

**MERAMEC RIVER KILLING: *STATE v. CROCKER* AND
MISSOURI'S FIRST FORAY INTO THE NATIONAL DEBATE ON
SELF-DEFENSE**

I. ALONG THE BANKS OF THE MERAMEC

Main Street in Steelville, Missouri, is home to the Crawford County Courthouse of Missouri's 42nd Judicial Circuit, a two-story brick structure whose only architectural flair is some white gabling over a small portico emblazoned "In God We Trust," quotation marks included. Apart from the typical courthouse lawn ornamentation of the national and state colors, a five-foot marble veteran's memorial, and a matching slab proclaiming the building's identity, the courthouse would be mistaken for a country chapel. The octagonal gazebo set off from the front lawn seems almost excessive against the modest backdrop of the courthouse.

One block east of the courthouse, past a few bail bondsmen and lawyers' offices is Main Street's lone watering hole, the West End Bar and Grill. The place is dingy, its lighting supplied almost entirely by sunlight bouncing from the street through two front windows, save for some additional blue glow from a neon Busch beer sign and a flat screen television. On a usual day, the bartender and two or three patrons will sit silently at the bar with their necks craned upward at whatever generic crime drama happens to air. Occasionally, they will look down to take a drag of a cigarette peeking from an ashtray or poke through some cold fries left in the basket that used to contain a cheeseburger. Nobody talks. The monotony of the scene is interrupted only by random, garbled walkie-talkie exchanges from somewhere beneath the flat screen. It is a police scanner. The exchanges between deputy and dispatcher are unintelligible under the din of the TV shootout: a minor nuisance. Nobody listens.

These scenes on Main Street are, in a word, typical.¹

However, on July 20, 2013, around 1:30 p.m., just six miles from Main Street, the scene turned anything but typical.² Forty-eight-year-old Paul Dart lay dead on a gravel bar along the Meramec River after a single nine

1. Although these scenes may seem a bit too typical and, as a result, fabricated for dramatic effect, the author has tried to faithfully represent Steelville's Main Street as he witnessed it in October 2013.

2. Felony Complaint and Request for Warrant at 2, *State v. Crocker*, No. 13CF-CR00772 (Mo. Cir. Ct. July 22, 2013).

millimeter round fired by James Crocker struck Dart in the face.³ Minutes before his death, Dart was paddling down the river in a rented canoe with several friends, a summer ritual familiar to most Missourians.⁴ Dart and his fellow floaters pulled ashore to grab a few drinks from the cooler and allow one of them to urinate.⁵ Unfortunately, the party docked near Crocker's property,⁶ and the intrusion was not welcome.⁷ The unclear demarcation of property lines along the river led to an argument between the floaters and Crocker as to whether the gravel bar was "public."⁸ When four members of the party began advancing toward him, Crocker removed a pistol from the holster on his side, firing two warning shots into the gravel.⁹ Crocker then aimed at the man closest to him, the unarmed Dart, and shot him in the face.¹⁰ Before departing the gravel bar, Crocker pointed his gun at another floater and asked, "Do you want to be next? I have the power. You don't."¹¹ The rocks along the riverbank were laced with Dart's blood.¹² The river continued to flow slowly and silently past the calamity.

This Note categorizes the Paul Dart killing as another episode in a national debate over the justification of self-defense. To accomplish this, the Note first examines the general history of self-defense law and the associated castle doctrine (Part II). It then examines the recent history of Missouri's current law on the "[u]se of force in defense of persons" (Part III).¹³ Next, the Note relates Missouri's own expanded self-defense law to the more widely studied Stand Your Ground law of Florida (Part IV).¹⁴ Finally, the Note critically reviews

3. *Id.*

4. Sam Levin, *Cops: Homeowner Mad at Urinating Man on Meramec Float Trip Shoots, Kills Paul Dart*, RIVERFRONT TIMES (July 22, 2013, 2:32 PM), http://blogs.riverfronttimes.com/dailyrft/2013/07/meramec_river_float_trip_murder_james_crocker.php. For a sense of its familiarity to Missourians, see *infra* p. 1214.

5. *Id.*

6. Crocker's property line was disputed during trial. See *infra* pp. 1214–15.

7. Felony Complaint and Request for Warrant, *supra* note 2.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Roche Madden, *Wife of Man Gunned Down on Meramec River Speaks Out*, FOX2NOW ST. LOUIS (July 22, 2013), <http://fox2now.com/2013/07/22/wife-of-man-gunned-down-on-float-trip-speaks-out/>.

13. MO. REV. STAT. § 563.031 (2014).

14. The pathos, intrigue, and historical significance of the Michael Brown killing, unfolding just 100 miles northeast of Steelville, exceeded that of the Trayvon Martin killing. However, this Note analyzes the Florida killing in depth while largely ignoring (as much as the Saint Louis author can bear) the Ferguson killing for the following reasons. First, the Trayvon Martin killing morphed the national debate on self-defense—as wedded to issues of class, race, gun ownership, and the American propensity for violence—into the form that existed at the time of the Paul Dart

Missouri's expanded self-defense law (Part V) based on the dilemmas caused by the inequities in the application of such expanded protections (Subsection A), faulty statutory construction (Subsection B), and historical conflicts inherent in the justification of self-defense that are exacerbated by the statute (Subsection C). The outcome of James Crocker's trial (Part VI) is related prior to the Note's conclusion (Part VII). This analysis of Missouri's expanded castle doctrine codified in section 563.031 will reveal that the statute and its problems are not unique; it is simply another iteration of a counterproductive statute founded upon the special interests of gun owners and a misconceptualization of American values.

II. A BRIEF HISTORY OF THE COMMON LAW JUSTIFICATION OF SELF-DEFENSE

Fortunately, this shooting on the Meramec River is not as typical for Missouri as the afternoon ennui of the West End Bar and Grill, but the shots fired by James Crocker are not a minor nuisance or to be dismissed as an anomaly. The tragedy, like so many others populating national headlines over the past few years,¹⁵ fits into a larger, historical debate on the tendency of the justification of self-defense to promote violence through vigilante action.¹⁶

The justification of self-defense exists "to compensate for the limitations of a written code . . . [and] to provide an exculpatory exception for acts that are prohibited by the written code but nonetheless are proper because of justifying circumstances not accounted for in it."¹⁷ However, like much of American criminal law, the current self-defense doctrine "remains grounded in largely obsolete nineteenth-century notions of free will and individualism."¹⁸ Historically, self-defense as a justification is seen as "morally appropriate," unlike defenses of excuse, which are simply "not blameworthy."¹⁹

Second, the Trayvon Martin killing, like the Paul Dart killing, involved civilian-on-civilian violence and thus avoids the swirling themes of police militarization and systematic state antagonism of minority populations. Third, Ferguson is still playing out through municipal court reform, and the already complex event remains difficult to place in historical perspective.

15. Lizette Alvarez, *Jury Reaches Partial Verdict in Florida Killing over Loud Music*, N.Y. TIMES, Feb. 16, 2014, at A20; Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, at A1; Monica Davey, *Shooting of Black Woman Stirs Racial Tensions Around Detroit*, N.Y. TIMES, Nov. 15, 2013, at A11.

16. The vigilante actions in all of these cases have been particularly troubling because all the defendants are white and all the victims are black. Alvarez, *supra* note 15.

17. Paul H. Robinson, *A Theory of Justification: Societal Harm as a Prerequisite for Criminal Liability*, 23 UCLA L. REV. 266, 272 (1975).

