29. *Id.*

30. *Id.*

31. *Id.* See also *Florida Legislation—The Controversy Over Florida's New "Stand Your Ground" Law—Fla. Stat. § 776.013 (2005)*, 33 FLA. ST. U. L. REV. 351, 354 (2005) [hereinafter *Florida Legislation*] (noting

her ground and defend herself against an attack in her home.<sup>32</sup> Thus, the common law doctrine of self-defense was based on the right to protect oneself from physical harm or conflict, and defense of habitation involved defense of one's home against violation and intrusion.<sup>33</sup> The common law preference for retreat stemmed from a concern that "the right to defend might be mistaken as the right to kill."<sup>34</sup>

However, this preference of the English common law system did not proliferate under United States law.<sup>35</sup> The 1895 decision of *Beard v. United States*<sup>36</sup> marks an approval of the modern castle doctrine by the Supreme Court.<sup>37</sup> The idea that one attacked in her own home had no duty to retreat before resorting to deadly force was well accepted by the turn of the century.<sup>38</sup> Where one reasonably believed that the use of deadly force was necessary to preserve her own life, such action was justified.<sup>39</sup> This common law duty to retreat evolved similarly under Florida law.<sup>40</sup>

Before passage of Florida's SYG Law, a person could use deadly force in self-defense only where she believed such force "necessary to prevent imminent death or great bodily harm" to herself or another.<sup>41</sup> However, even where deadly force was believed necessary, "a person [could] not resort to deadly force without first using every reasonable means within his or her power to avoid the danger, including retreat."<sup>42</sup> Still, Florida common law acknowledged that the duty to retreat did not apply to individuals using deadly force in response to an attack within her home, "so long as the deadly force is necessary to prevent death or great bodily harm."<sup>43</sup> Thus, one maintained the right to defend her home and family against trespassers in Florida.<sup>44</sup>

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that a duty to retreat requires "a person acting in self-defense outside his or her home or workplace" to employ "every reasonable means to avoid the danger, including retreat, prior to the use of deadly force").

32. Catalfamo, *supra* note 27, at 505.

33. *Id.* at 506 ("Thus, a man could be justified in standing his ground and using force, even deadly force, if it was necessary to protect his proprietary and dignitary interests in his home[.]").

34. *Id.* at 507 (quoting F. Baum & J. Baum, *LAW OF SELF-DEFENSE* 6 (1970)).

35. *Id.* at 507-08 ("During the 1880s, United States law began to veer sharply from English common law. The American ideals of bravery and honor suited themselves to frontier life in a way that the English duty to retreat could not. As the United States developed, so did the concept of the right to defend one's honor, especially in the South and the Midwest.") (internal footnotes omitted).

36. *Beard v. United States*, 158 U.S. 550 (1895).

37. Catalfamo, *supra* note 27, at 509 ("Beard had been convicted of the murder of a trespasser because the trial court instructed the jury that Beard had a duty to retreat before the use of deadly force, even on his own property. In reversing Beard's conviction, the Supreme Court noted that despite the overall U.S. and British duty to retreat before using deadly force, there had been a consistent exception in both British common law and the law of many U.S. jurisdictions that permitted a man to stand his ground when attacked in his home.") (internal footnotes omitted).

38. *Id.* at 509-10.

39. *Id.*

40. *Id.* at 512-22. See also Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 832-35 (2013) (providing an overview of Florida's SYG Law and comparing Florida's self-defense law before and after SYG).

41. *Weiland v. State*, 732 So. 2d 1044, 1049 (Fla. 1999). See also Lave, *supra* note 40, at 832.

42. *Weiland*, 732 So. 2d at 1049.

43. *Id.*

44. See *Wilson v. State*, 11 So. 556 (Fla. 1892); *Pell v. State*, 112 So. 110 (Fla. 1929). See also Catalfamo, *supra* note 27, at 513.

Although an individual possessed the right to defend her home against trespassers, Florida courts struggled with the question of whether one could exercise this right against people with a legal right to be in the home.<sup>45</sup> In *Hedges v. State*,<sup>46</sup> the Florida Supreme Court extended the privilege of non-retreat to attacks by guests or invitees.<sup>47</sup> Later, in *State v. Bobbitt*,<sup>48</sup> the Florida Supreme Court resolved a conflict over whether the castle doctrine applied to attacks between co-occupants.<sup>49</sup> There, the Court held that the castle doctrine could not apply where both parties “had equal rights to be in the ‘castle’ and neither had the legal right to eject the other.”<sup>50</sup> Twenty years later, in *Weiland v. State*, the Court retreated from *Bobbitt*, citing an “increased understanding of the plight of domestic violence victims” as sound policy for not imposing a duty to retreat in attacks against co-occupants.<sup>51</sup> Florida’s castle doctrine provided a privilege of non-retreat to persons attacked in their place of employment,<sup>52</sup> but declined to extend the privilege to guests in another’s home<sup>53</sup> or to include vehicles in the definition of one’s “castle.”<sup>54</sup>

Thus, a combination of statutory and common law comprised Florida’s self-defense regime before SYG.<sup>55</sup> With the Florida Supreme Court decision in *Weiland*, the confusion surrounding the castle doctrine and the duty to retreat appeared to be settled.<sup>56</sup> However, the duty to retreat was abrogated from Florida’s self-defense regime with the passing of SYG in 2005.<sup>57</sup>

Florida’s Stand Your Ground Law significantly expanded a person’s right to use deadly force in self-defense.<sup>58</sup> The National Rifle Association (NRA) played an instrumental role in getting the bill passed through the Florida Legislature.<sup>59</sup> The Protection of Persons Bill,<sup>60</sup> conceived by former NRA President Marion P. Hammer,

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45. Catalfamo, *supra* note 27, at 512-3.

46. 172 So. 2d 824 (Fla. 1965).

47. *Id.* at 826-27. See also Catalfamo, *supra* note 27, at 513.

48. 415 So. 2d 724 (1982).

49. Catalfamo, *supra* note 27, at 516.

50. *Bobbitt*, 415 So. 2d at 726.

51. *Weiland*, 732 So. 2d at 1054-55.

52. *Redondo v. State*, 380 So. 2d 1107, 1110-11 (Fla. 3d Dist. Ct. App. 1980).

53. *State v. James*, 867 So. 2d 414, 417 (Fla. 3d Dist. Ct. App. 2003).

54. *Baker v. State*, 506 So. 2d 1056 (Fla. 2d Dist. Ct. App. 1987).

55. See Michelle Jaffe, *Up in Arms over Florida’s New “Stand Your Ground” Law*, 30 NOVA L. REV. 155, 170 (2005).

56. *Id.* at 175.

57. See *infra* Part II.

58. Lave, *supra* note 40, at 835.

59. *Id.* at 836. See also Catalfamo, *supra* note 27, at 536-40 (“Legislative history indicates that both the House and Senate were aware that the Stand Your Ground law would have a significant impact on gun laws. First, although the Stand Your Ground law never mentions firearms, it deals with deadly force, which is defined by statute in Florida as including firing a firearm in the direction of another person. Additionally, the fact that the National Rifle Association, led by former president and lobbyist Marion Hammer, sponsored the Stand Your Ground Law further corroborates the connection. It is unsurprising, then, that the public has consistently characterized the Stand Your Ground law as a ‘gun law.’”); Jaffe, *supra* note 55, at 178-80; *A History of “Stand Your Ground” Law in Florida*, NPR (Mar. 20, 2012), <http://www.npr.org/2012/03/20/149014228/a-history-of-stand-your-ground-law-in-florida> (“Well, this was an NRA bill, and this is a Republican-dominated legislature, so, you know, it passed pretty easily.”).

60. H.B. 249, 107th Leg., Reg. Sess. (Fla. 2005); S.B. 436, 107th Leg., Reg. Sess. (Fla. 2005). Later, these Amendments came to be known collectively as the “Stand Your Ground” Law. See Lave, *supra* note 40, at 832. See also Elizabeth Megale, *A Call for Change: A Contextual-Configurative Analysis of Florida’s “Stand*

sought to amend Florida's self-defense legislation and immunity provisions.<sup>61</sup> The bill passed unanimously in the Senate and by an overwhelming majority in the House of Representatives.<sup>62</sup> It was signed into law by Governor Jeb Bush on April 26, 2005, and became effective on October 1, 2005.<sup>63</sup>

Thus, Florida became the first state to adopt SYG legislation as drafted and proposed by the NRA.<sup>64</sup> Florida's comprehensive update of its self-defense laws pursuant to successful lobbying prompted the NRA to increase its efforts in pushing for similar legislation across the country.<sup>65</sup> In fact, since 2005, more than half of the states have either enacted or considered similar SYG legislation.<sup>66</sup> Given the involvement of the NRA and the statutory language concerning "deadly force,"<sup>67</sup> the SYG regime is often characterized as a "gun law."<sup>68</sup> Indeed, both houses of the Florida Legislature were aware that the SYG regime would have a significant impact on gun laws.<sup>69</sup> Nevertheless, the rationale for passing the SYG laws was to enable "law-abiding [citizens] to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others[.]"<sup>70</sup>

### III. THE STATUTORY SCHEME

In 2005, the Florida legislature undertook to clarify and codify the common law "duty to retreat" in relation to the use of force in self-defense.<sup>71</sup> As a result, Florida

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*Your Ground*" Laws, 68 U. MIAMI L. REV. 1051, 1074-76; Zachary L. Weaver, *Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification*, 63 U. MIAMI L. REV. 395, 398-99 (2008).

61. See Catalfamo, *supra* note 27, at 537-38. See also Jennifer Randolph, *How to Get Away with Murder: Criminal and Civil Immunity Provisions in "Stand Your Ground Legislation*, 44 SETON HALL L. REV. 599, 612 (2014).

62. Randolph, *supra* note 61, at 612. See generally Daniel Michael, Recent Development: *Florida's Protection of Persons Bill*, 43 HARV. J. ON LEGIS. 199 (2006) (discussing the Protection of Persons Bill and its legal implications).

63. Randolph, *supra* note 61, at 612; Weaver, *supra* note 60, at 395. See also Michael, *supra* note 62, at 211.

64. See, e.g., Megale, *supra* note 60, at 1075. See generally Lave, *supra* note 40, at 836-39 for a detailed discussion of the NRA's involvement and tactics in pushing for Florida's SYG legislation.

65. See Randolph, *supra* note 61, at 614.

66. *Id.*

67. FLA. STAT. § 776.06(1) (Fla. 2005).

68. Catalfamo, *supra* note 27, at 537-38.

69. *Id.* In a footnote, Catalfamo notes that "[l]egislative history confirms what could otherwise be assumed from Florida culture." *Id.* at n.151. This "Florida culture" seemingly refers to the "right of people to bear arms in defense of themselves" as guaranteed by § 8 of Article I of the State Constitution, as well as the association of the State with gun laws and violence. *Id.* at 536, n.151.

