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THE UNITED STATES COMMISSION ON CIVIL RIGHTS  
BRIEFING ON STAND YOUR GROUND

Place: The Rosen Hotel  
9700 International Drive  
Orlando, Florida 32819  
9:00 a.m. - 3:00 p.m.

Date: October 17, 2014

Reported by:  
Kathy Wescott, CSR

(Volume 3, pages 1 through 100, p.m. session, Panel  
Number 3)

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3 Present:

4 Commissioner Michael Yaki

5 Commission Roberta Achtenberg

6 Marlene Sallo

7 Commissioner Marty Castro (Chairman)

8 Commissioner Karen K. Narasaki

9 Commissioner Patricia Timmons-Goodson

10 Commissioner Gail L. Heriot

11

12

13 Appearing by phone:

14 Commissioner David Kladney

15 Commissioner Peter Kirsanow

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17 Panel Number 3:

18 Elizabeth Burke

19 John Lott, Jr.

20 David LaBahn

21 Ilya Shapiro

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COMMISSIONER CASTRO: Are Commissioner's  
Kirsanow and Kladney on the phone.

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COMMISSIONER KLADNEY: Just talking  
baseball.

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COMMISSIONER CASTRO: Okay. Good.

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COMMISSIONER YAKI: Go Giants.

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COMMISSIONER CASTRO: It is 1:57 and we  
are coming back from the lunch recess for our  
afternoon panel. So just housekeeping for the  
panelists that are here, I assume many of you were  
probably here this morning, but in case you  
weren't you'll each have 8 minutes to speak. That  
will be governed by the series of warning lights  
here. Green mean starts. Yellow's going to be  
your two minute warning to begin to wrap up, and  
three is, please conclude. There will be an  
opportunity to elaborate when we as commissioners  
begin to ask you questions.

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So let me briefly introduce the  
panelists in the order in which they will speak.

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Our first panelist is Elizabeth Burke  
from the Brady Center to Prevent Gun Violence.

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Our second panelist is John Lott, who's

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-- right there -- the Crime Prevention Research  
Center.

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Our third panelist is David LaBahn from  
the Association of Prosecuting Attorneys.

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And our fourth panelist is Ilya Shapiro  
from the CATO Institute.

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Our fifth panelist was not able to make  
it, Ronald Sullivan, who was from Harvard Law  
School. Well, I presume we'll get his statement  
for the record.

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I'll now ask each of the panelists to  
swear or affirm that the information that you are  
about to provide us is true and accurate to the  
best of your knowledge and belief.

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Is that correct?

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PANELISTS: Yes.

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COMMISSIONER CASTRO: Okay. Thank you.  
Miss Burke, please proceed.

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MS. ELIZABETH BURKE: Thank you. And I  
would like to --

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COMMISSIONER CASTRO: You need to speak  
into the mic, please.

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MS. ELIZABETH BURKE: Thank you so  
much --

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COMMISSIONER CASTRO: A little closer.

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MS. ELIZABETH BURKE: So I didn't forget a tie today but I did bring a small electric fan that I had intended to place here, but I didn't want to set anything off.

7

In all seriousness --

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COMMISSIONER YAKI: -- you just insulted our host air conditioning -- so --

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(Laughter)

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MS. ELIZABETH BURKE: I'd like to thank the commission for convening these panels to study the legality and appropriateness of the stand your ground laws.

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As you know my name is Elizabeth Burke and I'm an attorney with the Brady Center to Prevent Gun Violence. And I'm a litigator with our Legal Action Project.

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The Brady Center was at the forefront of opposing Florida's enactment of stand your ground. Which we called at the time, appropriately, a "shoot first" law.

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The tragic shooting deaths of Trayvon Martin and Jordan Davis really realized our fears about these laws. If a law is found to have a

2           pernicious and disparate impact on certain groups  
3           in our society it must certainly be identified and  
4           challenged.

5                     Any law that creates a more dangerous  
6           society should be viewed with suspicion and  
7           subjected to the kind of thorough review that  
8           we're doing here today.

