

ANNOTATED BIBLIOGRAPHY

POLICING BY PROXY

The resources in this annotated bibliography were compiled as part of the October 2022 session of the Racial Justice Training Series co-hosted by the Georgetown Juvenile Justice Clinic & Initiative and the Gault Center based on Chapter 8: Policing by Proxy in *The Rage of Innocence: How America Criminalizes Black Youth* by Kristin Henning.

Watch the webinar recording for a full understanding of how these resources can help advocates end the policing by proxy off Black and Latino youth:

<https://www.youtube.com/watch?v=4cBCis8NmWg&t=8s>

The descriptions of the resources are drawn from the linked and cited sources. They are listed in reverse chronological order. Please find the most recent articles at the beginning of each section.

I. Books

Kristin Henning, Chapter 8: Policing by Proxy in *The Rage of Innocence: How America Criminalizes Black Youth*, Penguin Random House (2021).

- In Chapter 8 of *The Rage of Innocence*, Kristin Henning writes about the ways citizens engage in vigilante policing of Black youth. She describes how the history of police silence in the face of civilian brutality against Black people has implicitly sanctioned vigilantism as an acceptable form of “law enforcement.” She draws a through line from slavery, to the Jim Crow era, to the contemporary impact of police narratives about the Black youth killed by civilians today. She discusses the impact of “Stand Your Ground” laws, and she details the ways technology, including apps, are used to encourage civilian surveillance of Black youth.
- **About *The Rage of Innocence*:** Drawing upon twenty-five years of experience representing young people in Washington, D.C.’s juvenile courts, Henning confronts America’s irrational and manufactured fears of Black youth and makes a compelling case that the nation’s obsession with policing and incarcerating Black America begins with Black children. Unlike White youth, who are afforded the freedom to test boundaries, experiment with sex and drugs, and figure out who they are and who they want to be, Black youth are seen as a threat to White America and denied the privilege of healthy adolescent development. Weaving together powerful narratives and persuasive data, Henning examines the criminalization of Black adolescent play and sexuality, the demonization of Black fashion, hair, and music, and the discriminatory impact of police in schools. *The Rage of Innocence* lays bare the long-term consequences of racism and trauma that Black children experience at the hands of police and their vigilante surrogates and explains how discriminatory and aggressive policing has socialized a generation of Black teenagers to fear and resent the police.

Noel A. Cazenave, *Killing African Americans: Policing and Vigilante Violence as a Racial Control Mechanism*, Routledge (2018).

- *Killing African Americans* examines the pervasive, disproportionate, and persistent police and vigilante killings of African Americans in the United States as a racial control mechanism that sustains the racial control system of systemic racism. Noel A. Cazenave's well-researched and conceptualized historical sociological study is one of the first books to focus exclusively on those killings and to treat them as political violence. Few issues have received as much conventional and social media attention in the United States over the past few years or have, for decades now, sparked so many protests and so often strained race relations to a near breaking point. Because of both its timely and its enduring relevance, *Killing African Americans* can reach a large audience composed not only of students and scholars, but also of Movement for Black Lives activists, politicians, public policy analysts, concerned police officers and other criminal justice professionals, and anyone else eager to better understand this American nightmare and its solutions from a progressive and informed African American perspective.

II. Articles & Policy Reports

Kami Chavis, *The Dangerous Expansion of Stand-Your-Ground Laws and its Racial Implications*, Duke Center for Firearms Law Blog, January 18, 2022.

- Recently, there have been several high-profile trials that underscore the intersection of guns and race in America (including the trial of Greg and Travis McMichael for the death of Ahmaud Arbery and the acquittal of Kyle Rittenhouse). These cases demonstrate that the role of race and guns in America cannot be disentangled. Holding those responsible for these homicides is important, but it is imperative to determine how to prevent future killings.
- Valuing Black lives means confronting a gun culture that promotes private vigilantism (as in the shooting death of Arbery), which some white Americans use to justify gun violence against Blacks. Valuing Black lives also means ensuring equal access to self-defense claims and treating similarly-situated defendants similarly. This means ensuring that Black Americans, when appropriate, are able to avail themselves of available defenses under the law.
- Although the Rittenhouse case did not involve issues of Stand-Your-Ground, it offers an interesting lens through which to analyze the role that race potentially played in his acquittal.