18. Garrett Epps, *Any Which Way but Loose: Interpretive Strategies and Attitudes Toward Violence in the Evolution of the Anglo-American "Retreat Rule,"* 55 LAW & CONTEMP. PROBS. 303, 328 (1992).

19. *Id.* at 305–06 (quoting Kent Greenawalt, *Distinguishing Justifications from Excuses*, 49 LAW & CONTEMP. PROBS. 89, 91 (1986)).

At common law, a defender is justified in using force to repel an attack within certain limitations. The defender must reasonably believe that force is immediately necessary to repel a threat, and the force used must be proportional to the threat posed.²⁰ In addition, a defender is not justified in using force to repel an attack if he or she may safely retreat from that attack.²¹ This final limitation became known as the “Retreat Rule.”²² However, the common law maxim that a man’s home is his castle also gave rise to an exception to this duty to retreat, embracing the notion “that retreating to the home was, essentially, retreating to the wall.”²³ Whether through application of the castle doctrine or some other mechanism, American jurisdictions began carving out “no retreat” exceptions to the common law rule as early as the nineteenth century.²⁴ However, under the castle doctrine, all other self-defense requirements involving the reasonableness and proportionality of the use of force remained in effect.²⁵ Proportionality is founded on the rationale that it “protect[s] the legal order” and is applied in a number of international jurisdictions.²⁶

Many states began eliminating these common law requirements, such as the duty to retreat, from the justification of self-defense through legislative action in the mid-2000s.²⁷ By 2013, a majority of jurisdictions in the United States had adopted “Shoot First” statutes, permitting the use of deadly force in public places where there previously was a duty to retreat at common law.²⁸

III. MISSOURI’S DIVERGENCE FROM THE COMMON LAW

One statute²⁹ that is more permissive of the use of deadly force than the common law doctrine of self-defense is Missouri’s expanded castle doctrine

20. 2 WHARTON’S CRIMINAL LAW § 127 (15th ed. 2014).

21. *See id.*

22. Epps, *supra* note 18, at 305.

23. Sarah A. Pohlman, Comment, *Shooting from the Hip: Missouri’s New Approach to Defense of Habitation*, 56 ST. LOUIS U. L.J. 857, 860 (2012).

24. Epps, *supra* note 18, at 307.

25. Pohlman, *supra* note 23.

26. Mordechai Kremnitzer & Khalid Ghanayim, *Proportionality and the Aggressor’s Culpability in Self-Defense*, 39 TULSA L. REV. 875, 893 (2004).

27. P. Luevonda Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground*, 35 S.U. L. REV. 1, 16–18 (2007).

28. “Stand Your Ground” Policy Summary, LAW CENTER TO PREVENT GUN VIOLENCE (July 18, 2013), <http://smartgunlaws.org/shoot-first-laws-policy-summary/>.

29. And, it appears that there are other statutes poised to join it. *See Marie French, Missouri House Approves Extension of ‘Castle Doctrine’ to Guests*, ST. LOUIS POST-DISPATCH (Apr. 24, 2014, 2:15 PM), http://www.stltoday.com/news/local/govt-and-politics/missouri-house-approves-extension-of-castle-doctrine-to-guests/article_b5c62eb8-9443-5bf5-a0cd-ec2ebd8eae66.html. Of

found in Missouri Revised Statute section 563.031.³⁰ That section eliminates any duty to retreat from private property owned by the defender and allows the use of deadly force on private property owned by the defender in situations where only non-deadly force would be permitted otherwise.³¹ Although that self-defense statute qualifies as an expanded castle doctrine—broadening the application of the doctrine from the dwelling to any real property owned by the defender³²—the spirit of the law resembles the Stand Your Ground laws that became the center of debate in the wake of the Trayvon Martin shooting.³³ Further, both Missouri and Florida’s self-defense statutes implicate the even more polarizing issue regarding the right to possess and use firearms.³⁴

Missouri case law largely followed the common law justification of self-defense throughout the twentieth century.³⁵ In the 1980 decision of *State v. Ivicsics*, the Eastern District Court of Appeals held that defense of habitation was merely an “accelerated” form of self-defense.³⁶ The court set forth the following test for the use of deadly force in defense of habitation:

The defense of habitation grants the lawful occupant of a dwelling the privilege to use deadly force to prevent an attempted unlawful entry into the dwelling, if the occupant had reasonable cause to believe that (1) there is immediate danger the entry will occur, (2) the entry is being attempted for the purpose of killing or inflicting serious bodily harm on the occupant and (3) deadly force is necessary to prevent the unlawful entry.³⁷

The privilege to use deadly force was, therefore, accelerated because the deadly force could be used to repel an attacker’s unlawful entry to the defender’s home prior to the anticipated attack. However, this brand of defense of premises was not much of a departure from established self-defense doctrine, because the defender would still be required to show a reasonable belief that the entry was intended for the purpose of killing or inflicting serious

course, statutes like Missouri Revised Statute section 563.046 (permitting law enforcement use of deadly force to effect the arrest of a felon) have been in the books for some time. See John Simon, *Tennessee v. Garner: The Fleeting Felon Rule*, 30 ST. LOUIS U. L. J. 1259, 1266 n.46 (1986).

30. Pohlman, *supra* note 23, at 857.

31. *Id.* at 858.

32. *Id.* at 857–58.

33. 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, 272 (2012).

34. The Speaker Pro Tem made this implication unavoidable when, in his September 12, 2007, address to the Missouri House of Representatives, he exclaimed, “We passed the conceal and carry bill and the castle doctrine—We respect Missourians’ gun rights!” H. JOURNAL, 94th Gen. Assemb., 1st Sess., at 5 (2007).

35. Pohlman, *supra* note 23, at 869.

36. *State v. Ivicsics*, 604 S.W.2d 773, 777 (Mo. Ct. App. 1980).

37. *Id.*

bodily harm.³⁸ The defender's presence in his or her dwelling did not fundamentally alter the nature of the justification of self-defense.³⁹

The fundamental change occurred with the state legislature's 2007 and 2010 amendments to the Revised Missouri Statutes' section 563.031.⁴⁰ In 2007, "defense of habitation and self-defense officially merged into one statute . . . [creating] a new defense of habitation provision within the pre-existing self-defense statute."⁴¹ The pertinent parts of the statute read:

1. A person may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such other person, unless:

(1) The actor was the initial aggressor

2. A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless:

(1) He or she reasonably believes that such deadly force is necessary to protect himself or herself or another against death, serious physical injury, or any forcible felony; or

(2) *Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by such person.*

3. A person does not have a duty to retreat from a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining.⁴²

The 2007 amendment effectively extended the privilege to use deadly force not only in situations involving unlawful entry for the purpose of causing serious bodily harm, but also in situations where that unlawful entry has already been completed.⁴³ This amendment specifically responded to the 2006 decision in *State v. Goodine*,⁴⁴ where the court held that "once the intruder enters the premises without resistance, the defender is no longer entitled to an instruction on defense of premises."⁴⁵ With the 2007 amendment, the legislature specifically allowed the justification of defense of premises for the

38. *Id.*

39. Pohlman, *supra* note 23, at 869–70.

40. *Id.* at 871, 879.

41. *Id.* at 875.

42. MO. REV. STAT. § 563.031 (2007) (emphasis added).

43. Pohlman, *supra* note 23, at 875–76.

44. 196 S.W.3d 607 (Mo. Ct. App. 2006); Robert H. Dierker, *Defense of Premises—"Castle Doctrine,"* 32 MO. PRAC., MO. CRIM. LAW § 9.4 n.12 (2d ed.).