70. Weaver, *supra* note 60, at 398-99. Compare Megale, *supra* note 60, at 1076-77 (SYG laws "were supposed to prevent innocent people acting in self-defense from having to defend themselves or worry about being prosecuted . . . [i]n other words, the legislature intended to empower individuals in the community to take matters into their own hands.") (internal footnotes omitted), with Elizabeth B. Megale, *Disaster Unaverted: Reconciling the Desire for a Safe and Secure State with the Grim Realities of Stand Your Ground*, 37 AM. J. TRIAL ADVOC. 255 (2013) [hereinafter *Disaster Unaverted*] (giving an account of how the legislature's passing of SYG went too far in liberalizing the justifiable use of force under Florida's self-defense regime), and Lave, *supra* note 40, at 848-57 (identifying problematic aspects of SYG: creation of an incentive to kill—"shoot first, ask questions later" mentality; the lowering of state legitimacy because it "fosters racism and encourages people to break the law;" and the fact that studies show SYG does not deter violent crime).

71. See Catalfamo, *supra* note 27, at 523-24.

legislators substantially amended chapter 776 by a series of enactments collectively known as the “Stand Your Ground Law.”<sup>72</sup> This law abrogates the common law duty to retreat<sup>73</sup> and generally authorizes the use of force in self-defense, or in defense of others.<sup>74</sup> Significantly, the act authorizes the use of deadly force when such force is reasonably believed necessary to prevent imminent death, great bodily harm, or the commission of a “forcible felony,” and the person using such force “is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another[.]”<sup>75</sup>

Chapter 2005-07 amended two existing statutes,<sup>76</sup> and it created two new statutes.<sup>77</sup> As amended, § 776.012 provides that “[a] person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force.”<sup>78</sup> However, a person is justified in the use of 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; or

Under those circumstances permitted pursuant to s. 776.013 [which permits use of defensive force intended or likely to cause death or great bodily harm in a dwelling, residence, or occupied vehicle].<sup>79</sup>

As such, justifiable use of deadly force in self-defense applies in situations where an individual is attacked in a place where she has a lawful right to be, and she reasonably believes such conduct is necessary.<sup>80</sup>

One who uses deadly force in her “dwelling, residence, or occupied vehicle”<sup>81</sup> in response to an attack or an unlawful entry is *presumed* to have held reasonable fear of “imminent peril or great bodily harm” under § 776.013.<sup>82</sup> However, this presumption does not apply in those circumstances enumerated in § 776.013(2).<sup>83</sup> Situations

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72. *Id.*

73. See Catalfamo, *supra* note 27, at 524-25.

74. When self-defense is asserted in a criminal case, the defendant only has the burden of presenting “some evidence” to establish a *prima facie* case that the killing was justified. See, e.g., Sipple v. State, 972 So. 2d 912 (Fla. 5th Dist. Ct. App. 2008); Adams v. State, 727 So. 2d 997, 999-1000 (Fla. 2d Dist. Ct. App. 1999); Bolin v. State, 297 So.2d 317 (Fla. 3d Dist. Ct. App.), *cert. denied*, 304 So. 2d 452 (Fla. 1974). The state must then prove beyond a reasonable doubt that the defendant did not act in self-defense. See, e.g., Jenkins v. State, 942 So. 2d 910 (Fla. 2d Dist. Ct. App. 2006), *rev. denied*, 950 So. 2d 414 (Fla. 2007); Fowler v. State, 921 So. 2d 708, 711-12 (Fla. 2d Dist. Ct. App. 2006); Romero v. State, 901 So. 2d 260 (Fla. 4th Dist. Ct. App. 2005); Andrews v. State, 577 So. 2d 650, 652 (Fla. 1st Dist. Ct. App.), *rev. denied*, 587 So. 2d 1329 (Fla. 1991).

75. FLA. STAT. § 776.013(1) (2014).

76. See FLA. STAT. §§ 776.012 and 776.031 (2014).

77. See FLA. STAT. §§ 776.013 and 776.032 (2014).

78. FLA. STAT. § 776.012 (2014).

79. FLA. STAT. § 776.012 (2014).

80. Catalfamo, *supra* note 27, at 524.

81. FLA. STAT. § 776.013(1)(a) (2014).

82. See Catalfamo, *supra* note 27, at 524 (emphasis added).

83. FLA. STAT. § 776.013(2) (2014). The presumption of § 776.013(1) does not apply if (a) [t]he person



where a person may be justified in using force or deadly force to protect property are governed by § 776.031.<sup>84</sup> In essence, Florida's Stand Your Ground Law effectively:

expands the castle doctrine by expanding the concept of what is a "castle" and by expanding the group of persons entitled to the castle's protection. Under the castle doctrine, a person has no duty to retreat from his or her "castle," a person's home or workplace, before resorting to deadly force necessary for self-defense. [Florida's Stand Your Ground Law] expand[s] the concept of the castle to include attached porches, any type of vehicle, and place of temporary lodging, including tents. Under the castle doctrine, only persons lawfully residing in a dwelling have no duty to retreat before resorting to deadly force necessary for self-defense. [Florida's Stand Your Ground Law gives] invited guests in another person's "castle" . . . the same rights to self-defense as a resident of the expanded castle.<sup>85</sup>

Immunity from criminal prosecution and civil suit for anyone using permissive force is provided for in § 776.032. That section provides that one using force as permitted by §§ 776.012, 776.013, or 776.031, "is immune from criminal prosecution and civil action for the use of such force" subject to certain exceptions.<sup>86</sup> Under the statute, a defendant is not limited to asserting an affirmative defense at trial that her use of force was legally justified. The law provides that agencies may "use standard procedures for investigating the use of force," but may not arrest the person using force unless probable cause exists "that the force . . . used was unlawful."<sup>87</sup> As the Florida Supreme Court explained:

Section 776.032 contemplates that a defendant who establishes entitlement to the statutory immunity will not be subjected to trial. Section 776.032(1) expressly grants defendants a substantive right to not be arrested, detained,

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against whom the defensive force is used or threatened has a right to be in or is a lawful resident of the [location], 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) [t]he [person(s)] sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or (c) [t]he person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or (d) [t]he person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14)[.] *Id.*

84. "A person is justified in using or threatening to use force[] . . . against another when and to the extent that the person reasonably believes . . . necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property *other* than a dwelling or personal property, lawfully in his or her possession or in the possession of [others] or of a person whose property he or she has a legal duty to protect." FLA. STAT. § 776.031(1) (2014) (emphasis added). "A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force." *Id.* (emphasis added). The use of deadly force is addressed in § 776.031(2). See FLA. STAT. § 776.031(2) (2014). See also *Florida Legislation*, *supra* note 31, at 354.

85. See *Florida Legislation*, *supra* note 31, at 355 (citing Judiciary Comm. SB 436 Staff Analysis, at 6).

86. Namely, immunity does not apply where "the person against whom force was used or threatened is a law enforcement officer . . . who was acting 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 or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. FLA. STAT. § 776.032(1) (2014). Additionally, "criminal prosecution" is defined to include arrest, detainment in custody, and charging or prosecuting the defendant. *Id.*

87. FLA. STAT. § 776.032(2) (2014).

charged, or prosecuted as a result of the use of legally justified force. The statute does not merely provide that a defendant cannot be convicted as a result of legally justified force.<sup>88</sup>

For example, the use of force might be unlawful if a person is found to have acted *without* a reasonable belief of necessity, or if she was not in a place she had the right to be.<sup>89</sup> In any situation, this immunity clause provides an additional procedural hurdle in the form of a pre-trial determination.<sup>90</sup> If the defendant successfully proves her claim of self-defense to the judge at the pre-trial hearing, the case is dismissed.<sup>91</sup> Immunity is granted by judicial order alone, thereby removing the case from being tried by a jury, and withdrawing the defendant from criminal prosecution for her use of deadly force.<sup>92</sup>

Ultimately, the statutory scheme established by Florida's Stand Your Ground Law abrogates the duty to retreat before using deadly force.<sup>93</sup> Initially, critics feared that this scheme—built upon hard, bright-line rules and presumptions that appear to do away with common law considerations of necessity and proportionality—went too far in liberalizing the use of force.<sup>94</sup> Because Florida is a “high-crime state with heavy urbanization, a massively overcrowded prison system, and an extremely diverse (and often tense) racial population[,]” it appeared to have “all the ingredients for . . . disaster” with laws involving deadly force.<sup>95</sup> Indeed, cases applying the statute are a particularly difficult breed of cases that must be analyzed closely before any decisions to prosecute are made.<sup>96</sup>

#### IV. PROSECUTORIAL DISCRETION UNDER FLORIDA'S STAND YOUR GROUND LAW

The prosecutor, as a member of the executive branch, has complete discretion in deciding whether to prosecute and how to conduct a prosecution.<sup>97</sup> Any decision to prosecute is within the prosecutor's discretion where there is probable cause to believe the accused has committed an offense.<sup>98</sup> Further, charging decisions made

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88. *Dennis*, 51 So. 3d at 462.

89. Catalfamo, *supra* note 27, at 525.

90. Lawson, *supra* note 5, at 288.

91. *Id.*

92. *Id.*

93. Catalfamo, *supra* note 27, at 504.

94. *Id.*

95. *Id.* (quoting Clayton E. Cramer & David B. Kopel, “*Shall Issue: The New Wave of Concealed Handgun Permit Laws*,” 62 TENN. L. REV. 679, 690 (1995)).

96. Lawson, *supra* note 5, at 287.

97. See generally *Garnett v. State*, 87 So. 3d 799, 802 (Fla. 1st Dist. Ct. App. 2012); *State v. Greaux*, 977 So. 2d 614, 615 (Fla. 4th Dist. Ct. App. 2008); *State v. Gibson*, 935 So. 2d 611 (Fla. 3d Dist. Ct. App. 2006); *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986).