9                     So to go back a bit. Before stand your  
10          ground in order to justify the use of force in  
11          defense of self it was under the longstanding  
12          Castle Doctrine, which was derived from common  
13          law, a person was entitled to stand his ground in  
14          his or her home where nobody else had the right to  
15          be.

16                    In public places, however, where  
17          everyone has the right to be, there the law  
18          imposed a reasonable requirement to avoid conflict  
19          if possible.

20                    The law also required that a defendant  
21          prove that he believed force was necessary for his  
22          defense and he needs to prove his force was  
23          reasonable.

24                    Those were part of the tenets of  
25          common law of -- self-defense. There was logic to

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2 those requirements, that a defendant should show  
3 that his fear was reasonable, after all we  
4 shouldn't allow someone to unnecessarily shoot  
5 someone else simply because the shooter sort of  
6 wrongly perceived himself to be in harms way.

7 Self-defense law was intended to  
8 minimize conflict and preserve life. And those  
9 are objectives that one would hope everyone could  
10 agree on.

11 Stand your ground did away with these  
12 sensible requirements. At its core the law allows  
13 people to treat public spaces as their castles,  
14 thereby attempts to eliminate the duty to avoid  
15 conflict when possible.

16 As Trayvon Martin's killer George  
17 Zimmerman knew about stand your ground laws it  
18 could well be that these laws emboldened him to  
19 continue to follow Trayvon even after the 911  
20 dispatcher told him to stay in his car.

21 Additionally, under certain cases of  
22 stand your ground the law's now give a stand your  
23 ground shooter the right to use deadly force and  
24 they are presumed to have a reasonable fear.

25 In other words, they don't really even

2 have to put in evidence that they were in fear if  
3 they shoot on their property or in other limited  
4 cases, but the fact is that in those cases the  
5 stand your ground defendant is the only surviving  
6 person available to testify and therefore the  
7 presumption is going to carry the day in those  
8 cases, and it can result in an innocent verdict in  
9 what would actually be a non-justified homicide.

10 We've heard a lot about quotes from  
11 Brown versus U.S., Justice Harlan. And there's  
12 another case that's cited a lot in the stand your  
13 ground proponents' testimony.

14 I think it's important to know the facts  
15 of those cases. One is Beard. In the Beard case  
16 those actually -- on Mr. Beard's property, three  
17 individuals came on to his property in order to  
18 steal his cow. And they told him "We're coming to  
19 steal your cow or take your cow, and if you get in  
20 our way we will kill you."

21 The three of them were approaching on  
22 him, on his property, one of them looked as if he  
23 was drawing a gun, and Mr. Beard hit them on the  
24 head. One of them died.

25 So that is one stand your ground case

2 that has been used to prop up stand your ground  
3 and say this isn't really a departure from  
4 self-defense, when in fact it is, because those  
5 are pretty stark circumstances, I think everyone  
6 agrees, if you're on your own property being  
7 attacked by three people you have a right to  
8 defend yourself.

9 Similarly in Brown -- in the Brown case  
10 that Justice Harlan, we heard that famous quote  
11 from Justice Harlan. In that case Mr. Brown had  
12 been attacked by this other person twice before  
13 and had been told that he was going to be killed  
14 by him. So he had a gun at the ready.

15 And when that person came on to his work  
16 site he, unfortunately, had to use the gun. Even  
17 though he saw the person, was able to go get the  
18 gun, came back and defended himself.

19 And the Supreme Court said at that  
20 point, "You don't have to wait to be attacked."  
21 Although, in that case Mr. Brown was being  
22 stabbed.

23 So that's just background as we hear  
24 these important quotes that are held up as well,  
25 the law supports stand your ground. In fact, this

2 is a departure. So when we review changes to the  
3 self-defense doctrine, it's important to look at  
4 them in the context of our current gun laws and  
5 realize that any consideration of relaxing  
6 self-defense laws should be viewed in the context  
7 of an increasing arming of American citizens.