45. *Goodine*, 196 S.W.3d at 613.

use of deadly force.⁴⁶ But, the legislature quietly went a step further in expanding the justifiable use of deadly force by effectively removing the proportionality requirement from the defense of premises.⁴⁷ “Now . . . simple unlawful force will justify a response of deadly force if the person using unlawful force is also trespassing.”⁴⁸

The legislature did not stop with the 2007 amendment. The 2010 amendment to section 563.031 again extended the justifiable use of deadly force under defense of premises by broadening the definition of premises and explicitly eliminating the duty to retreat from any premises owned by the defender.⁴⁹ The statute now includes the following:

2. A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless: . . .

(3) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter *private property that is owned or leased by an individual claiming a justification of using protective force* under this section.

3. A person does not have a duty to retreat from a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining. *A person does not have a duty to retreat from private property that is owned or leased by such individual.*⁵⁰

Just to make the expansion of the justifiable use of deadly force abundantly clear, the legislature provided the following definition in 563.011: “(6) ‘Private property’, any real property in this state that is privately owned or leased.”⁵¹ Now, defense of habitation is extended all the way to a homeowner’s property line despite the courts’ previous refusal to extend defense of habitation beyond even the curtilage of a home.⁵²

IV. MISSOURI’S EXPANDED CASTLE DOCTRINE IN RELATION TO STAND YOUR GROUND

The elimination of the duty to retreat from as broad of an area as “any real property”⁵³ resembles the general elimination of the duty to retreat in other

46. § 563.031(2).

47. *Id.*

48. Pohlman, *supra* note 23, at 879.

49. MO. REV. STAT. § 563.031 (2010).

50. *Id.*

51. § 563.011(6).

52. Pohlman, *supra* note 23, at 879.

53. § 563.011(6).

states' Stand Your Ground laws.⁵⁴ On October 26, 2005, Florida enacted the infamous Stand Your Ground law that "radically expanded Florida's self-defense law, even insulating shooters from criminal prosecution and civil suit."⁵⁵ Before that law, a defender was required to show a reasonable belief that the use of force was "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."⁵⁶ He or she had a duty to retreat if he could do so in absolute safety.⁵⁷ Stand Your Ground removed that duty, allowing defenders to "stand their ground and meet force with force."⁵⁸

Under Florida's Stand Your Ground law, self-defense is no longer an affirmative defense that can only be adjudicated at trial.⁵⁹ Stand Your Ground shifts the burden to the state to prove beyond a reasonable doubt that a defender was not acting in self-defense and creates a presumption that a person possessed a reasonable fear of "imminent peril of death or great bodily harm" if "[t]he person against whom . . . force was used was in the process of unlawfully and forcefully entering, [or had already entered], a 'dwelling, residence, or occupied vehicle.'"⁶⁰ Defenders also have the right to a pre-trial hearing where, if the preponderance of the evidence shows that they acted lawfully pursuant to Stand Your Ground, they can be immunized from future prosecution or civil suit.⁶¹ The increased privilege to use deadly force to repel an unlawful entry or completed entry of a "dwelling, residence, or occupied vehicle" is obvious in both Florida's and Missouri's statutes.⁶²

Although George Zimmerman raised only a traditional self-defense claim in his trial for shooting and killing Trayvon Martin, the case begged the question: "Are Floridians too quick to use deadly force?"⁶³ Public outcry also implicitly questioned whether that state's Stand Your Ground law was "appropriate and adequate to keep Floridians safe from future tragedies."⁶⁴ Zimmerman claimed not to be familiar with the Stand Your Ground law during

54. Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 832-33 (2013).

55. *Id.* at 832.

56. *Id.*

57. *Id.*

58. *Id.* at 832-33.

59. Lave, *supra* note 54, at 834-35.

60. *Id.*

61. *Id.* at 835.

62. Compare *id.* at 834-35 and MO. REV. STAT. § 563.031 (2010).

63. Lawson, *supra* note 33, at 299.

64. *Id.* Because Stand Your Ground laws grant individuals expansive privileges to use handguns against others when they perceive a threat, these laws levy "a high cost, as sometimes the gun owner is wrong in his or her assessment of the existence of a threat and/or its seriousness, and a victim's life is lost needlessly." *Id.* at 300.

his trial, but the law was brought to the jury's attention nonetheless when a former professor testified that Zimmerman had "actually been taught about the law before the shooting took place."⁶⁵ This leads to speculation that Zimmerman either lied or, even if not consciously familiar with the law, somehow internalized that knowledge, which incentivized his decision to follow Martin despite the 911 dispatcher's admonition not to do so.⁶⁶ Whether or not the Stand Your Ground law directly resulted in the violence that claimed Martin's life, Zimmerman's highly publicized acquittal certainly sends a message to prospective vigilantes across the country that such violence is justified.⁶⁷

A similar dilemma arose in the 2013 killing of Paul Dart. There is no way to know if James Crocker was truly aware of the applicability of Missouri's expanded castle doctrine or if that awareness encouraged his decision to shoot Dart. However, Crocker's reported statements that "it's my property, and I was going to protect it" and "I have the power"⁶⁸ seem to beg the same questions that arose from the Trayvon Martin killing: Are *Americans* too quick to use deadly force?⁶⁹ Is Missouri's expanded castle doctrine appropriate and adequate to keep Missourians safe from future tragedies?

However, unlike the Trayvon Martin trial that only obliquely referred to the Stand Your Ground law,⁷⁰ the Missouri's expanded castle doctrine became an important issue in the trial of James Crocker.⁷¹ If the gravel bar where Paul Dart died was on Crocker's property, defense of premises would apply where it would not have prior to 2010.⁷² The use of force in the defense of premises would not have been available to Crocker to defend against an intrusion onto his real property until the amendments to 563.031.⁷³ If the legislature had not pre-empted *State v. Goodine*, use of force in defense of premises would not

65. Lave, *supra* note 54, at 853.

66. *Id.* at 853–54.

67. If the reader doubts that this message could be taken away from the Florida tragedy, recall Zimmerman's fandom that gifted him a fortune for his artwork. Vivian Kuo, *Bids for George Zimmerman Artwork Top \$100,000*, CNN.COM (Dec. 18, 2013, 10:13 A.M.), <http://www.cnn.com/2013/12/17/us/george-zimmerman-ebay-painting>.

68. Felony Complaint and Request for Warrant, *supra* note 2.

69. This is certainly a valid question, considering that homicides rates were as much as seven times that of other industrialized nations from 1950 to 2000. Gary LaFree & Andromachi Tseloni, *Democracy and Crime: A Multilevel Analysis of Homicide Trends in Forty-Four Countries, 1950-2000*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 26, 34–35 (2006).

70. Cara Buckley, *Zimmerman Studied 'Stand Your Ground' in Class, Florida Court Is Told*, N.Y. TIMES, July 4, 2013, at A15.

71. More accurately, it became an issue important for the state to avoid. *See infra* pp. 1216–17.

72. *See* Pohlman, *supra* note 23, at 879.

