Zimmerman and Racial Profiling

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Citizenship in a democratic republic brings with it the obligation to monitor, and express concerns with regard to, the actions of government representatives. However, we must be cognizant of the potential for tyranny of an uninformed populace, and the potential for demagoguery. As Eagelmea' (2011) began his book on human cognition: “Man is equally incapable of seeing the nothingness from which he emerges and the infinity in which he is engulfed.—Blaise Pascal, *Pensées.*” And, he also stated, “Just because you believe something to be true, just because you know it’s true, that doesn’t mean it is true” (p. 53).

Multiple issues were raised following the unfortunate death of Trayvon Martin at the hands of George Zimmerman.

- Was racism involved?
- Was there political pressure to seek prosecution?
- Was the confrontation asymmetrical—man against boy?
- Is there evidence supporting self-defense on the part of Zimmerman?
- Did the “Stand Your Ground” law precipitate this incident?
- Was Zimmerman a rogue, self-appointed vigilante?
- Why does Racial Profiling exist?

This essay does not attempt to answer all questions. However, it is an attempt to counsel for consideration of what can be determined and how it can contribute to an understanding of a verdict of not guilty; which is not an unequivocal judgment of innocence, but an acknowledgment that there is reasonable doubt as to guilt. What is needed is a dispassionate and objective view.

Moreover, statistics (as unreliable as they sometimes are) indicate that racial profiling is not the primary threat to young Black men, that position is held by young Black men. The challenge is what can we do about that?

**Was racism involved?**
Zimmerman’s maternal grandmother, who helped raise him, was the son of an Afro-Peruvian great-grandfather. In 2004, Zimmerman entered into an insurance office partnership with an African-American (Francescani, 2012).

In September 2011, Zimmerman sent an email message to the Sanford Police Chief (the same one later indicating a lack of probable cause in this case) expressing outrage over the police handling of an assault on a Black man by a relative of a White police lieutenant. This had been preceded by a public statement critical of this same incident at a public meeting in January 2011 (CNN, 2012).

During his call to police prior to the contact with Martin, Zimmerman used the term “assholes,” and indicated that they always eluded arrest, apparently referring to perpetrators of burglaries.
and robberies within his community, some of whom were identified as Black (Francescani, 2012).

The testimony of a person that spoke to Martin prior to the confrontation with Zimmerman indicated that Martin stated he was being followed by a “creepy-ass cracker” (abcnews, 2013).

**Was there political pressure to seek prosecution?**
The Sanford police chief stated that there was insufficient evidence to arrest Zimmerman (and subsequently stepped down under pressure). And, the State’s Attorney initially assigned to the case declined to file charges against Zimmerman (Legum, 2012).

The governor of Florida then appointed a special prosecutor, who chose to bypass the Grand Jury process (Vamburkar, 2012). The special prosecutor has admitted submitting a defective affidavit that apparently omitted exculpatory information (Huckabee, 2013), failed to release photographs of Zimmerman’s injuries until after charges were filed, failed to provide exculpatory information to defense attorneys as required by law (realclearpolitics.com, 2013), submitted a request for inclusion of lesser charges at mid-trial when faced with an apparent acquittal (Huckabee), and fired the employee who reported this failure to disclose required information to the defense attorneys (realclearpolitics.com). Alan Dershowitz, a noted civil liberties attorney, a defender of civil rights, and the Felix Frankfurter Professor of Law at Harvard Law School, has called for the special prosecutor to be disbarred for the above acts. The special prosecutor also made a post-acquittal statement indicating guilt on the part of Zimmerman (Huckabee).

After announcement of the state verdict, the U.S. Attorney General apparently implied that Zimmerman was guilty of something by describing the incident as a “tragic, unnecessary shooting” (Hallowell, 2013). Arguably, this statement could taint the pursuit of federal prosecution, not to mention amount to defamation of an acquitted individual. According to the American Bar Association (2012), Model Rules of Professional Conduct, Special Responsibilities of a Prosecutor:

> “Except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.” (Rule 3.8 (f))

Judge Jeanine Pirro stated the following:

> Almost every legal expert on both sides of the aisle agreed, in contrast to special prosecutor Corey, that the evidence presented by prosecutors was insufficient to convict. Which begs the question of whether the charges against George Zimmerman were proper or a capitulation to public pressure by the governor and that appointed state’s attorney who continues to say that the public had a right to watch this trial as though it’s theater, as though criminal justice and evidence is about theater for the public’s interest. (realpolitics, 2013, n.p.)
Scott (a 42-year-old Black male) confronted three young men reportedly engaged in vehicle burglary in a neighbor’s driveway in New York. Sixteen-year-old Cervini (a White person) reportedly charged Scott, who shot twice and killed him, even though Cervini made no physical contact with Scott. Scott was acquitted in 2009 (Hedeen, 2009). This is in spite of the facts that New York does not have a stand-your-ground law, and it is a general principle of law that the amount of force cannot be unreasonable (Gardner & Anderson, 2000). Presumably, most are unaware of this incident, as opposed to the Zimmerman/Martin incident.