- Backed by gun-rights proponents, and enacted in over half the states, Stand-Your-Ground laws have proliferated since 1994 when Utah became the first state to pass Stand-Your-Ground legislation.
- There are a number of arguments against expanding Stand-Your-Ground laws.
 - First, these laws encourage people to take the law into their own hands without calling on law-enforcement officials who should be skilled at intervening in dangerous situations. The existence of these laws discourages de-escalation and may encourage people to “shoot first, ask questions later.
 - Evidence suggests that Stand-Your-Ground laws increase firearm homicides.
 - In addition to the potential increase in firearm homicides in general, there is also evidence that Stand-Your-Ground laws exacerbate racial inequities for both victims of and defendants. In Stand-Your-Ground states, “homicides in which white shooters kill Black victims are deemed justifiable five times more frequently than when the situation is reversed.”
 - Like so many laws in the criminal legal system, Stand-Your-Ground laws are not equitably applied as a defense when it comes to Black defendants. White men are more likely to successfully invoke the use of Stand-Your-Ground laws for their defense after a shooting than women – especially Black women – or Black men.
- In the wake of Trayvon Martin, the American Bar Association issued recommendations that jurisdictions could implement in order avoid the deleterious effects of Stand-Your-Ground laws, including the repeal of Stand-Your-Ground laws

Jason Tashea “Looking Suspicious: Websites and apps for sharing crime and safety data have become outlets for racial profiling,” *American Bar Association Journal* (2016).

Available:

- Jason Tashea, an expert in technology and the law, details various apps and websites used to share crime and safety data.
- Both algorithms and users’ implicit and explicit biases can cause these apps to perpetuate racism and racial disparities in surveillance and policing of Black and Latino people.
- To learn more about activists efforts to address racial injustices perpetuated by technology, visit the following websites:
 - Color of Change Launches Black Tech Agenda as a Roadmap for Racial Equity in Tech Policy: https://colorofchange.org/press_release/color-of-change-launches-black-tech-agenda-as-a-roadmap-for-racial-equity-in-tech-policy/
 - Algorithmic Justice League: We Combine Art and Research to Illuminate the Social Implications and Harms of AI: <https://ww.ajl.org/>

Stand Your Ground” Kills: How These NRA-Backed Laws Promote Racist Violence, Giffords Law Center and SPLC Action (July 2020). Available:

<https://www.splcenter.org/news/2020/07/31/stand-your-ground-kills-new-report-giffords-law-center-and-splc-action>

- In this report, experts detail how “Stand Your Ground” laws deepen disparities in the legal system and use of lethal force. These laws are disproportionately used to justify the use of violence by people who are white and male against people who are not. This report uses data to show how these laws encourage a trigger-happy culture of vigilantism that cheapens the value of human life and increases vast and harmful disparities in our legal system.

U.S. Commission on Civil Rights, *Examining the Race Effects of Stand Your Ground Laws and Related Issues: Briefing Report (2019)*. Available:

<https://www.usccr.gov/files/pubs/2020/04-06-Stand-Your-Ground.pdf>

- This extensive brief examines whether there was racial bias in the assertion, investigation, or enforcement of justifiable homicide laws in states with Stand Your Ground (SYG) provisions. The brief includes expert testimony from state legislators, academic researchers, and advocates, as well as testimony on the personal impact of these laws.
- Studies found that Stand Your Ground laws were associated with higher homicide rates. d, to the ability that they were able, to identify the broad ethnicities of the people involved in SYG incidents. For firearms-related homicides, the increase in white males was 11.6%. They found no statistically significant increase for black males or the African-American population.
- The brief reports on studies that examined the impact of Stand Your Ground laws on the likelihood a homicide would be justified. Racial disparities grew when Stand Your Ground laws were enacted. Homicides where the shooter is Black and the victim is white were ruled to be justified 1.2 percent of the time. In cases where the shooter is white and the victim is Black, homicides were ruled to be justified 11.2 percent of the time. Homicides were ten times more likely to be ruled as justified if the shooter is white and the victim is Black, than if the shooter is Black and the victim is white.

III. Case Law & Statutes

The California Racial Justice Act, AB-2542 Criminal procedure: discrimination (2020).