73. *Id.*

have been available to Crocker because any unlawful entry to his real property would have been completed.⁷⁴ The 2007 amendment to section 563.031, further eliminating the proportionality requirement in situations of unlawful entry of premises owned by the defender,⁷⁵ also would allow Crocker to argue that his use of *deadly* force was justified based on his reasonable belief that the intruding floaters intended to use any amount of force against him.⁷⁶

According to Crocker's statements to investigators, "four male subjects . . . began advancing toward him, [and] one of the males had two rocks in his hands."⁷⁷ In interviews provided by Dart's wife, there is some suggestion that Dart grabbed for Crocker's gun: "He went to the guy's arm to try to stop him."⁷⁸ Crocker could argue that all of these factors substantiate his fear of an attack and that such an attack justifies his use of deadly force under section 563.031. On the other hand, Crocker could invoke the general justification of self-defense, but there would be no reason not to pursue a defense under section 563.031 given its elimination of the common law proportionality requirement.⁷⁹

Although reports in the *St. Louis Post-Dispatch* and *Riverfront Times* never delved into editorialism, the tenor of the coverage is that the Dart killing was a senseless act by a crazed property-owner taking some backwards sense of justice to a horrifying extreme.⁸⁰ The vacant stare and unkempt hair of Crocker's mugshot that accompanies every article do little to paint Crocker as a sympathetic character.⁸¹ But, just as every hour of the Trayvon Martin trial exposed the prosecution's case as increasingly thin—and talk show pundits slowly began uttering the word "acquittal" without any real exasperation⁸²—

74. State v. Goodine, 196 S.W.3d 607, 613 (Mo. Ct. App. 2006).

75. Pohlman, *supra* note 23, at 878–79.

76. See MO. REV. STAT. § 563.011 (2010).

77. Felony Complaint and Request for Warrant, *supra* note 2.

78. Kim Bell, *Meramec Float Trip Ends in Fatal Shooting After Dispute over Property Rights Along Waterway*, ST. LOUIS POST-DISPATCH (July 23, 2013), http://www.stltoday.com/news/local/crime-and-courts/meramec-float-trip-ends-in-fatal-shooting-after-dispute-over/article_a2774d0e-578c-5d01-89e2-d334dbe7c9c3.html.

79. Pohlman, *supra* note 23, at 879.

80. See Bell, *supra* note 78; Sam Levin, *James Crocker: Evidence Shows Float Trip Shooter Was Attacked, Injured, Says Lawyer*, RIVERFRONT TIMES BLOG (Aug. 27, 2013, 7:00 AM), http://blogs.riverfronttimes.com/dailyrft/2013/08/james_crocker_paul_dart_float_trip_shooting_trial.php.

81. See Bell, *supra* note 78; Levin, *supra* note 80.

82. Erin Donaghue, *George Zimmerman Verdict: Prosecutors "Didn't Have the Evidence" to Prove Their Case, Experts Say*, CBSNEWS.COM (July 15, 2013, 6:00 AM), <http://www.cbsnews.com/news/george-zimmerman-verdict-prosecutors-didnt-have-the-evidence-to-prove-their-case-experts-say/>.

the real monster in the Dart killing could be made not of the shooter, but the law that emboldened him.

Of course, the Dart killing also lacks the racially charged storyline that may have ultimately doomed the story to merely regional significance.⁸³ However, this absent element makes the Dart killing more about the failings of the law rather than the prejudices of the actors involved. The protections of the expanded castle doctrine, which can obviously only apply to owners or lessees, raise the same issues of class discrimination that have been suggested in the Stand Your Ground debate.⁸⁴ In Missouri, two propositions should be considered: (1) the extent of one's privilege to use deadly force is directly related to the amount of real property that person owns or leases; (2) deadly force used in defense of premises is most likely to be used on those who own or lease smaller properties. This second proposition is especially true in the context of the float trip, in which Dart was participating at the time of his death. Although Dart was forty-eight years old, floaters are usually younger people who, as a result, lease smaller real property.⁸⁵ Further, floaters are most likely to come into contact with property owners asserting their expanded right to defense of premises because floaters make use of public waterways cutting directly through, or adjacent to, private property.⁸⁶ Thus, in addition to the two primary questions posed above,⁸⁷ a third question is added to the debate: Whose interests motivate Missouri's lawmakers?

V. A CRITICAL EXAMINATION OF SECTION 563.031

A. *Partisan Legislation Catering to Special Interests*

With this discussion of who ultimately benefits from the expanded castle doctrine, it is helpful to understand how the bills were pushed through the legislative process. Stand Your Ground laws were first conceived in a "flurry of national legislative activity" in 2005, a time when violent crime was, nationally, on the decline.⁸⁸ That activity was backed primarily by the National

83. Dart was a forty-eight-year-old white male, and Crocker is a fifty-nine-year-old white male. See Bell, *supra* note 78.

84. Lave, *supra* note 54, at 850–51.

85. This is an observation based on the author's repeated participation in float trips from 2003 to 2014.

86. See *Elder v. Delcour*, 269 S.W.2d 17, 20, 26 (Mo. 1954) (recognizing a public easement allowing the use of canoes on the Meramec River even though the waterway was considered non-navigable).

87. Are Americans too quick to use deadly force? Is Missouri's expanded castle doctrine appropriate and adequate to keep Missourians safe from future tragedies? See *supra* pp. 1205.

88. Ross, *supra* note 27, at 16–17.

Rifle Association (NRA).⁸⁹ Likewise, Missouri's subsequent amendments enjoyed the full support of the NRA, with the organization's executive director Chris Cox joining Governor Matt Blunt for the signing of Senate Bill 62 (the 2007 amendment).⁹⁰ Cox made no attempt to veil the significance of the amendment to the NRA's grand agenda of expanding gun rights: "Missourians are fortunate to have a Governor and state legislators who respect and cherish their Second Amendment rights."⁹¹

With bills like S.B. 62, it is no wonder that the legislative process is often cynically compared to sausage-making. The only thing wrong with the sausage-making analogy in the case of section 563.031 is that nothing palatable was produced by the grotesquery of the legislative process. While Second Amendment proponents painted Stand Your Ground or castle doctrine legislation as safeguarding fundamental rights, critics immediately warned against a disproportionate, negative impact on racial minorities: "These laws are passed to protect the law-abiding people from criminals, . . . [y]et innocent people may end up being killed because of the new laws, while nothing will happen to the killers."⁹² These fears, unfortunately, seem to have been vindicated by the actions of George Zimmerman, Theodore Wafer, and Michael Dunn.⁹³

Again, on the surface, the racial component is lacking from the Dart killing—the violence was not cross-racial.⁹⁴ However, the treatment of the shooting by law enforcement and the media may point to a dormant form of racial discrimination. The media readily dismissed Crocker as a gun-toting psychopath. One dismissive report proclaimed, "James Crocker Cannot Claim 'Castle Doctrine' in Shooting Along Meramec River, Says Sheriff," only days after the shooting.⁹⁵ This revelation seems to be based primarily on Sheriff Randy Martin's statement that "[w]e don't know where the property owners [sic] land begins and ends," as Sheriff Martin is never quoted to confirm explicitly that the castle doctrine does not apply.⁹⁶ Essentially, the report dismisses Crocker's defense on the conjecture that the shooting occurred

89. *Id.* at 17.

90. *Missouri Governor Signs Castle Doctrine, Hunting Preservation Bills into Law*, NAT'L RIFLE ASS'N-INST. FOR LEGIS. ACTION (July 6, 2007), <http://www.nra.org/hunting/issues-and-alerts/2007/missouri-governor-signs-castle-doctrine.aspx?s=missouri+governor+signs&st=&ps=>

91. *Id.*

92. Ross, *supra* note 27, at 45.

93. *See supra* text accompanying note 14.