98. See generally *Wayte v. United States*, 470 U.S. 598, 607 (1984); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (“[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”).

by the prosecutor are largely unreviewable by courts.<sup>99</sup> In *State v. Bloom*,<sup>100</sup> the Florida Supreme Court held that article II, section 3 of the Florida Constitution prohibits the judiciary from interfering with the discretionary executive function of a prosecutor.<sup>101</sup> Thus, the prosecutor's initial charging decision is usually the final word on the matter, and "no court, judge, citizen, or any other person can force a prosecutor to file charges in a case."<sup>102</sup>

The prosecutor's ability to bring charges against an individual depends on a statutory grant of authority from the legislature. The passing of criminal laws allows the legislature to appear "tough on crime" while handing off the duty of law execution to the executive—that is, the prosecutor.<sup>103</sup> In fact, where the surrounding political climate fuels a "tough on crime" rhetoric, legislators are willing to pass these laws knowing that prosecutors ultimately decide which cases are actually brought.<sup>104</sup>

Charging decisions under SYG are "fact intensive excavations in which the prosecutor is focused on whether there is sufficient evidence to prove the criminality of the suspect beyond a reasonable doubt, to the exclusion of any criminal defenses . . . raised."<sup>105</sup> Due to certain evidentiary challenges and procedural obstacles, all "stand your ground cases" in Florida are challenging to evaluate and prosecute.<sup>106</sup> Overall, SYG has illuminated procedural and substantive implications for criminal defendants and citizens alike, and has perpetuated a debate concerning justifiable use of deadly force.<sup>107</sup>

Indeed, this debate was vibrant long before the confrontation between George Zimmerman and Trayvon Martin and the public outcry against SYG in response.

99. See *Inmates of Attica Corr. Facility v. Rockefeller*, 477 F.2d 375, 381-82 (2d Cir. 1973) (explaining that a court cannot order a prosecutor to file criminal charges); *Wayte*, 470 U.S. at 607 (The prosecutor's "(B)road discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake.").

100. *State v. Bloom*, 497 So. 2d 2 (Fla. 1986).

101. *Id.* at 3. That Court cited the principles enumerated in federal courts as underlying its holding, specifically that the "decision of whether or not to prosecute in any given instance must be left to the discretion of the prosecutor. This discretion has been curbed by the judiciary only in those instances where impermissible motives may be attributed to the prosecution, such as bad faith, race, religion, or a desire to prevent the exercise of the defendant's constitutional rights." *Id.* (citing *United States v. Smith*, 523 F.2d 771, 782 (5th Cir. 1975)).

102. Lawson, *supra* note 5, at 289.

103. See Sekhon, *supra* note 7, at 7.

104. *Id.* at 3. See also Lawson, *supra* note 5, at 284-86. Lawson notes that charging decisions are discretionary, and ultimately controversial, because the law is complex, and not all crimes that are identified are charged. *Id.* at 285. "In actuality, there are fundamental policy goals that drive decisions to charge and not to charge. Further, these policy goals often change depending on the politics of the current prosecutor in power, including the prosecutor's vision and priorities. Thus, purely legal issues are not the sole factors considered when making charging decisions." *Id.*

105. Lawson, *supra* note 5, at 287-88.

106. *Id.* at 288. Lawson further explains, "(I)t is normal for a prosecutor to be cautious before charging this type of case, and it may even be reasonable for the prosecutor to elect not to charge it after weighing all the factors." *Id.* "Objectively speaking, it is neither just nor unjust not to charge; instead, it is a commentary on the overall strength of case in the subjective view of the prosecutor at the time the decision is made." *id.* "Whether right or wrong, it is *exclusively* within the prosecutor's discretion to make this weighty determination." *Id.* (emphasis added).

107. See generally *Florida Legislation*, *supra* note 31. See also Ahmad Abuznaid et al., "Stand Your Ground" Laws: International Human Rights Law Implications, 68 U. MIAMI. L. REV. 1129 (2014).

Notably, both prosecutors and law enforcement expressed opposition to the law before it was passed.<sup>108</sup> While it is reasonable to believe that the legislature should have given greater weight to those opinions when considering the legislation, SYG nonetheless “overwhelmingly passed and remains in force.”<sup>109</sup> Thus, by passing SYG into law, the Florida legislature imposed on prosecutors the duty to seek justice and prosecute individuals who violate that law in accordance with their executive function.<sup>110</sup>

Initially, it appeared that SYG acted more as a “bar to prosecution than a defense.”<sup>111</sup> While the law did not turn “Florida into the Wild West, nor [did] it cause[] a demonstrable increase in homicides[,]” it inevitably influenced decisions “whether to prosecute at all or bring reduced charges against individuals using deadly force.”<sup>112</sup> This is because the additional layer of protection afforded to an individual acting in self-defense under SYG—that is, pre-trial determination of immunity from civil and criminal prosecution<sup>113</sup> in addition to an affirmative defense at trial—must also be considered by the prosecutor when making charging decisions.<sup>114</sup> That consideration further complicates an already complicated decision-making process through which prosecutors exercise their discretion.<sup>115</sup>

Moreover, prosecutorial discretion to bring charges against an individual asserting self-defense under SYG is limited by law enforcement’s investigation and handling of incidents.<sup>116</sup> Under § 776.032(2), the police cannot arrest or detain an individual unless there exists probable cause that the force used was unlawful.<sup>117</sup> Thus, situations where the police cannot find probable cause to make an arrest at the scene

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108. See Weaver, *supra* note 60, at 401-03 (“As agents of the State, prosecutors and law enforcement groups are charged with the duty to enforce the law. In Florida, both groups publicly voiced their opposition to the “Stand Your Ground” law, but unfortunately the legislature did not seem to listen.”).

109. *Id.* at 403.

110. *Id.* at 401-02.

111. *Id.* at 406. Weaver later states that the “assertion that the law acts more as a bar to prosecution than a defense cannot be fully substantiated[.] . . . because statistics on the number of self-defense claims statewide, either before or after the law took effect, [were] not available.” *Id.* at 407.

112. *Id.* at 407.

113. See FLA. STAT. § 776.032 (2014). See also notes 86-92 and accompanying text.

114. See, e.g., Lawson, *supra* note 5, at 286-88; see also Weaver, *supra* note 60, at 406-08.

115. For example, MacLean and Wilks list the following questions that face a prosecutor in nearly every case when making decisions: Is additional investigation needed? What evidence is admissible? Is there sufficient admissible evidence to support the charges? Should the suspect be charged with any offense? If so, what charges should be brought? When should the charges be brought? What bail and release conditions should be sought? What are the discovery obligations? What are the victims’ wishes? What are the offender’s circumstances and criminal history? What has been done in similar cases and similar situations? What is the optimal mix of retribution, restitution, and rehabilitation? What does “justice” require? MacLean & Wilks, *supra* note 22, at 68-69. Amidst a similar discussion, Lawson notes “the act of charging itself indicates that the prosecution has confidence in the incriminating evidence and believes that there is a high probability of a conviction at trial, *having first overcome all the necessary obstacles.*” Lawson, *supra* note 5, at 289; see also *id.* 288-90 (emphasis added).

116. See Weaver, *supra* note 60, at 408-09 (SYG “legislation altered how law enforcement assesses and handles incidents involving self-defense claims.”).

117. See FLA. STAT. § 776.032(2). See also Weaver, *supra* note 60, at 409 (“[A]lthough the law requires self-defense claims to be investigated, an individual claiming he or she acted in self-defense *cannot even be arrested* unless the police have evidence that the person’s actions do not fit within the requirements of the statute.”) (emphasis added).

of an incident impacts subsequent investigations.<sup>118</sup> Indeed, the prosecutor may have a lesser expectation of successfully obtaining a conviction against an individual at trial where law enforcement's investigation fails to establish probable cause for an arrest under SYG.<sup>119</sup>

As such, the failure of the Sanford Police Department to find probable cause to warrant Zimmerman's arrest likely lowered the prosecutor's expectation of obtaining a conviction in that case.<sup>120</sup> Norm Wolfinger, the State Attorney for the Eighteenth Judicial Circuit, thus elected to submit Zimmerman's fate to a grand jury.<sup>121</sup> However, when special prosecutor Angela Corey took over the case,<sup>122</sup> she chose to bring charges by information rather than proceeding with the grand jury.<sup>123</sup> Not only was her decision politically motivated,<sup>124</sup> it was arguably improper to remove the charging decision from the grand jury.<sup>125</sup>

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118. See Weaver, *supra* note 60, at 409-10 (Weaver reviews the effect of § 776.032(2) as illustrated by five months of court records for six different counties in Florida. "Assessment of the records uncovered that some incidents received over twenty hours of investigation by detectives, while others were sent straight to the prosecutors' offices and were never reviewed by detectives." Weaver goes on to compare three incidents in an attempt to illustrate the "varying methods of investigating cases by law enforcement." Weaver notes that "[s]ome investigators argue that the law has not changed how incidents are assessed and investigated by law enforcement agencies[.]" while others "assert the opposite conclusion." Weaver concludes the section through recognition that "[t]he varying amounts of time spent investigating and the different methods for handling incidents involving claims of self-defense under the law is difficult to reconcile with the desire for the law to be applied uniformly. Because cases are not handled uniformly, too much discretion may be vested in law enforcement.") (internal footnotes omitted).

119. See, e.g., Lawson, *supra* note 5, at 292 ("Despite the public's opinion, for the prosecutor, most of the analysis of a criminal case is in determining whether the evidence is sufficient to prove guilt beyond a reasonable doubt."). This proposition may be further inferred from arguments that SYG has made it "easier to get away with murder" in Florida. See Megale, *supra* note 60, at 1078-79 (concluding a discussion of the Florida Legislature as a participant in the SYG regime that "[b]ecause 'Stand Your Ground' has virtually eliminated the police and prosecutor roles in many homicides, legal control has vanished"); Lave, *supra* note 40, at 848-50 ("The presumption of acting lawfully in conjunction with no duty to retreat constitutes a de facto license to hunt and kill suspected criminals, and makes it easier for a person to murder someone and pass it off as self-defense.").

120. See, e.g., Lawson, *supra* note 5, at 289 ("In the case of Trayvon Martin's killing, in addition to other issues surrounding the case, the prosecutors were forced to consider the contours of the Stand Your Ground Law and its impact on a successful conviction of the killer. The knowledge of legal and procedural complexities of self-defense cases in Florida may help explain why the initial prosecutorial decision was not to charge murder for this homicide.").

121. See, e.g., Wroblewski, *supra* note 17, at 111.

122. See FLA. EXEC. ORDER NO. 12-72 (2012), [http://www.flgov.com/wp-content/uploads/orders/2012/12-72-martin\\_10-2.pdf](http://www.flgov.com/wp-content/uploads/orders/2012/12-72-martin_10-2.pdf).

123. See Information, *supra* note 20. See also Affidavit of Probable Cause—Second Degree Murder, State v. Zimmerman (Fla. Cir. Ct. Apr. 11, 2012), <http://s3.documentcloud.org/documents/336022/zimmerman-probable-cause-document.pdf>.