The NAACP has indicated that justice has not prevailed in this case (Novogrod, Winter, Connor, & McClam, 2013). And, there have been calls for changes in law to prevent recurrence of this incident (Trotta & Cotterell, 2013). Since the Magna Carta in 1215, our system of law has demanded credibility from witnesses. Subsequently, evaluation of physical and circumstantial evidence has enhanced our ability to judge guilt; and, our senses have been found to be frequently in error, for psychological and neurological reasons (Eagleman, 2011).

In this case, according to the jury, there are insufficient credible witnesses, physical, and circumstantial evidence to overcome the beyond a reasonable doubt criteria. Changing the law to get past these purported deficiencies would violate the U.S. Constitution’s guarantee of due process of law prior to deprivation “of life, liberty, or property” (Amendment V, 1992).

**Was the confrontation asymmetrical—man against boy?**

The reasonableness of self-defense can be dependent upon the relative disparity of the participants, in addition to the determination of who initiated the assault (Gardner & Anderson, 2000). At the time of the incident, according to police reports, Martin was six feet tall and weighed 160 pounds, and Zimmerman was five feet nine inches tall and weighed 170 pounds (wtsp.com, 2012; Rogers, 2012).

Photographs of Martin as a younger child were widely distributed, and may have shaped public perceptions (Allen, 2013).

In 2005, Zimmerman’s insurance business failed, he was arrested for resisting arrest and battery on a plain-clothes alcohol control agent, and he avoided conviction by participating in a pre-trial diversion program. Also, Zimmerman’s first engagement ended with issuance of mutual restraining orders; although he remains married to another woman (Francescani, 2012).

Evidence of Martin's drug use, school suspension, eviction from his mother’s home, possession of a firearm, and past fighting were judged not admissible in the trial (Schneider, 2013).
Is there evidence supporting self-defense on the part of Zimmerman?
A physician’s report disclosed that Zimmerman had a fractured nose, two black eyes, two lacerations on the back of his head, and a back injury on the day after the fatal shooting. Dr. Vincent Di Maio, a forensic pathologist, testified that in his expert opinion, the wounds suffered by Zimmerman were consistent with the statements of Zimmerman (Alvarez, 2013a).

Di Maio also testified that the gunshot wound suffered by Martin was consistent with the statement of Zimmerman. The examination of the clothing worn by Martin and the body of Martin indicate that Martin’s clothing was pulled away from the body, as would be expected if Martin had been straddling Zimmerman and leaning forward; and, the estimated distance of the gun muzzle from the clothing was consistent with Zimmerman’s account.

Zimmerman ignored the advice of a police dispatcher to not follow Martin; although, Zimmerman claimed to have been returning to his vehicle when confronted by Martin, with prosecutors being unable to indicate otherwise (Alvarez, 2013b). It is not a criminal violation to follow another person, less any menacing remarks or behavior. And, “all people … may use deadly force, if necessary, to prevent imminent death or great bodily harm to themselves or others” (Gardner & Anderson, 2000). And, the distinction between a six foot tall child weighing 160 pounds, and an adult who is five feet nine inches tall and weighs 170 pounds is irrelevant in a rapidly unfolding confrontation.

Did the “Stand Your Ground” law precipitate this incident?
Included in the judge’s instructions to the jury was the advisement as to the parameters of the stand your ground law. However, Zimmerman’s defense team did not raise this issue. The self-defense claim was based on the inability of Zimmerman to retreat or otherwise prevent his own death or serious bodily injury (Zimmerman was reportedly on his back under Martin); and, although Zimmerman was injured, the Florida law does not require an individual to actually suffer injuries in order to claim self-defense, merely that it this reasonably likely (Alvarez, 2013b).

Was Zimmerman a rogue, self-appointed vigilante?
Francescani (2012) provided a detailed description of the evolution of Zimmerman from passive resident to neighborhood watch captain, from being repeatedly menaced by a pit bull in the Fall of 2009; to June 2011, when multiple robberies within the community led the homeowners association to ask him to create a neighborhood watch. A Black neighbor indicated that demonstrators should recognize that, at the time of the incident, numerous crimes in that community had been committed by young Black males.

Francescani is a Reuters journalist who provided a lengthy and fairly detailed review of Zimmerman’s background, and it is recommended reading (http://www.reuters.com/article/2012/04/25/us-usa-florida-shooting-zimmerman-idUSBRE83O18H20120425).