94. *See* Bell, *supra* note 78.

95. Farrah Fazal, *James Crocker Cannot Claim 'Castle Doctrine' in Shooting Along Meramec River, Says Sheriff*, KSDK.COM (July 22, 2013), <http://www.ksdk.com/news/article/389366/3/Sheriff-Castle-Law-does-not-apply-in-shooting-along-Meramec-River>.

96. *Id.*

beyond his property line. This creates a new dilemma: Would this particular report afford Crocker the protection of the castle doctrine if the shooting victim had been black? Or even more troubling: Can the justice system (through prosecutorial discretion or juror bias) choose when to apply the castle doctrine based upon the victim's identity? A guilty verdict in Crocker's trial, juxtaposed with the outcomes of the Zimmerman and Dunn cases,⁹⁷ may suggest that Crocker's jurors, as proxy for the white majority of Americans, can accept the occasional loss of life resulting from the expanded castle doctrine, as long as that life is not of the same color as them.

B. The Problematic Construction of Section 563.031

Sheriff Martin's comment about the unclear demarcation of Crocker's property line raises another issue with, specifically, the 2010 amendment to section 563.031: Does the applicability of the statute now depend on something as esoteric to the layperson as riparian rights based upon the navigability of a watercourse? If so, does the statute attempt to provide uniformity in a place better suited for case-by-case determinations?

Conceptually, the 2010 amendment makes little sense. If Crocker is not entitled to the protection of the castle doctrine on the gravel bar where he shot Dart, would he receive the protection fifteen feet farther into the woods? What about fifty feet? Attributing varying levels of sanctity for any given outdoor location, based upon the content of a legal title, is simply too far afield from the philosophical underpinnings of the common law castle doctrine.⁹⁸ The legislature likely had visions of a *Goodine*-style front yard melee when it extended the castle doctrine,⁹⁹ but extending the doctrine to *any* real property is unreasonably broad—especially when any sanctity of the front yard could have been protected by using a word like *curtilage*.¹⁰⁰ Again, Missouri's castle doctrine has become so expansive that it is conceptually closer to a general Stand Your Ground statute. When viewed in this context, it is no wonder that the NRA considered the passage of the section 563.031 amendments such a momentous victory for Second Amendment rights.¹⁰¹

Another indicator that the statute was ill-conceived is simply its manufactured necessity. By conflating defense of premises (found in

97. Zimmerman was acquitted, and the Dunn jury failed to reach a verdict on the second-degree murder count. Alvarez, *supra* note 15; Alvarez & Buckley, *supra* note 15.

98. Pohlman, *supra* note 23.

99. State v. Goodine, 196 S.W.3d 607, 610–11 (Mo. Ct. App. 2006).

100. Pohlman, *supra* note 23, at 879.

101. *Missouri Governor Signs Important Pro-Gun Measures into Law*, NAT'L RIFLE ASS'N-INST. FOR LEGIS. ACTION (July 14, 2010), <http://www.nrila.org/legislation/state-legislation/2010/7/missouri-governor-signs-important-pro-g.aspx?s=pro-gun%20measures&st=%2010489&ps=>.

subsection 2) and a now absurdly expanded castle doctrine (found in subsection 3), the statute has displaced an established line of cases that kept the two doctrines independent, both with clear, well-reasoned limits on their application.¹⁰² As mentioned earlier, cases like *Goodine* may have limited the application of defense of habitation,¹⁰³ but the legislature's response was just as disproportionate as a nine-millimeter round answering a thrown rock.

Aside from the fatal consequences of the amendments, Sarah Pohlman lucidly criticized the newly convoluted language of section 563.031 in her article *Shooting from the Hip: Missouri's New Approach to Defense of Habitation*.¹⁰⁴ Pohlman pointed out that it could at least be argued that the added subsection 2, which states:

A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless . . . [s]uch force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual claiming a justification of using protective force under this section[.]¹⁰⁵

did not “incorporate subsection 1’s requirements of reasonable belief, necessity, and imminent harm.”¹⁰⁶ Although Pohlman ultimately believed the alternative interpretation of the statute, that subsection 2 did indeed incorporate the requirement of subsection 1,¹⁰⁷ the statutory language was unnecessarily muddled and then substituted for clear case law.¹⁰⁸ This was a second indication that the amendments were ramrodded through the legislature, without meaningful reflection, at the behest of the NRA.¹⁰⁹

Even with subsection 2’s *incorporation* of subsection 1, Missouri courts are left to sort out what is now “an extreme divergence from the proportionality element” that existed prior to the amendments.¹¹⁰ With the

102. Pohlman, *supra* note 23, at 869–70.

103. *Goodine*, 196 S.W.3d at 613.

104. Pohlman, *supra* note 23, at 881–82.

105. MO. REV. STAT. § 563.031.2 (2010).

106. Pohlman, *supra* note 23, at 877.

107. *Id.* at 877–78.

108. The Western District Court of Appeals agreed and disagreed with Pohlman in *State v. Clinch*, 335 S.W.3d 579, 587–88 (Mo. Ct. App. 2011). In dicta, the court noted that while subsection 2 did not “eliminate the requirement of [imminence found in subsection 1, it] . . . codified that the unlawful entry into a dwelling, residence, or vehicle constitutes the act of force necessary to justify deadly force.” *Id.* at 588. Thus, in defense of premises cases, the imminence requirement of subsection 1 is so fundamentally altered that subsection 1 is not really *incorporated* by subsection 2 at all.

109. See *Missouri Governor Signs Important Pro-Gun Measures into Law*, *supra* note 101.

110. Pohlman, *supra* note 23, at 878.

amendments, if a defender anticipates any use of unlawful force, a response of deadly force is justified if the attacker is also trespassing.¹¹¹ If section 563.031 was put to the jury in the *Crocker* case, Crocker's defense would have depended on evidence that the floaters were approaching him with *rocks*. Did the legislature seriously contemplate that a bullet would be an appropriate response to a rock? The problem with any expanded self-defense statute and concomitant reaffirmation of Second Amendment rights is that proportionality becomes increasingly harder to find when the destructive power of firearms enters the picture.¹¹² Proportionality is essential to self-defense's existence as a justification and to its role in protecting the populace.¹¹³ Thus, the legislature should seriously consider whether the fundamental social goals of self-defense could be achieved when legislation expanding the doctrine is wedded to the proliferation of gun ownership.¹¹⁴

C. *Historical Conflicts Inherent in the Justification of Self-Defense*

The reality is that the conflicts resulting from Missouri's expanded castle doctrine are simply the latest iterations of tensions that have always existed in self-defense law. While the tension in the Dart killing was above characterized as floaters versus landowners, that tension can be further reduced, at the risk of oversimplification, to urban versus rural ideologies.¹¹⁵ Those competing ideologies underscore an even greater identity crisis at the core of American politics. In fact, the first principal question posed above—are Americans too quick to use deadly force?—is simply a sub-question of a broader question of American identity: Who are we and what kind of country do we want to make for ourselves?

On the side of more restrictive self-defense justification are urbanites, who are generally “egalitarian . . . solidaristic . . . [and] ‘logically opposed to individualism.’”¹¹⁶ “Urban individuals see gun possession as a threat to their sense of community.”¹¹⁷ Naturally, self-defense, with an emphasis on self, champions the ideal of individualism.¹¹⁸ The logical link between self-defense

111. *Id.* at 879.