124. See Sekhon, *supra* note 7, at 2 ("Angela Corey's ultimate decision to prosecute George Zimmerman could not have been anything but 'political.'"); Wroblewski, *supra* note 17, at 113 (noting that "the pressure on Corey to charge Zimmerman was immense"); *supra* notes 19-21 and accompanying text. See also Douglas O. Linder, *The George Zimmerman Trial: An Account*, <http://law2.umkc.edu/faculty/projects/ftrials/zimmerman1/zimmermanaccount.html> (last visited April 8, 2015) ("State Attorney Angela Corey filed charges against Zimmerman under heavy political pressure to do so. But political pressure should not decide who gets charged with a crime and who does not. The facts of a case should decide that.").

125. See Bennett L. Gershman & Joel Cohen, *Charging George Zimmerman: Why Bypass the Grand Jury?*, HUFFINGTON POST (Apr. 24, 2012, 5:05 PM), [http://www.huffingtonpost.com/bennett-l-gershman/george-zimmerman-grand-jury\\_b\\_1445714.html](http://www.huffingtonpost.com/bennett-l-gershman/george-zimmerman-grand-jury_b_1445714.html) ("[T]he prosecutor has chosen in a controversial case of such magnitude . . . to use Florida's escape hatch [charging a crime by information], thereby foregoing a procedure designed by the Magna Carta to protect a defendant from unwarranted accusations.").

In Florida, an indictment is required for capital offenses, or those punishable by death or life imprisonment.<sup>126</sup> The Florida Constitution provides that “[n]o person shall be tried for [a] capital crime without presentment or indictment by a grand jury[.]”<sup>127</sup> Zimmerman was charged with second-degree murder,<sup>128</sup> which carries a maximum penalty of life imprisonment, but is not considered a capital offense.<sup>129</sup> However, the legislative committee notes on indictments and informations “indicates that the decision to charge a person by information rather than grand jury indictment, while within a Florida prosecutor’s discretion, is *disfavored* when employed by prosecutors *not elected in the jurisdiction*”—that is, Corey.<sup>130</sup> Not only did Corey disregard public input when she charged Zimmerman by information as “an appointed and unelected prosecutor with no allegiance or [political] accountability,”<sup>131</sup> she also pursued a charge that was seemingly unsupported by the facts of the case.<sup>132</sup> In fact, Corey’s decision to charge Zimmerman with second-degree murder was criticized by several legal analysts.<sup>133</sup> Thus, Corey’s exercise of discretion—motivated by public

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126. See, e.g., Elizabeth Bosek, et. al, *Capital felonies*, 14B FLA. JUR. 2D CRIMINAL LAW—PROCEDURE § 1133 (2015) (“In some jurisdictions, including Florida, an indictment is required only for capital offenses, or those punishable by death or life imprisonment[.]”).

127. FLA. CONST., Art. I § 15.

128. See Information, *supra* note 20.

129. FLA. STAT. ANN. § 782.04(2) (Westlaw through Ch. 255, 2014 Spec. “A” Sess.). But see Gershman & Cohen, *supra* note 125 (“But a charge of murder in the second degree is hardly a “run-of-the-mill” offense, especially given that a conviction could bring a life sentence for the accused.”).

130. Wroblewski, *supra* note 17, at 112 (emphasis added). See generally FLA. R. CRIM. P. 3.140, and committee notes at (a)(1)-(2) (“In courts not having elective prosecutors, prosecution by information is not recommended because of the [ ] doubt as to the authority of a nonelected prosecutor to use an information as an accusatorial writ. . . . While practicalities dictate that most non-capital felonies and misdemeanors will be tried by information or affidavit, if appropriate, even if an indictment is permissible as an alternative procedure, it is well to retain the grand jury’s check on prosecutors in this area of otherwise practically unrestricted discretion.”).

131. Wroblewski, *supra* note 17, at 112-13.

132. Many believed that manslaughter would have been a more appropriate charge against Zimmerman, and more likely to obtain a conviction. See *infra* note 133. See also Gershman & Cohen, *supra* note 125 (On removing the charging decision from the grand jury: “[W]as Corey concerned that the murder case was weak and difficult to prove beyond a reasonable doubt, so that she wanted to avoid key witnesses giving one version of their recollections under oath at the grand jury, and somewhat different versions at trial, thereby subjecting them to impeachment by a skilled defense attorney?”); *Bellamy v. Florida*, 977 So.2d 682, 684 (Fla. Dist. Ct. App. 2008) (an “impulsive overreaction to an attack or injury” was held insufficient to prove the prerequisites for second-degree murder).

133. See Linder, *supra* note 124 (“Several legal analysts, including Harvard law professor Alan Dershowitz, criticized Corey’s action, suggested that she over-charged, and that the evidence could not support a murder charge.”); Alan Dershowitz, *On Prosecutor Angela Corey’s Rant About My Criticism of Her*, HUFFINGTON POST (June 5, 2012, 4:38 PM), [http://www.huffingtonpost.com/alan-dershowitz/prosecutor-angela-corey-r\\_b\\_1571942.html](http://www.huffingtonpost.com/alan-dershowitz/prosecutor-angela-corey-r_b_1571942.html) (“I criticized her for filing a misleading affidavit that willfully omitted all information about the injuries Zimmerman had sustained during the “struggle” it described. She denied that she had any obligation to include in the affidavit truthful material that was favorable to the defense. She insisted that she is entitled to submit what, in effect, were half truths in an affidavit of probable cause, so long as she subsequently provides the defense with exculpatory evidence.”); James Joyner, *Dershowitz: Zimmerman Arrest Affidavit “Irresponsible and Unethical”*, OUTSIDE THE BELTWAY (Apr. 13, 2012), <http://www.outsidethebeltway.com/dershowitz-zimmerman-arrest-affidavit-irresponsible-and-unethical/> (“Dershowitz has made a career of hyperbole but I think he’s right here. As Doug Mataconis noted when the charges were filed late Wednesday, the evidence here points to manslaughter, not murder. Alas, prosecutors routinely overcharge and stack charges, especially in high profile cases, in order to appear “tough on crime” and to raise the stakes in order to coerce a plea to a more reasonable charge.”). See generally Josh Levs, *Trayvon Martin Case Has a Tough, Controversial Prosecutor*,

pressures, politically unchecked, and unlikely to establish Zimmerman's guilt beyond a reasonable doubt<sup>134</sup>—undermined the legitimacy of the criminal justice system in that case.<sup>135</sup>

## V. PUBLIC PRESSURES AND THE LEGITIMACY OF THE CRIMINAL JUSTICE SYSTEM

### A. George Zimmerman

Undoubtedly, Corey's decision to charge Zimmerman appeased the public's punitive impulse at the time. Trayvon Martin's death became a national movement, and communities rallied to vindicate the perceived injustice of the situation.<sup>136</sup> The media attention and public pressures surrounding the case pushed Corey to prosecute Zimmerman for second-degree murder, despite the arguable impropriety of the degree and manner in which the charge was brought.<sup>137</sup> As a result, George Zimmerman's trial emerged as the headline story of every media outlet and American household.<sup>138</sup>

Despite Corey's "political" prosecution, however, the jury acquitted Zimmerman of second-degree murder and the focus of national dialogue shifted to Florida's

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CNN (Apr. 11, 2012, 6:26 PM), <http://www.cnn.com/2012/04/10/justice/florida-teen-shooting-prosecutor/> (discussing Corey's reputation as "a tough prosecutor ready to pursue what she believes is right, even in the face of media glare and public pressure").

134. See, e.g., Doug Matacomis, *Trayvon Martin Case Will Not Go to Grand Jury*, OUTSIDE THE BELTWAY (Apr. 9, 2012), <http://www.outsidethebeltway.com/trayvon-martin-case-will-not-go-to-grand-jury/> ("Given the nature of the self-defense claim that Zimmerman will obviously raise in this case, [Corey] may have feared that a grand jury would have refused to indict based on the evidence, which would have been politically troublesome to say the least.").

135. Cf. Lawson, *supra* note 5, at 291-92 ("Although from the prosecutorial standpoint the charging decision is focused on the criminality of the suspect and not on the individuality of the victim, it is sometimes hard for the public to separate the two. The public perception of criminal law mostly views the case from a victim-centered perspective. Often times when charges are not filed in a case, the public's objection to the decision highlights a perceived indifference of the prosecutor toward the victim. Despite the public's opinion, for the prosecutor, most of the analysis of a criminal case is in determining whether the evidence is sufficient to prove guilt beyond a reasonable doubt.").

136. See, e.g., Lawson, *supra* note 5, at 283 ("Communities all over were chanting the slogan: 'I am Trayvon.' Students of Trayvon's age group and younger were walking out of school in symbolic rage regarding the fact that nothing was being done to vindicate his killing. People from all walks of life were wearing hoodies in solidarity with the perceived injustice of the treatment of the case."). See also CNN WIRE STAFF, *From Coast to Coast, Protesters Demand Justice in Trayvon Martin Case*, CNN (Mar. 26, 2012), <http://www.cnn.com/2012/03/26/justice/florida-teen-shooting-events/index.html?iref=allsearch>; Brock Parker, *Harvard Square Protest Mounted Over Trayvon Martin Shooting*, BOSTON GLOBE (Mar. 23, 2012), [http://articles.boston.com/2012-03-23/yourtown/31230778\\_1\\_large-protest-fatal-shooting-protest-organizers](http://articles.boston.com/2012-03-23/yourtown/31230778_1_large-protest-fatal-shooting-protest-organizers); 'Hoodies' unite for Trayvon Martin, SBS WORLD NEWS (Apr. 2, 2012), <http://www.sbs.com.au/news/article/1639321/Hoodies-unite-for-Trayvon-Martin>; Brian Hamacher & Lisa Orkin Emmanuel, *High School Students Walk Out In Protest of Trayvon Martin Shooting*, NBC MIAMI (Mar. 23, 2012), [http://us-news.nbcnews.com/\\_news/2012/03/23/10830314-high-school-students-walk-out-in-protest-of-trayvon-martin-shooting?lite](http://us-news.nbcnews.com/_news/2012/03/23/10830314-high-school-students-walk-out-in-protest-of-trayvon-martin-shooting?lite).

137. See discussion *supra* notes 126-35 and accompanying text.

138. See, e.g., Lawson, *supra* note 5, at n.71 ("Every media outlet was covering the story."), and 294-95 ("Based on the breadth, intensity, and duration of the public outcry to the Trayvon Martin killing, and the lack of corresponding criminal charges, the atmosphere became increasingly tense. . . . [A]s the media attention continued to swarm the case, the politics arguably shifted, and maybe the legal analysis did as well.") (internal footnotes omitted).