Why does Racial Profiling exist?
Despite the fact that it has been established that there are more intra-racial biological differences than there are differences between races (Banton, 1998), there are cultural differences. Access to
health care and education (as it pertains to diet and exercise) are apparent contributors to this situation. In recent decades, health differences between Blacks and Whites have decreased; however, gaps still exist.

Hypertension, diabetes, and stroke are much higher in the U.S. Black population, and these ailments are acquired at a younger age (WebMD, 2011). Black men are 35% more likely to die of cancer than Whites, and the disparity for Black women is 18% (WebMD, 2007). In the U.S., Blacks, at about 14% of the population, account for 44% of the new HIV infections, with Black females having rate of infection 15 times higher than White females (WebMD, 2012). According to the U.S. Centers for Disease Control and Prevention, Blacks have a significantly shorter life expectancy; which is attributed to increased cancer, diabetes, heart disease, stroke, and murder (as cited in DeNoon, 2007).

When factors contributing to the likelihood to be arrested for crimes are considered, racism must be included; however, there is statistical support for the argument that Blacks are more likely to engage in criminal behavior. Crime statistics are a relevant consideration in the arena of bias and reality, with about one in three Black males being convicted felons, as opposed to about one in 17 White males (statistics cited below). And, several variables are taken into consideration during the decision-making process regarding prosecution and sentencing; these include prior convictions, employment history, and education level. These considerations contribute to the determination of whether or not the individual will be a contributing member of society, or will return to criminal behavior if not prosecuted and incarcerated.

Education plays a major role in employability, and employment can counteract pursuit of criminal activities. The national average for completion of high school by White students is about 75%, and the average for Black students is about 50% (Swanson, 2004). It seems possible that a lack of education, lack of cultural appreciation for education, and a lack of parental expectations perpetuate the problem of black crime; even though racial profiling is a prominent argument for this situation. Empirical research indicates a link between low socio-economic status, poor education, and anti-social behavior (Baron-Cohen, 2011). Lack of employment apparently stems from poor education, which may result in criminal behavior being needed to supply income.

In addition to the contribution of familial socio-economic status to deviance, crime can be inter-generational. Studies of repeat offenders indicate that 37% have fathers with criminal records, while 8.4% have non-deviant fathers; and, and research indicates that juvenile delinquents eventually tend to parent deviant children. Moreover, divorce and separation rates are higher in Black homes, and these rates are significantly associated with murder rates (Siegel, 2006).

Police must rely on the community as their eyes and ears in areas inaccessible to police in order to address criminal predation. The world of black music provides examples of
the Black community’s failure to provide witness information that could reduce crime. Jam Master Jay, Biggie Smalls, and Tupak Shakur were murdered by unidentified perpetrators, and in all of these cases witnesses have been uncooperative. Likewise, rapper Busta Rhymes refused to cooperate after witnessing the murder of his bodyguard, as did 50 other witnesses (Hampson, 2006). Hampson also reported on the nation-wide “Stop Snitching” movement in the Black community. This billboard graced the Houston Montrose area in 2013:

Based on then current incarceration rates, about 32% of Black males will be imprisoned during their lifetime, along with 5.9% of White males (Bureau of Justice Statistics, 2007). In 2005, one victim and one offender homicides were mostly intra-racial, about 93% for Black victims (with 49% of all homicide victims being Black) and 85% for white victims (Harrell, 2007). Black offenders accounted for more than 50% of the offenders arrested for murder and non-negligent manslaughter (U.S. Department of Justice, 2009). The 2000 census indicated that 77.1% of the U.S. population was White (Census, 2001a), and 12.9% was Black (Census, 2001b). And, Blacks on federal pretrial release had a significantly higher history of failures to appear for court hearings and engaging in escape behavior than Whites (Fennessy & Huss, 2013).

Hickey (2006) reported on an extensive study that indicated that out of the 249 serial killers studied, 72% were White, 23% were Black, 3% were Hispanic, 1% were Asian, and 1% were “other.” Since more than 20% of the serial killers have been Black, there is an over-representation of Black serial killers. Hickey reported that, between 1995 and 2004, about 44% of identified serial killers were Black. Walsh (2005) reported serial killing ratios similar to those of Hickey, and commented on the mythological nature of the popular conception that serial killing is a White phenomenon. Hickey also reported that serial killing has been generally intra-racial; however, serial killers do kill people of other races.

Safarik, Jarvis, and Nussbaum (2006) studied elderly female sexual homicide and their research population of offenders was found to be 44% White and 42% Black. Safarik et. al determined that, in their elderly female sexual homicide research, "Blacks offend interracially 77% of the time … and Whites only 4%” (p. 113).