112. The percentage of homicides resulting from firearm use hovered around 70% for most of the twentieth century. See Lance K. Stell, *The Production of Criminal Violence in America: Is Strict Gun Control the Solution?*, 32 J.L. MED. & ETHICS 38, 40 (2004).

113. Kremnitzer & Ghanayim, *supra* note 26.

114. H. JOURNAL, 94th Gen. Assemb., 1st Sess., at 7 (Mo. 2007).

115. Christopher T. Pierce, *Not Only in My Backyard but on My Front Stoop: The Forgotten Opinion of Urbanites About Concealed-Carry in Missouri*, 21 WASH. U. J.L. & POL'Y 407, 414–25 (2006).

116. *Id.* at 421.

117. *Id.* at 422.

118. Epps, *supra* note 18.

and this rural sense of individualism is all too apparent in expansions of self-defense law. Rural individuals are more likely to live in areas isolated from law enforcement, and self-help may present the only option available for preservation of life or property. Fittingly, the expanded castle doctrine was born of this rural milieu; Senate Bill 62 was sponsored by a state senator from Mount Vernon, Missouri.¹¹⁹

In a sense, Missouri is the perfect powder keg for urban-rural conflict because it possesses two major urban centers (Kansas City and Saint Louis) that bracket over one hundred largely rural counties (perhaps with the exception of Boone County, which possesses the University of Missouri-Columbia). The ideological divide is clearly depicted in the 2012 general election results—presidential candidate Barack Obama emerged victorious in only four counties but won a whopping 82.7% of the vote in Saint Louis City.¹²⁰ In 2014, the state has a Democratic governor but a House of Representatives controlled by Republicans.¹²¹ The demographic dichotomy existing in Missouri further complicates the second principal question posed above—Is Missouri’s expanded castle doctrine appropriate and adequate to keep Missourians safe from future tragedies?—because it could lead to the unsatisfying answer of *some Missourians, but not others*. In response to this equivocation, we could allow the legislative process to keep churning out artificial codifications of whatever behaviors are ostensibly deemed acceptable by the majority of the population.¹²² The other option is to grapple with our identity crisis so that we can definitively answer whether expanded self-defense statutes really help fashion the world we want for ourselves.¹²³

119. *Missouri Governor Traveling the State and Signing Important Pro-Gun Legislation!*, NAT’L RIFLE ASS’N-INST. FOR LEGIS. ACTION (July 2, 2007), <https://www.nrila.org/articles/20070702/missouri-governor-traveling-the-state-a>.

120. *2012 Missouri Presidential Results*, POLITICO.COM (Nov. 19, 2012), <http://www.politico.com/2012-election/results/president/missouri/>.

121. *State of Missouri—General Election—November 6, 2012 Official Results*, MO. SECRETARY ST.—ELECTIONS & VOTING (Dec. 5, 2012), <http://enr.sos.mo.gov/enrnet/default.aspx?eid=750002497>.

122. *But see* Sanford Levinson, “Who Counts?” “Sez Who?”, 58 ST. LOUIS U. L.J. 937, 947–58 (2014) (scrutinizing whether our system of geographic representation really expresses the will of the people).

123. It is important to remember the role of conflicting urban and rural sensibilities even in Saint Louis’s current decidedly urban morass. That conflict is not *the* defining factor of the culture of violence gripping American cities, however, because there is no one defining factor. To reduce the events following the death of Michael Brown to any one issue (police militarization, structural racism, or even misguided self-defense legislation) neglects the complexity of the world that we already have fashioned for ourselves, which involved many missteps over many years.

VI. THE REALITY OF TRIAL

On May 12, 2014, James Crocker's trial commences at the Crawford County Courthouse. Seemingly every sheriff's deputy in the county finds a post to man at the chapel-courthouse. At 8:30 a.m., three deputies guard the front door to vet the lone observer.¹²⁴ The clerk's office has blocked cause number 13CF-CR00772 on Case.net—Missouri's online case information system—and the court's administrative assistant refuses to provide any information regarding the trial schedule over the telephone. The tensions between the victim's family and defendant's supporters are less of a reason and more of an excuse for the heightened security. The rumored presence of one cub reporter from the *St. Louis Post-Dispatch* is enough temptation for the men and women in beige to flex.¹²⁵ The courtroom is typical as far as the climate and primary building material are concerned: nearly freezing and lacquered wood. However, the benches in the gallery, constructed from wrought iron and wood slats, look more suited to the gazebo outside. The bar is similarly constructed from fence-like wrought iron. The bench, tucked into the corner opposite the doorway, is only a foot or two raised from the well. Behind that, a dry wall partition separates the courtroom from the judge's chambers but does little to soundproof the conversations that occur in camera.

The voir dire process is scheduled to begin around 9:00 a.m., but the prosecutor and the court are still resolving pretrial motions. Crocker sits alone at the defendant's table, blankly staring forward with his hands clasped in front of him. His face, still goateed, is even more drawn than the mugshots that surfaced nearly a year earlier. Everything about Crocker is drab: his blue jeans (concealing leg braces), slate collared shirt (tucked in but with no tie), and gray mane (combed back tightly before curling just below his shoulders). The Honorable Kelly Parker sits at the bench, unrobed for the pretrial motions but dressed sharply. The angles of his suit match his cropped hair and rectangular frames of his glasses. His rulings are deliberately paced with a slight country

124. The lone observer is the author because Judge Kelly Parker prohibited the media from attending voir dire.

125. As it turns out, Jesse Bogan's coverage of the trial is fantastic. Listed chronologically: Jesse Bogan, *Trial Set to Begin in Meramec Float Trip Killing*, ST. LOUIS POST-DISPATCH (May 13, 2014), http://www.stltoday.com/news/local/crime-and-courts/trial-set-to-begin-in-meramec-float-trip-killing/article_e400b956-45fe-522b-828d-02457b22f49b.html; Jesse Bogan, *Lawyer Says Gunman in Fatal Meramec River Shooting Acted in Self-Defense*, ST. LOUIS POST-DISPATCH (May 14, 2014), http://www.stltoday.com/news/local/crime-and-courts/lawyer-says-gunman-in-fatal-meramec-river-shooting-acted-in/article_5d74d474-04fe-5cca-b6b1-cd0409671582.html; Jesse Bogan, *Man Gets 25 Years in Shooting Death of Meramec River Floater*, ST. LOUIS POST-DISPATCH (May 15, 2014), http://www.stltoday.com/news/local/crime-and-courts/man-gets-years-in-shooting-death-of-meramec-river-floater/article_4e9657d1-3691-529e-a05a-98c3bee421c3.html.

drawl. Prosecutor William Seay, a former judge, speaks at the same modest rate but commands the bellowing voice of a fire and brimstone preacher. Seay is heavy, stern-faced, reclining comfortably in a leather chair bearing his name, and coolly rotating some manner of precious stone about his ring finger. Assistant prosecutor Michael Randazzo is seated to Seay's left. He is the youngest of the players in the trial, and his facial features seem almost delicate next to the Churchill-esque Seay. Randazzo's juvenile appearance is exaggerated by, despite his healthy frame, a slightly wide suit jacket.

Crocker's attorney, Michael Bert, arrives from Saint Louis shortly before Judge Parker's final pretrial ruling. The unusually muggy morning has gotten a hold of him. His breathing is heavy, and his wavy hair looks slick with sweat. Perhaps exasperated by the heat, the I-44 traffic, or the unfavorable pretrial rulings, Bert quickly eclipses Seay and Judge Parker in words per minute. The one hundred and sixty potential jurors remain in limbo at the associate court across the street while Seay, Bert, and Judge Parker retire to (not-so-secret) chambers to clear up last minute concerns.