SYG regime.<sup>139</sup> Though the rationale and purpose of SYG was legitimate,<sup>140</sup> public mobilization in reaction to Zimmerman's acquittal pushed the Florida Legislature to reevaluate the law.<sup>141</sup> While the House ultimately rejected the proposed repeal,<sup>142</sup> this legislative response to public pressures illustrates the appropriate political mechanism through which such action should occur. Rather than assuming control of the case by circumventing the grand jury screening process and overcharging Zimmerman, Corey should have brought the case to a grand jury and sought appropriate charges under which she surely would have obtained a conviction.<sup>143</sup> Her surrender

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139. See, e.g., Gruber, *supra* note 23, at 977 (“[M]any commentators interpreted the verdict as a product, not of racial bias, but of the inherently undesirable stand-your-ground law.”); Megale, *supra* note 60, at 1072 (“Until 2012, Florida’s ‘Stand Your Ground’ law had not received much attention[.] This began to change when Trayvon Martin was shot and killed by George Zimmerman and the media descended upon Sanford, Florida.”) (internal footnotes omitted). See also Chelsea J. Carter & Holly Yan, *Why this verdict? Five things that led to Zimmerman’s acquittal*, CNN (July 15, 2013), <http://edition.cnn.com/2013/07/14/us/zimmerman-why-this-verdict/> (identifying the charges filed, evidence presented, key prosecution witness, voices on the 911 call, and testimony of the trial as the reasons for Zimmerman’s acquittal); Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (July 13, 2013), <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>; Mark Follman & Lauren Williams, *Actually, Stand Your Ground Played a Major Role in the Trayvon Martin Case*, MOTHER JONES (July 12, 2013), <http://www.motherjones.com/politics/2013/07/stand-your-ground-george-zimmerman-trayvon-martin>. See generally *supra* Part II for an in-depth examination of the SYG statutory scheme in Florida, as well as relevant discussion of Zimmerman’s trial and surrounding circumstances, upon which the analysis of Part III, Sec. A builds.

140. See, e.g., Madison Fair, Note, *Dare Defend: Standing for Stand Your Ground*, 38 LAW & PSYCHOL. REV. 153, 163 (2014) (“In general, Americans both understand and accept the inherent limitations of law enforcement, for a government able to protect every one of its citizens all the time would be far too oppressive and lacking in implicit freedoms that Americans especially hold dear. In light of law enforcement’s inability to completely protect individual citizens at all times, though, citizens must have the legal ability to protect themselves. Stand your ground laws empower victims by enhancing this right to self-protection and showing the state stands behind them in the event they are compelled to respond to an attack with deadly force.”) (internal footnotes omitted). But see Weaver, *supra* note 60, at 423-24, for a discussion of perceived problems with the legislature’s rationale for passing the law.

141. See, e.g., Abuznaid, *supra* note 107, at 1135-36 (“Perhaps the most prominent example of youth mobilization is the Dream Defenders, a Florida-based organization that has focused, in the aftermath of the Trayvon Martin killing, on the impact of SYG laws on youth of color. The Dream Defenders’ 31-day sit-in in the Florida State Capitol building in the wake of the verdict acquitting George Zimmerman of all charges related to the death of Trayvon Martin[.] . . . led the Florida Legislature to hold a hearing to reevaluate Florida’s SYG law.”) (internal footnotes omitted); Megale, *supra* note 60, at 1095-96 (“After a thirty-one-day protest[.] . . . Governor Rick Scott called a special legislative session to consider House Bill 4003 that proposed repeal of Florida’s [SYG].”). See also, Kathleen McGrory, *Dream Defenders End Sit-In Protest at Capitol in Tallahassee*, MIAMI HERALD (Aug. 15, 2013), <http://www.miamiherald.com/2013/08/15/3564934/dream-defenders-end-sit-in-protest.html>; Elizabeth Chuck, *Mothers of Victims Plead for Changes to Stand-Your-Ground Laws*, NBC NEWS (Oct. 29, 2013), [http://usnews.nbcnews.com/\\_news/2013/10/29/21231481-mothers-of-victims-plead-for-changes-to-stand-your-ground-laws](http://usnews.nbcnews.com/_news/2013/10/29/21231481-mothers-of-victims-plead-for-changes-to-stand-your-ground-laws); ASSOCIATED PRESS, *Florida lawmakers to vote on ‘stand your ground’ repeal*, FOX NEWS (Nov. 7, 2013), <http://www.foxnews.com/politics/2013/11/07/florida-lawmakers-to-vote-on-stand-your-ground-repeal/>.

142. See H.B. 4003, 115th Leg., (Fla. 2014, as rejected by Criminal Justice Subcomm.), available at <http://www.flsenate.gov/Session/Bill/2014/4003/BillText/Filed/PDF>; Bill History, Florida Senate, <http://www.flsenate.gov/Session/Bill/2014/4003> (last visited Apr. 4, 2015). See also Sascha Cordner, *House Panel Rejects Proposal to Repeal Florida’s Stand Your Ground Law*, WFSU (Nov. 7, 2013), <http://news.wfsu.org/post/house-panel-rejects-proposal-repeal-floridas-stand-your-ground-law>; Marion P. Hammer, *ALERT: Florida’s Stand Your Ground Law Stood its Ground Against Attack*, NRA-ILA (Nov. 8, 2013), <http://www.nraila.org/legislation/state-legislation/2013/11/alert!-floridas-stand-your-ground-law-stood-its-ground-against-attack.aspx>.

143. It is widely believed that manslaughter was the appropriate charge to bring against Zimmerman. See *supra* notes 132-33. A manslaughter charge may have been met with criticism, arguably going “too easy” on



to political and public pressures surrounding the case ultimately undermined her expertise, the legislative directive of SYG, and the legitimacy of the criminal justice system.<sup>144</sup>

### B. Michael Dunn

Other Florida cases involving SYG have similarly received media attention and roused public opinion concerning enforcement and applicability of the law.<sup>145</sup> In another headline criminal trial, Corey prosecuted Michael Dunn for the November 2012 killing of 17 year-old Jordan Davis.<sup>146</sup> However, Corey was acting in an elected and politically accountable capacity in this prosecution, as the case was tried in her own district of Duval County.<sup>147</sup> In November 2012, an altercation erupted between Dunn and a group of teenagers playing music in their car after Dunn asked them to turn down the volume.<sup>148</sup> The argument turned violent when Dunn grabbed his handgun and fired into the car, killing Davis.<sup>149</sup> Dunn claimed he fired into the car because he “saw a gun in the [teens’] car” and believed he was in immediate danger.<sup>150</sup> Similarly to Zimmerman, Dunn did not explicitly invoke a SYG defense by motion, but instead relied upon its inclusion in the jury instructions as part of his defense.<sup>151</sup> The jury found Dunn guilty on four counts of attempted murder, but was hung on the charge of first-degree murder for Davis’s death, again spurring media attention and public outrage.<sup>152</sup>

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Zimmerman, it is reasonable to assume public preference of *some* conviction rather than no conviction.

144. *But see* Sekhon, *supra* note 7, at 18 (“Prosecutors’ expressive power is potentially independent of any conviction they might secure. George Zimmerman’s recent acquittal bolsters this point—the trial has impelled a national dialogue about race, violence, and self-defense. It may even be that the acquittal has made for more animated political dialogue than a conviction would have.”).

145. While the following cases did not receive nearly as much media attention and public scrutiny as Zimmerman’s trial, they are nonetheless significant insofar as they perpetuated the debate concerning SYG, and kept the issue relevant to the public.

146. *See* Abuznaid, *supra* note 107, at 1143-44.

147. *See* Indictment, State v. Dunn, No. 16-2012-CF-011572-AXXX-MA (Fla. 4th Cir. Ct. Dec. 13, 2012), available at <https://core.duvalclerk.com/CoreCms.aspx>. *See also* Matt Soergel, *Dunn trial brings national focus on Florida’s stand-your-ground law*, THE FLORIDA TIMES UNION (Feb. 11, 2014), <http://jacksonville.com/news/metro/2014-02-10/story/dunn-trial-brings-national-focus-floridas-stand-your-ground-law>.

148. *See* Charlotte Alter, *Florida Man Who Killed Teen Over Loud Music Dispute Due in Court*, TIME (Feb. 3, 2014), <http://nation.time.com/2014/02/03/stand-your-ground-michael-dunn-jordan-davis-killing-loud-music/>.

149. *Id.*

150. *Id.* However, despite Dunn’s claim that he “saw Jordan Davis point a shotgun at him through the car window[,]” the subsequent investigation produced no such gun, nor did any of the witnesses see one. Abuznaid, *supra* note 107, at 1144.

151. *See* Abuznaid, *supra* note 107, at 1144.

152. *See* DIANE REHM SHOW, *The Loud Music Trial and Renewed Debate over Stand-Your-Ground Laws*, NPR (Feb. 18, 2014), <http://thedianerehmshow.org/shows/2014-02-18/loud-music-trial-and-renewed-debate-over-stand-your-ground-laws> (discussing complexities inherent in SYG which makes it “very different to separate out a provision of the law with the larger law[,]” particularly from the jury’s perspective); Gibson & Winkle, *infra* note 155 (noting that the jury found Dunn guilty “on four of five counts” for the attempted murder of the other teenagers in the car, but was deadlocked on the first-degree murder charge). *See also* Lisa Bloom, *4 Reasons Why Stand Your Ground Made a Difference in the Michael Dunn Trial*, HUFFINGTON POST (Feb. 21, 2014), [http://www.huffingtonpost.com/lisa-bloom/four-reasons-why-stand-yr\\_b\\_4821223.html](http://www.huffingtonpost.com/lisa-bloom/four-reasons-why-stand-yr_b_4821223.html) (“We do not yet have a conviction for the killing of Jordan Davis. The very least we can do is be honest about the law that stands in the way of accountability for his killing.”); Ashley Lopez, *Dunn Case Puts Stand Your Ground on*

Corey received criticism for charging Dunn with first-degree murder for killing Jordan Davis.<sup>153</sup> It was claimed that Corey's overcharging Dunn was "due to escalated political pressure and heightened media attention from the Zimmerman case."<sup>154</sup> Additionally, Corey sought to retry Dunn for first-degree murder after initially failing to obtain a conviction.<sup>155</sup> The fact that Corey pursued a retrial, without regard to the fact that Dunn's conviction for attempted murder also could have been reversed and the entire case lost, implicates politically motivated decision-making that undermines the prosecutorial function.<sup>156</sup>

Indeed, it is likely that Corey's decision to retry Dunn was a response to the negative opinion she had garnered in the media and amongst the public after failing to obtain a conviction against Zimmerman.<sup>157</sup> Securing a conviction of first-degree murder for Dunn arguably would have put her back in the good graces of the public, or set her up for reelection in her district.<sup>158</sup> Whatever her motivation, she promised a conviction that she could not deliver.<sup>159</sup> In light of the headline nature of the trial, Corey's actions point less towards everyday prosecutorial strategy and more towards a political manipulation of her discretion.<sup>160</sup>

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*Trial, Again*, FCIR (Feb. 21, 2014), <http://fcir.org/2014/02/21/dunn-case-puts-stand-your-ground-on-trial-again-zimmerman-gun-murder-florida/>.