8 There's been, as Mr. Gerney mentioned in  
9 the last panel, a recent revision to who can carry  
10 a concealed weapon in public. And as you know now  
11 we have concealed carry's the law of the land in  
12 almost every state. Many states have a  
13 shall-issue regime in that there really isn't even  
14 an opportunity for police to say "this is a  
15 dangerous individual who should not have a gun."

16 More and more, even in constitutional  
17 carry states, a person who's allowed to own a gun  
18 can carry it anywhere they don't even have to have  
19 a permit. They don't have to make an application.  
20 And there's actually no point of contact for  
21 police to try and prevent tragedy.

22 Finally, and I see my time is running  
23 short. So when you look at stand your ground laws  
24 within the combination of sort of the lax  
25 concealed carry laws and the increasing

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militarization and lethality of the weapons, and then you combine that with the civil immunity discussion we were having earlier where the stand your ground laws shift the cost of violence. They take away the potential risk to a shooter by giving him civil immunity. And they -- therefore they eliminate the generally accepted American rule and leave really only the wealthy individuals able to bring actions against shooters in an effort to bring change to society.

So this -- this combination of shifting immunity and lax concealed carry laws are combining to make a very dangerous situation in states that have also enacted stand your ground.

So, again, as I said we're very interested in continuing the discussion on this.

And I'd like to get back quickly if I could to the dramatic testimony about someone punching you and you being able to then shoot them. If we think about that in a land with concealed carry, someone -- you know, a drunken stranger punches you and you shoot them and you've now taken a life, and I contend that's no small matter for either party, right?

2                   If you don't have a gun with you -- if  
3                   you don't have concealed carry allowed everywhere,  
4                   someone punches you, you have a black eye, and a  
5                   complaint for assault. You know, and that's  
6                   really what we need to think about when we put in  
7                   place laws that relax self-defense, but at the  
8                   same time increase access to guns we're just  
9                   creating a more dangerous society.

10                   COMMISSIONER CASTRO: Thanks,  
11                   Miss Burke. Thank you.

12                   Mr. Lott, you have the floor.

13                   MR. JOHN LOTT: Well, thank you very  
14                   much Mr. Chairman and commissioners for inviting  
15                   me here today to talk.

16                   I'm -- have a PowerPoint here that I  
17                   think may help a little bit. Let me just make a  
18                   couple of quick comments before I get into that.  
19                   And that is, people many times today have talked  
20                   about Florida as starting some new law, in fact,  
21                   there have been stand your ground type rules even  
22                   in common law going back to some states since  
23                   they've been part of the Union. California, for  
24                   example. In other states have essentially had  
25                   this is not some new experiment that's going on

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for the first time here.

    You know, there's a reason why states have adopted stand your ground laws, it's not something that just sprung up. There's issues about certainty for the person who's using a gun defensively when you go and you say that people have to, you know, reasonably retreat as far as possible you create doubt in people's minds. How far should I actually have to retreat? And as the appendix in my testimony to you all goes through a number of cases where there's been real issues about prosecutors bringing cases when, you know, there's been differences, you know when -- somebody's been knocked down three times and the prosecutor said, "you still could have gotten up and tried to run away a fourth time." And the person thought that the third time he had been knocked down, at that point he pulled out the gun to go and defend himself.

    Now, if we look at the Tampa Bay Tribune data which has been talked a lot about today. They have cases from -- that were brought from 2006 to 2014. Blacks make up about 16.7 percent of Florida's population. They make up about 34

2 percent of the stand your ground cases. So  
3 they're -- they're much more likely than the  
4 average Floridian, blacks are, to go and use stand  
5 your ground. And they're more successful when  
6 they do use it. Blacks who use stand your ground  
7 are 4 percentage points more likely not to face --  
8 not to have criminal charges than a white in that  
9 same situation.

10 Earlier today among, for example on the  
11 first panel -- he pointed out that -- what was  
12 mentioned a couple of other times is that if you  
13 look at the Tampa Bay Tribune data 67 percent of  
14 those who killed a black faced no penalty, but  
15 only 57 percent of people who killed whites faced  
16 no penalty.