By late morning, Judge Parker, now robed, stands stately in the middle of the courtroom to finally greet the potential jurors. The voir dire for the first one hundred potential jurors proceeds predictably: Seay never breaks character as the courtroom's consummate pro, and Bert ingratiates himself to the jury's rural sensibilities to quash the perception that he is the outsider. The homogeneity of the jury pool is also predictable, almost comically so. One potential juror appears to be Southeast Asian; the rest are white. Over half of the potential jurors own or have access to guns in their homes. Only ten potential jurors have never floated. Every potential juror has heard or read about the Paul Dart killing. The remainder of the first day of trial is spent empaneling the jury. The final jury composition is as follows: nine men, two women, all white, and all but one appear older than forty.

The state opens its case on the second day of trial with testimony from members of Dart's float party, fleshing out the story told in the charging documents.¹²⁶

On the third day of trial, the state presents the evidence relevant to the statute at the center of this Note. With Kim Cook, the Recorder of Deeds, on the stand, the court admits a warranty deed granting Crocker Lot Seven of Meramec Estates in the mid-2000s. The County Surveyor, Mark Mueller, testifies as to the location of physical evidence in relation to the property line of Lot Seven. Mueller testifies that the previous survey of Meramec Estates, completed by his father in 1970, marked the northwestern boundary of Lot Seven at north 33 degrees, 26 minutes, 11 seconds east. This was

126. Bogan, *Lawyer Says Gunman in Fatal Meramec River Shooting Acted in Self-Defense*, *supra* note 125.

approximately the eastern bank of the Meramec River's "old channel" in 1970. The shell casings and blood pool lay fifty feet east from the 2013 water line but 381 feet west from this 1970 boundary of Lot Seven. The court admits Mueller's survey of the crime scene. The County Assessor, Kerry Summers, then testifies that the landowners across the river from Crocker are Philip and Helen Hughes and that their property reaches southwest to north 33 degrees, 26 minutes, 11 seconds. The upshot of all this is that Crocker shot Paul Dart almost 400 feet from Crocker's property, and the state appears to succeed in taking Missouri's expanded castle doctrine out of play.

Crocker takes the stand to maintain his belief that he owned property to the Meramec River. He has little support for this proposition, however, other than supposed representations made by Lot Seven's previous owner and some vague, unsubstantiated statements of an easement. Crocker is wearing the same clothes he wore on the first day of trial, and he talks like he has a mouthful of rocks. By the time he reaches his version of the altercation that culminated in Dart's death, he is down in the count.

The reality is, however, that Crocker's story is not implausible. According to Crocker, he approached a man urinating on what he thought to be his property. The man responded by exclaiming, "I'll piss and shit anywhere I want!" Crocker retrieves a nine-millimeter handgun from his car and returns to order the floaters to "get on down the river." He then hears someone joke, "I think he liked watching." Insulted, Crocker fires shots into the gravel to intimidate the floaters. The floaters, who outnumber Crocker at least five to one, are not intimidated and instead arm themselves with softball-sized river rocks. Crocker is afraid that if he turns his back, a rock will find the back of his head. But, Crocker suffers his third strike when he claims that one rock did find his head, causing him to fire the fatal shot inadvertently. Two sheriff's deputies later testify that Crocker sustained no injuries.

Nevertheless, Crocker's belief that he owned property to the river *is* genuine. The 1970 legal description of Meramec Estates establishes its northwestern boundary at the "southeast edge of the Meramec River," but makes no mention of north 33 degrees, 26 minutes, 11 seconds. The Meramec River moved in the forty years since the creation of Meramec Estates, and the northwest property line of Lot Seven could certainly have moved with it: as any first-year Property student knows, land gained slowly by accretion goes to the riparian landowner.¹²⁷ The State never produced evidence that the Meramec changed course suddenly by avulsion, and Crocker would have a strong argument that the land on which he shot Paul Dart was, in fact, his land. However, that argument never materializes.

127. Missouri follows this rule as well. 1 MO. PRAC., METHODS OF PRAC.: TRANSACT. GUIDE § 15.4 (4th ed. 2011).

After both sides rest, Seay focuses his closing argument on keeping the castle doctrine out of the jury's mindset. "This didn't take place in his castle. . . . It was not about his right to protect property. He wasn't protecting his home," Seay's voice booms. His line "[t]he defendant was on a mission" is soaked with contempt for vigilantism. Bert makes the best argument given the facts. "Jim stood his ground. He had no duty to retreat. Jim treated the property as his." When Bert asks the jurors to consider whether the jury would want someone urinating in their yards, the hypothetical seems too far removed from the events of July 20, 2013. Seay has already driven home for the jury that Crocker shot Paul Dart farther than a football field away from his property. Randazzo echoes Seay in his rebuttal: "This isn't about rights. . . . Property disputes shouldn't be handled on riverbanks. They should be handled in the courtroom."¹²⁸

With sheriff's deputies occupying every standing space in the gallery, the jury finds Crocker guilty of second degree murder by 4:30 p.m. After a brief outburst of relief, Paul Dart's family shares their emotions silently.

In a way, the Crocker trial became another abortive attempt to answer the questions posed above, because the prosecution effectively shielded the jury from having to grapple with the expanded castle doctrine. This is another similarity between the Crocker case¹²⁹ and its highly publicized Florida counterparts¹³⁰—neither definitively addressed the controversial expanded self-defense laws swirling around the cases. The courtroom ignorance, willful or otherwise, of the statutes turns them into legal ciphers: the proponent of the expanded self-defense statute will argue that its rare application refutes the notion that it incentivizes, or at least eliminates deterrence for, the use of violence. The counterargument is that the self-defense statutes elicit acts of violence with mirages of legal immunity that offer unequal protections. Closing arguments on both sides in the Crocker case invoked the spirit of the castle doctrine while framing it as simple self-defense. The prosecution kept the expanded castle doctrine under wraps for obvious reasons, but the motivation for defense approach is harder to place. Did Bert want to invoke a justification with some familiarity for the rural jury? Was the protection offered by defense of premises too ludicrous for the jury? Was it futile to rebut

128. Randazzo then closes with a reference to the Lone Ranger that stays with the indictment of vigilantism, but is a bit too over the top for reproduction here. *Man Gets 25 Years in Shooting Death of Meramec River Floater*, ST. LOUIS POST-DISPATCH (May 15, 2014), http://www.stltoday.com/news/local/crime-and-courts/man-gets-years-in-shooting-death-of-meramec-river-floater/article_4e9657d1-3691-529e-a05a-98c3bee421c3.html.

129. The victim's friends acknowledged the connection even though they slightly mischaracterized it. *Id.* ("There's no stand-your-ground law in Missouri.")

130. Alvarez, *supra* note 15; Alvarez & Buckley, *supra* note 15.

the state's evidence that the shooting occurred 381 yards from Crocker's property line?