153. See, e.g., Erin Donaghue, *Did prosecutors in "loud music" trial overcharge shooter?*, CBS NEWS (Feb. 18, 2014), <http://www.cbsnews.com/news/did-prosecutors-overcharge-accused-loud-music-shooter/>; Larry Hannan, *Did Angela Corey blow it? Experts say state prosecutor has history of overcharging*, THE FLORIDA TIMES UNION (Feb. 22, 2014), <http://jacksonville.com/news/crime/2014-02-22/story/did-angela-corey-blow-it-experts-say-state-prosecutor-has-history> ("Dunn should have been charged with second-degree murder, not first-degree, because this was not a premeditated murder[.]"); Figueroa, *infra* note 185 ("Corey has been criticized for overcharging all three defendants in her high-profile cases—Zimmerman, Dunn, and Alexander—all with the desire they accept her plea bargain. . . . In addition, she received a lot of public criticism for failing to secure murder charges for Zimmerman and Dunn."); DIANE REHM SHOW *supra* note 152 (discussing the "amount of anger against State Attorney Angela Corey"). See also Noah Rothman, *Dershowitz: Angela Corey's 'Prosecutorial Ineptitude' Might Allow Michael Dunn to Walk Free*, MEDIAITE (Feb. 19, 2014), <http://www.mediaite.com/tv/dershowitz-angela-corey%E2%80%99s-prosecutorial-ineptitude-might-allow-michael-dunn-to-walk-free/>.

154. Rick Neale & Gary Strauss, *Attorney: Dunn 'overcharged' due to Trayvon killing*, USA TODAY (Feb. 13, 2014), <http://www.usatoday.com/story/news/2014/02/13/attorney-says-michael-dunn-overcharged-due-to-trayvon-martin-death/5457507/>.

155. See, e.g., Travis Gibson & Amanda Winkle, *Dunn prosecutor: Will retry on first-degree murder*, FIRST COAST NEWS (Feb. 16, 2014), <http://www.firstcoastnews.com/story/news/local/michael-dunn-trial/2014/02/15/corey-retry-dunn-murder/5519925/>; Eliana Dockterman, *Both Sides Vow to Fight on in Florida Loud Music Case*, TIME (Feb. 17, 2014), <http://nation.time.com/2014/02/17/both-sides-vow-to-fight-on-in-florida-loud-music-case/>; Mark O'Mara, *Why prosecutor is retrying 'loud music' murder case*, CNN (Sept. 22, 2014), <http://www.cnn.com/2014/09/22/opinion/omara-loud-music-murder-case-retrial/>.

156. See Wanda Carruthers, *Dershowitz: Prosecutor Could Lose in 'Loud Music' Retrial*, NEWSMAX (Feb. 20, 2014), <http://www.newsmax.com/US/Alan-Dershowitz-Florida-CNN-loud-music-kill-ing/2014/02/20/id/553852/> (discussing Harvard law professor Alan Dershowitz's critical commentary on Angela Corey, and his belief that "there was a possibility the attempted murder charges against Dunn would not hold up when the case was retried"). Further, at that time, it was noted in a New York Times article that the case would focus more on SYG than race relations, and that "any changes in the state law [as a result of the trial] would be unlikely." See Soergel, *supra* note 147.

157. See Yamiche Alcindor & Jordan Friedman, *Zimmerman prosecutor takes hit in court of public opinion*, USA TODAY (Sept. 14, 2013), <http://www.usatoday.com/story/news/nation/2013/09/14/angela-corey-george-zimmerman-trayvon-martin-murder-florida/2763835/>.

158. See O'Mara, *supra* note 155.

159. *Id.*

160. See *id.* While prosecutors routinely overcharge in an attempt to pressure a defendant into a plea deal,

Because the media attention and public pressures surrounding the Dunn trial motivated her decision to retry on first-degree murder, Corey acted politically and in response to those pressures in her capacity as a prosecutor. This is further evidenced by the proximity in timing between Zimmerman's acquittal and the announcement of Dunn's retrial, as well as her perceived desire to make a name for herself rather than to seek justice.<sup>161</sup> Thus, Corey's discretionary decision to retry Dunn in response to public pressures undermined the legitimacy of the criminal justice system, despite her being subject to political accountability.

### C. Marissa Alexander

The unsuccessful invocation of SYG in the domestic violence context by Marissa Alexander prompted public and media criticism to the law once more.<sup>162</sup> Corey, again in an elected and politically accountable capacity, was the prosecutor in this case.<sup>163</sup> Corey pursued charges of aggravated assault with a deadly weapon against Alexander<sup>164</sup> under Florida's "10-20-Life" law.<sup>165</sup>

In that case, Alexander fired a "warning shot" in the direction of her abusive husband during a domestic dispute.<sup>166</sup> Despite Alexander's history of being abused

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such tactics are not prudent in headline criminal trials. Where the public maintains a "thirst for blood," prosecutors usually opt to pursue charges where the likelihood of obtaining a valid conviction at trial is high. This is true in the cases of headline trials, where the public would likely prefer some conviction rather than no conviction at all. Thus, it is reasonable to assume that prosecutors will pursue lesser charges against a criminal defendant in a high-profile case, and thus be more likely to obtain a conviction and vindicate the perceived injustice of a given situation, rather than to overcharge and lowering that probability. See, e.g., Lawson, *supra* note 5, at 286-88. See also *supra* note 115.

161. See, e.g., Alcindor & Friedman, *supra* note 157; O'Mara, *supra* note 155; Neale & Strauss, *supra* note 154. See also Hannan, *supra* note 153; Rothman, *supra* note 153; Figueroa, *infra* note 185. See generally Radley Balko, *Florida's Killingest Prosecutor*, WASH. POST (Mar. 13, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/03/13/floridas-killingest-prosecutor/> (examining Corey's track record in prosecuting the Zimmerman, Dunn, and Alexander trials, but also in sending more people to death row than any other prosecutor in Florida).

162. See Abuznaid, *supra* note 107, at 1146-48; see also *All Things Considered: Another Florida Case Puts Crosshairs On 'Stand Your Ground'*, NAT'L PUB. RADIO (Feb. 1, 2015), <http://www.npr.org/2015/02/01/383121919/another-florida-case-puts-crosshairs-on-stand-your-ground> [hereinafter *Crosshairs*] ("[A]fter a jury found George Zimmerman not guilty in the death of unarmed black teenager Trayvon Martin, people started to pay attention to the Alexander case.").

163. See Lauren Victoria Burke, *Angela Corey Speaks on Marissa Alexander*, POLITIC 365 (May 15, 2012), <http://politic365.com/2012/05/15/angela-corey-speaks-on-marissa-alexander-case/>.

164. See Information, *State v. Alexander*, No. 16-2010-CF-008579-AXXX-MA (Fla. 4th Cir. Ct. Aug. 26, 2010), available at <https://core.dualclerk.com/CoreCms.aspx>; see also, *Timeline for Marissa Alexander's Legal Case*, FREE MARISSA NOW <http://www.freemariissanow.org/timeline.html> (last visited Apr. 10, 2015); Mitch Stacy, *Marissa Alexander Gets 20 Years for Firing Warning Shot (VIDEO)*, HUFFINGTON POST (May 19, 2012), [http://www.huffingtonpost.com/2012/05/19/marissa-alexander-gets-20\\_n\\_1530035.html](http://www.huffingtonpost.com/2012/05/19/marissa-alexander-gets-20_n_1530035.html).

165. See FLA. STAT. § 775.087(1) ("[W]henever a person is charged with a felony[] . . . and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified" according to §§ 775.087(1)(a)-(c).); see also Bob Sparks, *Angela Corey is no stranger to Stand Your Ground*, CONTEXTFLORIDA, <http://contextflorida.com/bob-sparks-angela-corey-no-stranger-stand-ground/> (noting that Florida's 10-20-Life law "calls for 20-year mandatory prison sentences for those firing a gun during the commission of a crime"); Jim Piggot, *Alexander case highlights Florida's 10-20-Life law*, NEWS4JAX (Jan. 28, 2015), <http://www.news4jax.com/news/alexander-case-highlights-floridas-1020life-law/30970906>.

166. See *Crosshairs*, *supra* note 162 (presenting the disputed facts in that case as follows: "[Alexander]

at the hands of her estranged husband, Rico Gray, Corey pursued Alexander as the aggressor rather than a victim of domestic abuse.<sup>167</sup> Alexander rejected a plea deal offer from Corey and sought immunity under SYG.<sup>168</sup> Abiding by the language of the relevant statutory provisions, Duval Circuit Judge James Daniel denied Alexander an evidentiary hearing seeking immunity under SYG.<sup>169</sup> Further, Alexander was unable to claim self-defense at trial because she could not demonstrate that she had suffered “serious bodily injury at the time that she fired the shot[.]”<sup>170</sup> Alexander was convicted and sentenced to twenty years in prison under the guidelines of “10-20-Life,” and controversy ensued amongst the media and the public.<sup>171</sup>

Notably, activists formed the Free Marissa Now Mobilization Campaign, and pushed for Alexander’s release from incarceration.<sup>172</sup> Corey and her office’s handling of the case came under scrutiny.<sup>173</sup> In response, Corey maintained that Alexander was the aggressor in the situation and was properly denied SYG immunity, and moreover declared that the public outrage over Alexander’s conviction was misguided.<sup>174</sup> However, the First District Court of Appeal later found that the trial judge

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claimed that her husband had just beaten her and that he was about to beat her again, that he was charging towards her when she fired the shot and that she was not trying to shoot him. She was just trying to scare him off. Her husband, Rico Gray, and the prosecutors disputed that saying that she didn’t fire the shot at the ceiling, she fired it past him into the wall and that it could’ve killed either him or two of his underage children, who were both in the room as well.”).

167. See, e.g., Sparks, *supra* note 165; Sean Davis, *No, Marissa Alexander’s Conviction Was Not a “Reverse Trayvon Martin” Case in Florida*, MEDIATRACKERS (July 16, 2013), <http://mediatrackers.org/florida/2013/07/16/no-marissa-alexanders-conviction-was-not-a-reverse-trayvon-martin-case-in-florida> (“Gray had a long history of abusing Alexander and multiple other women. He had previously been charged with domestic battery on at least three separate occasions, including charges in 1994, 2006, and 2009. The 2009 incident against Alexander sent her to the hospital with head injuries after he shoved her into a bathtub.”). It is important to note, however, that Corey was within her discretion granted by the legislature to pursue charges under that provision. See also Joy-Ann Reid, *Angela Corey lashes out at critics of Marissa Alexander prosecution*, THE GRIO (May 15, 2012), <http://thegrio.com/2012/05/15/angela-corey-lashes-out-at-critics-of-marissa-alexander-prosecution/> (noting that Corey pursued the prosecution because Alexander “was the aggressor, not the victim, in the August 2010 incident”).