17 It appears to be discrimination going on  
18 there. But what you have to take into account is  
19 that it's primarily blacks who kill blacks, and  
20 whites who kill whites in these stand your ground  
21 cases.

22 So for example, if you look at the Tampa  
23 Bay data, a little bit over 76 percent of the  
24 cases for blacks involve a black killing a black.  
25 In the case of whites, it's slightly over 80

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percent of the time there.

And when you take that into account what you find is that even though you're not likely to you get a conviction when a black is killed, it's because it's blacks who are killing blacks. And in fact, blacks who use a stand your ground defense are more successful in -- in bringing it than whites are. Hispanics are actually the highest in terms of success for doing that.

So, here's the bottom line. If you want to go and declare discrimination in terms of differential rates, in terms of who the vic -- who was shot, why isn't it also discrimination in favor of blacks and Hispanics in terms of the ones who are the ones who shot in that case. I would argue that it's pry not discrimination in either of the cases.

If you look at the Tampa Bay Tribune data one of the things that really doesn't get talked is all the other differences across these cases. So blacks who were killed were 26 percentage points more likely to be armed with a gun than a white who was killed. Blacks were also 25 percentage points more often than whites to be

2 in the process of committing a robbery, home  
3 invasion, or burglary.

4 You know these types of things as well  
5 as other things suggest that maybe there was a  
6 reason that they were shot. That there was a  
7 reason why, you know, the black victim or whoever,  
8 shot these individuals in order to protect  
9 themselves.

10 And these differences continue to exist  
11 even when you look at the, you know, blacks or  
12 whites doing the shooting. Now I run some  
13 regressions that I show you because the  
14 overwhelming discussion here is just looking at  
15 simple averages.

16 And as I say there's huge differences in  
17 these cases. You know, whether the person who's  
18 being shot had a gun for example, you'd think  
19 would be important. Whether there were witnesses  
20 there. Whether there was forensics evidence that  
21 was involved.

22 You had -- there's lots -- it's a very  
23 rich data set. There's lots of things you can try  
24 to account for. And the thing is once you account  
25 for those things there's no statistically

2 significant difference between either on the  
3 victim's side or the people who are using the  
4 stand your ground defense between whites and  
5 blacks, they're essentially exactly the same in  
6 terms of how the law is treated. Once you control  
7 for all of the differences in the cases there.

8 Now one thing we've heard a fair amount  
9 today about are justifiable homicides. And  
10 there's some real problems with the data. First  
11 of all the number of states and number of  
12 jurisdictions that are reporting this have  
13 increased fairly significantly over time.

14 I'll just show you. Here's just a  
15 number of states. Basically it goes from, you  
16 know, 29, 28 at the beginning, up to as high as 36  
17 towards the end of the period. If you weight  
18 those states by population it's actually even more  
19 of a dramatic of an increase.

20 Plus you have to realize that for a lot  
21 of these states you may only have one police  
22 district in the entire state that's reporting the  
23 data.

24 On average you end up having some place  
25 between about 14 and 18 percent of police

2 departments in the country reporting justifiable  
3 homicides. And it's been changing too in terms of  
4 the composition. You're getting police  
5 departments for more heavily minority areas  
6 reporting towards the end of the period than you  
7 did at the beginning. So if I see an increase in  
8 justifiable homicides in total or if I see an  
9 increase in justifiable homicides involving  
10 minorities, a large part of that, if not all, is  
11 simply due to the fact that you're having more  
12 places reporting. And more places reporting for  
13 areas where minorities are living.

14 Now I'm not going to go through Roman's  
15 stuff right now, but I'll just mention the Texas  
16 A & M study for a minute. Even they, in their  
17 paper, recognize that there were many states that  
18 had stand your grounds before 2005, but yet they  
19 don't include any of them in their sample.  
20 There's no explanation for why they include no  
21 states before 2005. There's no explanation in  
22 their paper for why they don't include crime data  
23 or anything else before 2000.