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2542

- The CRJA prohibits prosecutors from seeking, obtaining, or imposing a conviction or sentence on the basis of race by expanding opportunities for defendants to challenge racial bias in their case.
 - Read more about the CRJA here:
https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/fall-2020/california-criminal-justice-reform-package/.
-

In re Edgerrin J., 57 Cal.App.5th 752 (2020)

- The California court of appeals held that three minors were detained and not free to leave when four officers approached their vehicle, blocked each door preventing the boys from leaving, and ran a check on all three minors. The detention was not supported by reasonable suspicion when the boys were legally parked in a residential neighborhood and a white woman flagged down the police and reported that there were ***“Black males in a parked black Mercedes on her street who were acting shady.”*** The woman’s tip alone was not enough to support the officers’ detention and the allegation of “shady” behavior was far too vague to suggest criminal activity. Although the officers learned during their check that Mr. Edgerrin was on probation and subject to a “Fourth Amendment waiver” as a condition of that probation, the court held that the officers did not know about the waiver before the stop and did not know that Mr. Edgerrin was a “known gang member.” As the court noted, “[a]fter-acquired knowledge of a probation search condition cannot justify an otherwise unlawful detention or search.”
- The concurring opinion noted that judges and courts must be compelled to acknowledge and confront issues of racial injustices when they arise. Here, “three Black male teenagers sitting in a legally parked vehicle were detained by four police officers, based on an unreliable tip from a white woman that the minors were acting shady.” ***“Officers and judges must be vigilant about how implicit biases may have influenced the perception that the Black males were a threat.”*** ***As our society continues to grapple with “racial inequalities that have resulted in state-sanctioned violence, including lethal violence, against Black people throughout our history to this very day;” and “it is no secret that people of color are disproportionate victims of this type of scrutiny in suspicion less stops.”*** There are many ways “in which racial perceptions and biases might surface in a given criminal case, as in everyday life. As such, our opinion in this case ***“appropriately highlights the dangers of relying solely on this type of report as a basis to detain.”*** Accordingly, the lower court judgments denying Mr. Edgerrin’s motion to suppress a firearm and other evidence recovered from the vehicle was reversed, and the matters were remanded to juvenile court.
- Click on the links below to download the pleadings filed by Edgerrin and his co-defendant in this case:
 - [Appellant’s Opening Brief, In re Edgerrin J.](#)
 - [Appellant’s Reply Brief, In re Edgerrin J.](#)
 - [Appellant’s Opening Brief, In re Jamar D.](#)

- [Appellant’s Reply Brief, In re Jamar D.](#)

Florida v. J.L., 529 U.S. 266, 270, 271-72 (2000).

- The Supreme Court held that an anonymous tip that a certain individual at a particular location was in possession of a gun did NOT provide the police with an adequate basis for a stop and frisk, even though the police found a person matching the description at that precise location) because “an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity” and, although “there are situations in which an anonymous tip, suitably corroborated, exhibits ‘sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop,’” the “unknown, unaccountable informant . . . neither explained how he knew about the gun nor supplied any basis for believing he had inside information about [the subject]” and the police confirmation of the accuracy of the tipster’s “description of [the] subject’s readily observable location and appearance . . . does not show that the tipster has knowledge of concealed criminal activity”: “The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.”).

Illinois v. Gates, 462 US 213 (1983).

- In this case, the Supreme Court adopted a “totality of circumstances approach” to evaluating the reliability of tips used to justify a stop and frisk – and abandoned the more stringent two-pronged test Aguilar/Spinelli. While Gates expands the opportunity for police to use less than reliable information – especially in some states, all is not lost. Even under a “totality of the circumstances,” the factors laid out in Spinelli are still relevant.
- The tip must have some dependable basis of knowledge prong - some personal observation and MORE than a mere rumor. The officer also has to have facts establishing informant’s credibility and the reliability of his information (veracity prong).
- In Gates, the police received an anonymous letter stating Mr. And Mrs. Gates made their living by selling drugs they procured via road trips to Florida. The letter predicted the date of their next trip and travel arrangements, but it got some details wrong. Although the Gates court agreed that the tip, standing alone, did not provide probable cause, it found that “the totality of circumstances” provided a “substantial basis” for finding probable cause. The majority held that basis of knowledge and veracity need not be analyzed independently; instead, a strong showing of one should be able to compensate for a deficiency in the other.

People v. Madden (1970) 2 Cal.3d 1017.

- The Court determined that the prosecution failed to provide sufficient information about the reliability of the information relayed by the police officers or by the informant to conduct a search.
 - Although a police officer may make an arrest based on information received through “official channels,” the prosecution is required to show that the officer who originally furnished the information had probable cause to believe that the suspect committed a felony, and should that come from an informant, that the informant also received that information in a reliable way.
-

***People v. Harvey* (1958) 156 Cal.App.2d 516.**

- The Court held that there was not reasonable nor probable cause where one of the arresting officers testified that he had only seen an informant talking to his superior officer, did not hear the conversation, did not know what it was about, and did not remember whether the supposed informant had supplied him with any information about defendant. Having such vague information as the only basis for arrest is not sufficient.