168. See Sparks, *supra* note 165 (“Corey offered Alexander a plea deal of three years in prison. Convinced she did nothing wrong or choosing to roll the dice, Alexander rejected the plea deal. She would stand her ground on [SYG].”); see also Notice of Filing Defendant’s Proposed Order Granting Defenses Motion for Determination of Immunity from Prosecution and Motion to Dismiss, *State v. Alexander*, No. 16-2010-CF-008579-AXXX-MA (Fla. 4th Cir. Ct. Aug. 11, 2011), available at <http://docslide.us/documents/notice-of-filing-for-determination-of-immunity-and-motion-to-dismiss.html>.

169. See Sparks, *supra* note 165 (“Duval Circuit Judge James Daniel rejected the [SYG] defense by saying Alexander could have run out of the house to avoid further confrontation with Gray.”); Susan Cooper Eastman, *Florida Woman Who Fired ‘Warning Shot’ Denied Self-Defense Hearing*, HUFFINGTON POST (July 21, 2014), [http://www.huffingtonpost.com/2014/07/21/florida-woman-warning-shot\\_n\\_5606101.html](http://www.huffingtonpost.com/2014/07/21/florida-woman-warning-shot_n_5606101.html); see also *Crosshairs*, *supra* note 162 (“What the judge found was that by advancing back into the house, she lost her right to claim [SYG].”).

170. See Abuzniad, *supra* note 107, at 1147.

171. See, e.g., Eastman, *supra* note 169; Stacy, *supra* note 164; Burke, *supra* note 163.; see also Touré, *Where was ‘Stand Your Ground’ for Marissa Alexander?*, TIME (Apr. 12, 2012), <http://ideas.time.com/2012/04/30/where-was-stand-your-ground-for-marissa-alexander/> (“It seems to make sense that a woman who was in a physical fight in her home with an admitted habitual domestic abuser against whom she has legal protection should be entitled to stand her ground. Alexander told officers that she feared for her life.”).

172. See FREE MARISSA NOW, <http://www.freemarissanow.org/about.html> (last visited Apr. 10, 2015).

173. See Burke, *supra* note 163.

174. See Reid, *supra* note 167 (“Corey remains certain about the prosecution. And she says people who are making judgments about the unfairness of the case are misguided. . . . Corey dismissed speculation that the

erred in his jury instructions by shifting the burden of proof from the prosecution to the defendant.<sup>175</sup> As a result, Alexander's conviction was overturned and a new trial ordered.<sup>176</sup>

In response, Corey announced that the State would pursue three consecutive twenty-year sentences against Alexander instead of concurrent sentences.<sup>177</sup> Alexander again sought pretrial immunity under SYG in light of legislative revision to the law—revision that had been inspired, in part, by the public pressures emanating from Alexander's case.<sup>178</sup> The “warning shot” bill, which was signed into law by Governor Rick Scott on June 20, 2014, expanded SYG to include persons who fire a warning shot or threaten to use a firearm in self-defense.<sup>179</sup> Unfortunately for Alexander, Judge Daniel denied her request for a new immunity determination, finding that the expansion of SYG to include warning shots could not be applied retroactively.<sup>180</sup> Instead of going back to trial, Alexander accepted a plea deal for three years in prison including time served.<sup>181</sup>

Marissa Alexander's case has become the representative domestic violence case under SYG.<sup>182</sup> In that case, as compared to Zimmerman's, Corey did not succumb to public or political pressures in her charging decision. Rather, she acted within the realm of discretion granted to her by the legislature in an executive capacity. Further, the media attention and public outcry garnished in response to Alexander's headline

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[SYG] law has been applied unfairly, making it unavailable as a defense for black defendants.”). *But cf.* Touré, *supra* note 171.

175. See Sparks, *supra* note 165; Amanda Marcotte, *Marissa Alexander, Sentenced to 20 Years for Firing One Shot Into the Ceiling, Gets a Retrial*, SLATE (Sept. 26, 2013), [http://www.slate.com/blogs/xx\\_factor/2013/09/26/marissa\\_alexander\\_and\\_stand\\_your\\_ground\\_she\\_claimed\\_self\\_defense\\_but\\_was.html](http://www.slate.com/blogs/xx_factor/2013/09/26/marissa_alexander_and_stand_your_ground_she_claimed_self_defense_but_was.html) (quoting Judge Daniel's argument that Alexander had been held to too high a standard to prove self-defense because the defendant only has to raise a reasonable doubt concerning self-defense, but “does *not* have the burden to prove the victim guilty of the aggression defendant against” beyond a reasonable doubt) (emphasis added).

176. See, e.g., Marcotte, *supra* note 175; Abuznaid, *supra* note 107, at 1147. See also Kevin Meerschaert, *Jury Selection, Retrial Dates Set for Marissa Alexander*, WJCT NEWS (Apr. 2, 2014), <http://news.wjct.org/post/jury-selection-retrial-dates-set-marissa-alexander>.

177. See Abuznaid, *supra* note 107, at 1147; Sparks, *supra* note 165 (characterizing Corey's response as aggressive). See also THE GRIO, *Marissa Alexander on Angela Corey: 'She had a job to do'* (Feb. 9, 2015), <http://thegrio.com/2015/02/09/marissa-alexander-angela-corey-stand-ground/> (noting that Corey had been strongly criticized for seeking such a long sentence); Larry Hannan, *Marissa Alexander's Sentence Could Triple in 'Warning-Shot' Case*, FLA. TIMES UNION (March 1, 2014), <http://www.jacksonville.com/news/crime/2014-03-01/story/marissa-alexander-sentence-could-triple-warning-shot-case#ixzz30n7s3zGc>.

178. See Gary Fineout, *Gov. Rick Scott signs warning shot bill*, TALLAHASSEE DEMOCRAT (Jun. 21, 2014), <http://www.tallahassee.com/story/news/politics/2014/06/21/gov-rick-scott-signs-warning-shot-bill/11204137/>. See also H.B. 89, 116th Leg. (Fla. 2014), available at [http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=\\_h0089\\_.docx&DocumentType=Bill&BillNumber=0089&Session=2014](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0089_.docx&DocumentType=Bill&BillNumber=0089&Session=2014).

179. See Fineout, *supra* note 178. See generally FAMM, *The Impact of the Threatened Use of Force Act on 10-20-Life*, available at <http://famm.org/states-map/florida/the-impact-of-the-threatened-use-of-force-act-on-10-20-life/> (examining the legal landscape before and after passage of H.B. 89, as well as the resulting impact on gun sentencing in Florida).

180. See, e.g., FAMM, *supra* note 179; Irin Carmon, *Marissa Alexander denied new Stand Your Ground hearing*, MSNBC (Jan. 27, 2015), <http://www.msnbc.com/msnbc/marissa-alexander-denied-new-stand-your-ground-hearing>.

181. See, e.g., Aliyah Frumin, *Marissa Alexander accepts plea deal*, MSNBC (Nov. 24, 2014), <http://www.msnbc.com/msnbc/marissa-alexander-accepts-plea-deal>.

182. See Abuznaid, *supra* note 107, at 1146.

criminal trial pushed the legislature to amend SYG in a way that legitimizes the criminal justice system.<sup>183</sup> What arguably may have undermined the prosecutorial function in that case, however, is Corey's apparent lack of consideration for Alexander as a victim of domestic violence.<sup>184</sup> Indeed, Corey's pursuit of a sixty-year sentence upon retrial—three times Alexander's original sentence—may appear somewhat vindictive.<sup>185</sup> Yet her refusal to allow the media or public opinion impact her decisions, and instead bring charges as she saw fit, was proper.<sup>186</sup> Whether the process or outcome of Alexander's trial appears unjust in the eyes of the public, Corey remained accountable to the citizens of Duval County who were able to call for her resignation or refuse to reelect her as their State Attorney.<sup>187</sup> In this respect, Corey's exercise of discretion with regard to Alexander, as opposed to Zimmerman or Dunn, was legitimate.<sup>188</sup>

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183. See discussion *supra* notes 12, 133; notes 103–04 and accompanying text.

184. See *infra* note 185; see, e.g., Touré, *supra* note 171; Julia Dahl, *Fla. woman Marissa Alexander gets 20 years for "warning shot": Did she stand her ground?*, CBS NEWS (May 16, 2012), <http://www.cbsnews.com/news/fla-woman-marissa-alexander-gets-20-years-for-warning-shot-did-she-stand-her-ground/> (noting that Alexander's initial conviction sent a message to victims of domestic violence that SYG would not apply to them). Consider Fair, *supra* note 140, at 169–170 (discussing the adverse psychological effects in situations of domestic violence, where requiring citizens in imminent danger to retreat from aggressors "could put innocents at risk from someone emboldened by dominance[.]" and noting that the ability of a victim to stand his or her ground may break the power differential characteristic of relationships fraught with domestic abuse). See also Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099, 1118–23 (2014) (discussing both Zimmerman's and Alexander's trials in relation to SYG applicability, and the implications of Battered Women's Syndrome (BWS) in Alexander's case). "In theory, [BWS] can be used as evidence to provide for any self-defense claim, including [SYG]. Self-defense doctrine provides a justification for the use of what would normally be considered unlawful force." *Id.* at 1121.

185. See, e.g., Alyssa Figueroa, *Meet the Florida State Attorney Who Vindictively Wants to Send Marissa Alexander to Jail for 60 Years*, ALTERNET, Mar. 11, 2014, <http://www.alternet.org/civil-liberties/meet-florida-state-attorney-who-vindictively-wants-send-marissa-alexander-jail-60> ("From prosecuting her from the start, to pursuing the case after Alexander won on appeal, and then painting Alexander as careless while out on bond, Corey seems to be making sure this domestic violence victim will suffer as much as possible.").

186. See *supra* notes 11, 115. See, e.g., Joyner, *supra* note 133 (regarding the tendency of prosecutors to overcharge in high-profile cases); Wallace, *supra* note 7, at 22 ("Prosecutors in high-profile cases must balance many important but often-competing interests when carrying out their duties to represent the public. The pressure of intense publicity taxes the resources and tests the abilities of prosecutors to remain focused upon the true goal in any criminal case—to serve the citizenry with the utmost integrity, and to insure that a just result is obtained."); MacLean & Wilks, *supra* note 22, at 59–61 (introducing the complexities of prosecutorial decision-making). See also Donovan X. Ramsey, *Accused of overcharging, Florida State Attorney Angela Corey defends decisions in Zimmerman, Alexander cases*, THE GRIO, Aug. 1, 2013, <http://thegrio.com/2013/08/01/accused-of-overcharging-florida-state-attorney-angela-corey-defends-decisions-in-zimmerman-alexander-cases/> (noting the tendency of prosecutors to overcharge defendants in an attempt to coerce a plea deal and identifying it as a commonly employed strategy).