As noted above, with the revisions to section 563.031 aimed at undercutting *Goodine*,¹³¹ the legislature was essentially attempting to usurp the authority of the judiciary and its finders of fact. Seay and Randazzo were simply effective in keeping that authority with the jury in the Crocker case. Because the justification of self-defense exists "to compensate for the limitations of a written code,"¹³² we have historically depended on judges and juries to evaluate self-defense claims on a case-by-case basis. This makes perfect sense because no statutory construction can possibly contemplate every action that may fall under its purview.¹³³ By tinkering with the doctrine of self-defense, the legislature undercuts not only the holding of one case but, ultimately, the fundamental benefit of the doctrine itself.¹³⁴ To put it bluntly, our identity crisis cannot be resolved on the floor of the Missouri House of Representatives,¹³⁵ and it may never be resolved in Missouri's circuit courts either. However, this should never preclude public dialogue on where to limit the justification of self-defense.¹³⁶

There are some aspects of the Dart killing that should be noted regardless of whether the expanded castle doctrine was applied. James Crocker's interview with Detective Zachary Driskill concluded with the following exchange:

James stated several times in the interview that he was going to protect his property and that, if he would have left, the people would have been gone before law enforcement arrival. I asked James even if the people had left wouldn't that have been the desired result and he stated, "Yeah, that would have worked too." I asked James again why he did not call law enforcement and he then stated he did not want to talk anymore.¹³⁷

Crocker was invoking that same rural notion of individualism that underlies the justification of self-defense, but, while Saint Louis may dwarf

131. Dierker, *supra* note 44.

132. Robinson, *supra* note 17.

133. *Id.* at 271.

134. Namely, that a jury of twelve of the defendant's peers could review all of the facts of a case to determine whether a defendant's conduct is acceptable.

135. Ideally, statutes passed by elected officials would express the will of the people, but, as noted earlier, that is rarely the reality. See Levinson, *supra* note 122 (describing the lack of representation of the people's will in the U.S. House of Representatives).

136. See Dan M. Kahan & Donald Braman, *More Statistics, Less Persuasion: A Cultural Theory of Gun-Risk Perceptions*, 151 U. PA. L. REV. 1291, 1324 (2003).

137. Felony Complaint and Request for Warrant, *supra* note 2.

Steelville,¹³⁸ Crocker still had access to a telephone or assistance from his neighbors or a modern law enforcement agency. In fact, the first thing that Crocker did after shooting Dart was knock on his neighbor's door to request that she call 911.¹³⁹

The not-so-rural reality of the scene in Crocker's backyard reminds us that it is important not to conflate rural individualism with the American mythology of the Old West or "frontier culture,"¹⁴⁰ distilled from a stew of comic books, TV shows, and Hollywood films that were never grounded in reality. What it means to be rural in the twenty-first century may actually have less to do with the stoic individualism of Gary Cooper in *High Noon* than the impassioned humanitarianism of Henry Fonda in *The Grapes of Wrath*.¹⁴¹ Billboards for tourist traps along I-44 love to boast that they were once the hideout of the James-Younger gang,¹⁴² but, nonetheless, Steelville did not exist in a vacuum of law and order on July 20, 2013.

There is also a tendency to accept the longevity of the justification of self-defense, with its masculine origins,¹⁴³ as an expression of something hyper-masculine and inherently violent in the American character.¹⁴⁴ The sustained popularity of NFL football, despite its devastating impact on the players' mental health, might attest to this aspect of our national character.¹⁴⁵ But, we have to recognize the difference between our history and current and future

138. The population of the city of Saint Louis is approximately thirteen times that of Crawford County. See MO. CENSUS DATA CTR., <http://census.missouri.edu/census2010/report.php?g=05000US29510|05000US29055> (last visited Feb. 16, 2014).

139. Sam Levin, *James Crocker: Woman Who Called 911 After Float Trip Shooting Says He Was "Very Calm,"* RIVERFRONT TIMES BLOGS (July 26, 2013, 10:06 AM), http://blogs.riverfronttimes.com/dailyrft/2013/07/james_crocker_meramec_river_shooting_911.php.

140. Epps, *supra* note 18.

141. These two classics of American cinema encapsulate the individualism and solidarity at odds in modern formulations of self-defense law. Gary Cooper delivers lines like, "If you don't know, there's no use in me telling you," while Henry Fonda delivers lines like, "Wherever there's a fight, so hungry people can eat, I'll be there." *High Noon* (Republic Pictures 1952); *Grapes of Wrath* (20th Century Fox 1940).

142. *Jesse's Hideout*, JESSE JAMES WAX MUSEUM, http://www.jessejameswaxmuseum.com/cavern_hideout.php (last visited Jan. 31, 2015).

143. Alene Kristal, *You've Come A Long Way, Baby: The Battered Women's Syndrome Revisited*, 9 N.Y.L. SCH. J. HUM. RTS. 111, 147 (1991).

144. Jamie R. Abrams, *Examining Entrenched Masculinities in the Republican Government Tradition*, 114 W. VA. L. REV. 165, 207 (2011) (discussing "[t]he historical fusion of citizenship, military service, and masculinity" in the American republican government tradition).

145. See *League of Denial: The NFL's Concussion Crisis*, PBS.ORG (Oct. 8, 2013), <http://www.pbs.org/wgbh/pages/frontline/league-of-denial/> (providing further discussion of NFL football's impact on the players).

identity.¹⁴⁶ The characterization of rural individualism as a relic of our nation's past would also explain the state of perpetual fear that proponents of expanded self-defense seem to foster.¹⁴⁷ When these individualists are given the sense that they are part of an old order nearing extinction, it makes them defensive about any newness or otherness that they might encounter. This aversion to otherness is probably why the racially charged self-defense stories of 2013 and 2014 had such a visceral impact on Americans.

VII. CONCLUSION

After reviewing the general history of the justification of self-defense, it is apparent that Missouri's current law on the "use of force in defense of persons"¹⁴⁸ fits within both the national debate currently raging on Stand Your Ground laws and a broader historical narrative of the American erosion of the duty to retreat.¹⁴⁹ The discrimination fostered by reformulations of established self-defense doctrines, the shoddy statutory construction of those reformulations,¹⁵⁰ and unresolved historical conflicts embedded in the justification of self-defense itself¹⁵¹ are all reasons to critically reexamine the 2007 and 2010 amendments to 563.031 and 563.011.

As of now, the terrifying events of July 20, 2013, are fortunately not typical. However, the fear remains that we may allow antiquated conceptualizations of justifiable homicide to define us as a nation of petty, isolated vigilante pretenders living in a state of perpetual mistrust. If that happens, Meramec River killings will become all too typical.

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146. While it may seem a bit *unacademic* to throw out references to NFL football and old Hollywood movies, the tensions over gun violence are fueled more by cultural orientation than empirical data. Kahan & Braman, *supra* note 136, at 1323–24.

147. See Jamelle Bouie, *Could America Become Mississippi?*, SLATE (Apr. 9, 2014), http://www.slate.com/articles/news_and_politics/politics/2014/04/demographics_conservatism_and_racial_polarization_could_america_become_mississippi.html (discussing certain groups' resistance to demographic change and fear of dependency on the government).

148. MO. REV. STAT. § 563.031 (2010); *see also* MO. REV. STAT. § 563.011 (2010) (providing the definitions that govern Missouri's justification defense).

149. Lave, *supra* note 54, at 832–35; Epps, *supra* note 18, at 311–14.

150. Pohlman, *supra* note 23, at 881–82.

151. Pierce, *supra* note 115, at 417–22.

* J.D., 2015, Saint Louis University School of Law. I would like to thank Professor Marcia McCormick for her gracious assistance in the drafting of this Note. I would also like to thank Cierra Simpson for her unflinching support through the revision process.