In attempting to maintain an empathetic frame of mind when interacting with minorities, one must acknowledge that being defensive due to past experience of discrimination has been empirically supported. Research on prejudice (in this case with Jewish males) has indicated that those who have been the subject of prejudice, or perceive that they have been subjected to prejudice, were reportedly more aggressive, sadder, more anxious, and more egotistical than those not perceiving such prejudice (Dion & Earn, 1981). In other words, once a person has been discriminated against, it is more likely that the person will be hypersensitive to perceived discrimination, possibly seeing it where it does not exist. And, more importantly, their perceptions of prejudice interfere with their accepting the culture of the majority group, and
encourage differentiation in speech, fashion, and resistance to the adoption of majority group goals.

Moreover, our brains are hardwired to be xenophobic (fearful and hateful toward strangers/foreigners or anything that is strange/foreign), according to Eagleman (2011). Therefore, people of different races, ethnicities, cultures, and religions are viewed with suspicion instinctively; and this suspicion can only be overcome by intentionally altering these subconscious reactions, facilitating conformity with societal expectations for acceptance of diversity.

While this current discussion concerns self-defense in general, the greater implication concerns the criminal justice system. The problem with racial profiling is that it subjects innocent people to unwarranted suspicion and accusations. No matter what percentage of an identifiable group of people can be considered criminal, there is an additional, and apparently larger, percentage who cannot be considered criminal. And it is a violation of the civil rights of all of these people to make an assumption that is not based on evidence, as opposed to statistical or biased assumptions.

It is a display of prejudice (pre-judgment of a person or act without facts of the particular situation) to make a statement such as that of President Obama with regard to the arrest of a Black professor (“Cambridge police acted stupidly,” as cited in Baichwal, 2010, para. 5); for, as the President later admitted, he was not in possession of all of the facts. And, it is a display of prejudice for police to confront minorities based only on the fact that they are minorities. An exacerbating factor to be overcome by police is the instantaneous nature of the decision-making process in the public safety arena.

“The Fourth Amendment to the Constitution is interpreted by the Supreme Court that sets the legal standard for Use of Force in the United States. … The early application of a reasonable amount of force will result in less force having to be used; less injury to suspects, less injury to officers. … Officers have to use force that’s objectively reasonable based on the totality of the facts and circumstances confronting the officer at the time of the seizure. … Holding the officer to the least intrusive or minimal amount of force is a subjective standard. … Imposing such a requirement would inevitably induce hesitation by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second guessing of police decisions made under stress and subject them to exigencies of the moment. … The court went on to say that officers … do not have to avail themselves of the least intrusive means of responding to an exigent situation; only a reasonable one.” (Federal Law Enforcement Training Center, n.d.)

Decades ago, the Supreme Court ruled that:

The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain, [in11] will not be [p15] stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never
be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. Nothing we say today is to be taken as indicating approval of police conduct outside the legitimate investigative sphere. (Terry v. Ohio, 1968, para. 19)

Presumably, the expectations of police officers as to the increased probability of Black people being engaged in illegal activities (as supported by available statistics) affects how they deal with Black people, hence the “driving while Black” scenario and the existence of racial profiling. Unfortunately, this fuels the negative responses of the Black community, perpetuating a negative spiral contributing to the arrest and incarceration statistics.

This state of affairs cannot be cured by emotional calls for “justice” in this specific case. Subversion of due process by popular demand to conform with faulty perceptions is equivalent to vigilantism, nothing more.

What must be done is to focus attention on altering the roots of the problem, the underlying precipitators of criminality, like low socio-economic status and low educational achievement, and ensuring equitable treatment and negating bias [color-blindly providing due process (equality under law, based on individual circumstances, not perceived equality of outcome)].

This can be done in law enforcement by review processes that evaluate enforcement actions by requiring that officers specifically articulate the circumstances used to determine that an appropriate level of suspicion was reached, such that a reasonably prudent person drawing on relevant experience would agree, according to the U.S. Supreme Court (Terry v. Ohio, 1968), would reach the same conclusion. This is the current standard, and while it can be questioned by the public, it is not public opinion that determines the outcome.

As Dr. King indicated, people must be judged on individual character, not skin color; and that includes those defending themselves.

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i Dr. David Eagleman directs the Laboratory for Perception and Action and the Initiative on Neuroscience and Law, Baylor College of Medicine.

ii Dr. Vincent Di Maio, is a forensic pathologist with more than 40 years of experience (editor-in-chief of the Journal of Forensic Medicine and Pathology, Professor--Department of Pathology at the University of Texas Health Science Center at San Antonio, and fellow of the National Association of Medical Examiners and the American Academy of Forensic Sciences), and author of Forensic Pathology and Gunshot Wounds: Practical Aspects of Firearms, Ballistics, and Forensic Techniques, among other works.