24 Those are -- all seem like important  
25 things. There's no explanation why they don't

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include stand your ground cases which have been a result of court decisions that were there. And there have been other issues. Brady Campaign, others have mentioned other gun control laws like, right to carry, you argue it's very important in terms of interpreting these laws whether you take into account stand your ground rules.

          This Texas A & M study had no other gun control laws that were involved there. So there are other problems that I could point to with regard to it.

          What happens when you try to look at the whole period of time -- I have data that goes back to '77. From '77 through 2012 for all of the states that changed their laws during that entire period of time. And I try to account for other gun control laws. 13 in fact said -- ah, right to carry laws. And when you try to do that this is the change that you see in terms of murder rates for example. I also have evidence there, you know, before and after, so the line there is year zero when the different states adopt the laws and you can see how murder rates are falling in the states that adopt stand your ground rates -- laws,

2 relative to the states that don't and how it was  
3 beforehand.

4 I appreciate your time. Thank you very  
5 much. But the bottom line is that the most  
6 vulnerable people in our society are the ones who  
7 are taking the greatest advantage of the stand  
8 your ground laws and using it most successfully.

9 COMMISSIONER CASTRO: Thank you. Doctor  
10 -- I'm sorry, Mr. Labahn.

11 MR. DAVID LABAHN: Thank you Chairman  
12 Castro and members of the commission for the  
13 opportunity to testify before you today.

14 My name is David LaBahn and I'm the  
15 President and CEO of the Association of  
16 Prosecuting Attorneys. We're a private nonprofit  
17 whose mission is to support and enhance the  
18 effectiveness of prosecutors in our effort to  
19 create safer communities.

20 APA is the only national organization to  
21 include and support all prosecutors, whether  
22 appointed or elected, as well as their deputies  
23 and assistants.

24 On behalf of APA I'm pleased to have the  
25 opportunity to address the issues surrounding the

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vast expansion of self-defense referred to as stand your ground or Castle Doctrine laws. In our materials we use the phrase Castle Doctrine because we feel this legislative expansion includes more than merely stand your ground, as the expansion has taken the common law right to protect ones home to any place that one has a right to be.

As prosecutors we seek to do justice for victims and to hold offenders accountable for their actions, especially in cases where a life has been violently ended whether by a firearm or other deadly means.

During my tenure as the Director of the American Prosecutors Research Institute we convened a symposium of prosecution, law enforcement, government, public health, and academic experts from a little over 12 states.

This 2007 symposium was summarized in a 2008 report co-authored by my Vice-President, Steven Jansen. In it we expressed serious reservations about the potential impact of the expanded legislation on youth aged 14 to 18.

Quoting from the report, "Specifically,

2 law enforcement considers this age group to be  
3 particularly desensitized to violence and more  
4 prone to quote "unprovoked violence" as a result  
5 of being quote "disrespected." The Castle  
6 expansion will not have a deterrent effect on  
7 juveniles and young adults claiming to be  
8 "disrespected" as a reason for occurrence of  
9 assaults, but instead could create a legal shield  
10 from criminal and civil immunity."

11 This concern from 2007 has been borne  
12 out in the application of an otherwise neutral  
13 statute because of the subjective nature of stand  
14 your ground. Disparities in age, race, religion  
15 and other cultural factors create situations where  
16 the subjective perceptions of being in imminent  
17 danger are due to disparities between individual  
18 and now lead to senseless violence including the  
19 taking of another's life.

20 Since 2009, APA has been tracking the  
21 legislative progression of stand your ground and  
22 assisted prosecutors who have been working to  
23 enforce these expansive new laws. I have attached  
24 to my testimony APA's Statement of Principles  
25 regarding stand your ground laws as these laws

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have raised a number of troubling and dangerous concerns.

Prosecutors and their professional associations have overwhelmingly opposed stand your ground laws when they were in their respective legislatures. The concerns expressed include the limitation or even -- I'm sorry, the limitation or elimination of prosecutors' ability to hold violent criminals accountable for their acts.