187. See, e.g., Steven Nelson, *Marissa Alexander Supporters Urge Governor to Suspend Angela Corey*, U.S. NEWS, Mar. 19, 2014, <http://www.usnews.com/news/articles/2014/03/19/marissa-alexander-supporters-urge-governor-to-suspend-angela-corey>.

188. An argument may be made to the contrary, however, under the assumption that Corey's decision-making in the Alexander and Dunn cases were, in part, motivated by her perceived failure in Zimmerman's trial. For example, if Corey's charging decision was influenced by a "desire to use Alexander as a symbol for her political ambitions[.]" or in an effort to divert public attention away from "all the scandals that surround her," then her exercise of discretion under SYG in that case would have been improper, and therefore undermined the legitimacy of the criminal justice system. Figueroa, *supra* note 185 (opining as to Corey's possible motivations in the Alexander case, and quoting Alissa Bierria of the Free Marissa Now campaign regarding the "scandals" surrounding Corey—referring to recent lawsuits brought against Corey, as well as her failure to secure murder charges for Zimmerman and Dunn). See generally Larry Hannan, *State attorney settles lawsuit*

## VI. CONCLUSION

The trials of George Zimmerman, Michael Dunn, and Marissa Alexander are three significant headline criminal trials that have garnered considerable debate over Florida's SYG regime.<sup>189</sup> The substantial media coverage of those cases allows for close scrutiny of the prosecutorial discretion afforded under that law. Incidentally, Angela Corey conducted each of those prosecutions, prompting a thorough examination of her decision-making in three of Florida's most notorious SYG cases. The surrounding facts, circumstances, and sociopolitical climate impacted Corey's prosecutorial decisions.<sup>190</sup> Furthermore, that environment provides insight as to whether prosecutors, legislators, and the public normatively function in a way that legitimizes the criminal justice system in the context of headline trials.

In the Zimmerman and Dunn trials, Corey improperly exercised her discretion by succumbing to public pressures and engaging in politically motivated decision-making.

Corey's resolution to bypass a grand jury and charge George Zimmerman with second-degree murder in her capacity as an appointed special prosecutor undercut the initial decision of elected prosecutor Wolfinger. Moreover, it disregarded the statutory directive of SYG and consideration for the likelihood of conviction against the accused.<sup>191</sup> Law enforcement's failure to establish probable cause for Zimmerman's arrest lowered the prosecution's chance of successfully obtaining a conviction at trial.<sup>192</sup> Not only did Corey yield to political demand by filing charges against Zimmerman, she pursued a charge that was not supported by the facts of the case, and ultimately failed to satisfy the public's punitive impulse to vindicate the injustice of

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with former Nassau employee, THE FLORIDA TIMES UNION, Feb. 26, 2014, <http://jacksonville.com/news/crime/2014-02-26/story/state-attorney-settles-lawsuit-former-nassau-employee> (discussing Corey's settlement with a former employee in a retaliation lawsuit). However, Bierra acknowledged Corey's "autonomy to decide [] matters" like pursuit of 60 years for Alexander upon retrial. Figueroa, *supra* note 185. Thus, my analysis with respect to Alexander's case proceeds under the assumption that Corey was exercising her discretion in a legitimate manner through a strategic use of commonly employed prosecutorial tactics (e.g., overcharging in an effort to secure a plea, or pursuing an increased sentence on retrial). Further, for purposes of this Note, Corey's decision-making or exercise of discretion would be illegitimate only if it was reactive to some kind of public pressure or outcry. Alexander received a new trial after an appellate court ruled the jury instructions on self-defense to be erroneous. See Steven Nelson, *Marissa Alexander Granted New Trial*, U.S. NEWS, Sept. 26, 2013, <http://www.usnews.com/news/articles/2013/09/26/marissa-alexander-granted-new-trial>. As a result, a lower court decision denying a retrial was reversed, and a new trial ordered for Alexander. *Id.* Corey, in other words, did not play a part in the decision to retry Alexander's case—that is, prosecutorial discretion had no bearing on that result. This is the key difference between the cases of Alexander and Dunn for purposes of this Note. The decision to retry Dunn on the first-degree murder charge was a direct result of Corey's exercise of discretion, whereas the decision to grant Alexander a new trial was not. See, e.g., Lizette Alvarez, *Jury Reaches Partial Verdict in Florida Killing Over Loud Music*, N.Y. TIMES (Feb. 15, 2014), [http://www.nytimes.com/2014/02/16/us/florida-killing-over-loud-music.html?\\_r=0](http://www.nytimes.com/2014/02/16/us/florida-killing-over-loud-music.html?_r=0).

189. See, e.g., Kris Hundley, et al., *Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied*, TAMPA BAY TIMES, Jun. 1, 2012, <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>.

190. Compare O'Mara, *supra* note 155; and Figueroa, *supra* note 185, with MCT REGIONAL NEWS, *Angela Corey: Florida prosecutor reflects on high-profile cases*, ORLANDO SENTINEL (Oct. 13, 2014), <http://www.orlandosentinel.com/news/trayvon-martin-george-zimmerman/os-angela-corey-george-zimmerman-20141013-story.html#page=1>.

191. See *supra* notes 103-25 and accompanying text.

192. See *supra* notes 117-19 and accompanying text.

Trayvon Martin's death.

Similarly, Corey's decision to retry Michael Dunn on a charge of first-degree murder functioned to weaken the integrity of the criminal justice system. Corey arguably overcharged Dunn with first-degree murder and was motivated by sociopolitical forces.<sup>193</sup> SYG functioned in that case by way of argument and jury instruction to produce a hung jury on the charge of first-degree murder for the death of Jordan Davis.<sup>194</sup> In response, Corey undertook to retry Dunn on the first-degree murder charge at the possible expense of vacating Dunn's conviction altogether.<sup>195</sup> Although Corey remained accountable to the citizens of her district in that case, she frustrated the prosecutorial function by promising an unattainable conviction and engaging in risky decision-making.<sup>196</sup>

Arguably, the only situation where Corey's actions did not undermine the validity of the criminal justice system was in the trial of Marissa Alexander. While that case disregarded the underlying issue of domestic violence and the applicability of SYG to domestic abuse victims,<sup>197</sup> Corey's exercise of discretion was not reactive to public pressures.<sup>198</sup> Instead, she employed standard prosecutorial techniques to obtain a plea bargain by offering a lesser sentence than Alexander faced under Florida's "10-20-Life" law.<sup>199</sup> Additionally, Alexander received a new trial upon appeal because of an erroneous jury instruction rather than a unilateral decision by the prosecutor.<sup>200</sup>

Significantly, as a result of Alexander's trial and the surrounding controversy, the Florida legislature enacted amendments to SYG.<sup>201</sup> That legislation would have brought Alexander's actions within the protection of SYG as originally intended. Unfortunately, the new law did not apply retroactively.<sup>202</sup> Still, the legislative response to public indignation at the injustice of Alexander's situation, coupled with an appropriate exercise of prosecutorial discretion, identifies the manner in which these actors may function to legitimize the criminal justice system. The relationship between prosecutors, the public, and legislators in the context of headline criminal trials has the power to provoke important dialogue and generate necessary legal change.

Indeed, Florida's SYG law has not been applied uniformly across cases, thereby producing results that contravene its intended purpose.<sup>203</sup> It is moreover argued that SYG violates a number of international human rights, including the right to life, the

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193. See *supra* notes 153-56 and accompanying text.

194. See Bloom, *supra* note 152.

195. See Gibson & Winkle, *supra* note 155 ("After Michael Dunn was found guilty on four of five counts[,] . . . State Attorney Angela Corey said she intends to retry Dunn on the outstanding first-degree murder charge[:] . . . a charge on which the jury deadlocked.").

196. See *supra* notes 157-61 and accompanying text.

197. See *supra* note 184 and accompanying text.

198. See *supra* notes 172-73 and accompanying text.

199. See *supra* notes 164-65 and accompanying text.

200. See *supra* notes 174-76 and accompanying text.

201. See *supra* notes 178-79 and accompanying text.

202. See *supra* notes 180-81 and accompanying text.

203. See, e.g., Hundley, *supra* note 189.



right to equality and non-discrimination, and the right to due process and court access, among others.<sup>204</sup> The uncertainty surrounding SYG calls for speculation on its applicability to any altercation that evidences some remote possibility that it will be invoked.<sup>205</sup> The stable controversy concerning SYG will continue to bring prosecutorial decision-making under scrutiny, particularly in cases receiving significant media attention. At the end of the day, the future applicability of Florida's SYG law remains in flux.<sup>206</sup>

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204. See Abuzniad, *supra* note 107, at 1157-68.

205. See Hundley, *supra* note 189 ("If there's one thing on which critics and supporters agree, it is that [SYG] is being applied in a growing number of cases, including misdemeanors."). But compare to the later-quoted statement of a Naples defense lawyer: "Judges are denying these [immunity] motions where they should be denied and granting them in the limited number of cases statewide where they should be granted." *Id.*

206. See, e.g., ASSOCIATED PRESS, *Attorneys in Florida theater shooting weigh possible "stand your ground" defense strategy*, FOX NEWS, Jul. 9, 2014, <http://www.foxnews.com/us/2014/07/09/attorneys-in-florida-theater-shooting-weigh-possible-stand-your-ground-defense/>; David Ovalle, *There's Another Stand Your Ground Case in Florida*, MIAMI HERALD, Jan. 20, 2015, <http://www.miamiherald.com/news/local/community/miami-dade/miami-gardens/article7438982.html>; ASSOCIATED PRESS, *Stand Your Ground Case Goes to Florida High Court*, NBC NEWS MIAMI Dec. 2, 2014, <http://www.nbcmiami.com/news/local/Stand-Your-Ground-Case-Goes-to-Florida-High-Court-284550901.html>; Marc Freeman, *Stand Your Ground remains a possible defense for felons*, SUN SENTINEL Jan. 21, 2015, <http://www.sun-sentinel.com/local/palm-beach/fl-stand-your-ground-felon-cases-20150121-story.html>; Sascha Cordner, *Some Push To Revive Stand Your Ground Repeal Bill, Others Call It Waste Of Time*, WFSU, Feb. 13, 2015, <http://news.wfsu.org/post/some-push-revive-stand-your-ground-repeal-bill-others-call-it-waste-time>.