However, even with this opposition, many states have passed stand your ground laws. Many of these laws include provisions that diminish or eliminate the common law "duty of retreat," changed the burden of proving reasonableness to a presumption, and provide blanket civil and criminal immunity. By expanding the realm in which violent acts can be committed with the justification of self-defense. Stand your ground laws have negatively affected public safety and undermined prosecutorial and law enforcement efforts to keep communities safe.

These measures have undermined standard police procedures, prevented law enforcement from

2           arresting and detaining criminals, and have  
3           stymied prosecutors deterring them from  
4           prosecuting people who claim self-defense even  
5           while killing someone in the course of unlawful  
6           activity.

7                         In some states, courts have interpreted  
8           the law to create an unprecedented procedural  
9           hurdle in the form of an immunity hearing which  
10          effectively transfer the role of the jury over to  
11          the judge. Moreover, because these laws are  
12          unclear, there have been inconsistent applications  
13          throughout the states and even within respective  
14          states. Prosecutors, judges, police officers, and  
15          ordinary citizens have been left to guess what  
16          behavior is legal and what is criminal.

17                        Even with the best efforts to implement  
18          these broad measures, defendants, victims'  
19          families and friends, investigators, prosecutors,  
20          defense attorneys, trial courts, and appellate  
21          courts have been forced into a case-by-case  
22          analysis with no legal certainty as to what they  
23          can expect once that life has been taken.

24                        Stand your ground laws provide safe  
25          harbors for criminals, prevent prosecutors from

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bringing cases against those who claim self-defense, even after unnecessarily killing others. For example, in 2008, Florida case, a 29 year old drug dealer named Tavarious China Smith killed two people in two separate incidents. The first was drug-related, and the second was over a retaliation for the first. Though he was engaged in unlawful activity in both instances prosecutors had to conclude that both homicides were justified under Florida's stand your ground law.

Unfortunately, this example is not an anomaly. A recent study concluded that the majority of defendants shielded by stand your ground laws had arrest records prior to the homicide at issue.

Stand your ground began here in Florida in 2005. And it is our position that the common law did sufficiently protect people's rights to defend themselves, their homes, and others. The proper use of prosecutorial discretion ensured that lawful acts of self-defense were not prosecuted, and I've not seen any evidence to the contrary.

After reviewing the legislative history

2 of the Florida provision, the very case used to  
3 justify this broad measure, it involved no arrest  
4 or prosecution. The law enforcement community  
5 responded properly to the shooting and the  
6 homeowner was never arrested or charged in his  
7 lawful exercise of self-defense.

8 Because the provisions of stand your  
9 ground measures vary from state to state, I'll  
10 attempt to summarize some of the provisions which  
11 have caused prosecutors difficulty in uniformly  
12 enforcing the law.

13 First, the meaning of "unlawful  
14 activity" needs to be clarified. Many states have  
15 extended stand your ground laws to people who are  
16 in a place where they have a right to be -- and  
17 you have a right to be and non-engaged in unlawful  
18 activity. Can a drug dealer defend his open air  
19 drug market? I believe we already had that  
20 discussion earlier. If the individual is a felon,  
21 does that felon have a right to possess and kill  
22 another with a firearm?

23 Secondly, immunity is rarely granted in  
24 criminal law, with the few exceptions existing in  
25 order to encourage cooperation with law

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enforcement and the judicial system. The legislatures should remove the immunity provisions and clarify that self-defense is what it's always been under common law, it's an affirmative defense.

Third, the replacement of the presumptions with inferences eliminate -- would eliminate many dangerous effects. This coupled with an objective rather than a subjective standard will improve accountability while protecting the right to self-defense. And that's subjective versus objective is a huge issue which you've heard about today. That -- that is a key provision that this commission should examine.

And finally, the statutes should be amended to prevent the initial aggressor from claiming self-defense. Some laws allow a person, including Florida statute, to attack another with deadly force and later use stand your ground to justify the killing of the person he or she attacked if that person responds with like force and the initial aggressor cannot escape.

Taken together, I believe these reforms to the various stand your ground laws will help

2 minimize the racial disparate and detrimental  
3 effects and restore the ability of investigators  
4 and prosecutors to fully enforce the law and  
5 promote public safety, while continuing to respect  
6 the rights of law-abiding citizens to protect  
7 themselves and their families.

8 On behalf of the APA and the prosecutors  
9 we represent, I want to thank you for holding the  
10 hearing on the legislation -- and the key with  
11 this legislation -- that this is legislation and  
12 we would like to see things which promote --  
13 promote safe communities rather than promote the  
14 use of deadly force.

15 The final issue that I'd like to address  
16 would be the Jordan Davis case. In my opinion,  
17 the Jordan Davis case is the loss of two lives not  
18 one. Jordan, obviously was shot dead. This was  
19 the loud music case. He was shot dead because  
20 they were listening to rap music and because he  
21 disrespected Mr. Dunn. At the same time, Dunn is  
22 now, and we just heard today, is going to serve  
23 105 years to life. His life is also gone. He was  
24 celebrating, I believe, his son's wedding, he's now  
25 going to spend the rest of his life in prison.

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Because of stand your ground he felt he had that right and he's on tape saying, "I'm the victim here." That he had the right to take a gun and shoot dead another individual because, in the case of Dunn, he had been disrespected.

Thank you, sir.

COMMISSIONER CASTRO: Mr. Shapiro.

MR. ILYA SHAPIRO: Chairman Castro and distinguished commissioners, thank you for this opportunity to discuss stand your ground laws and potential racial disparities in the constitutional right to armed self-defense.

It's most appropriate that we're having this hearing in Orlando, which is so close to the tragic incident that ignited the current incarnation of this public policy debate.

Indeed, since George Zimmerman was found not guilty of killing Trayvon Martin stand your ground laws have been under attack. President Obama injected race into the discussion, claiming that the outcome would have been different had Martin been white.

Attorney General Holder then claimed stand your ground laws undermine public safety and

2           sow dangerous conflict in our neighborhoods. Both  
3           want these enhanced self-defense laws reviewed,  
4           which of course means repealed.

5                         In my written statement I reviewed some  
6           of the alleged racial disparities in the  
7           application of these laws. Since I'm a  
8           constitutional lawyer rather than a criminologist,  
9           however, I'll leave that statistical analysis here  
10          to my panel colleague John Lott. And also  
11          PowerPoint's unconstitutional in most uses.

12                        Instead let me provide you a legal  
13          overview of stand your ground so everyone's on the  
14          same page.

15                        Not withstanding recent efforts to  
16          politicize the issue there's nothing particularly  
17          novel, partisan, ideological, racist, or otherwise  
18          nefarious about these laws. All they do is allow  
19          people to defend themselves without having a  
20          so-called duty to retreat -- a concept that's been  
21          part of U.S. law for over 150 years.

22                        About 31 states now have some type of  
23          stand your ground doctrine. The vast majority in  
24          common law before legislators took any action.  
25          Some, like California and Virginia, maintain stand

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your ground without any legislation.

Of the 15 states that have passed stand your ground since 2005, the year that Florida's model legislation was enacted, a majority had democratic governors. Leading progressives who signed such bills include; Jennifer Granholm, Janet Napolitano and Kathleen Sebelius (phonetic).

Louisiana and West Virginia passed them with Democratic control of both state houses. Even Florida's supposedly controversial law passed the state senate unanimously and split Democrats in the State House.

When Illinois strengthened its stand your ground law in 2004 State Senator Barack Obama joined in unanimous approval.

Conversely, many so-called "red states" do impose a duty to retreat in public. And even in more restrictive states such as New York courts have held that retreat isn't required at home or when preventing serious crime like rape or robbery.

Indeed, it's a universal principle that a person can use force when she reasonably believes it's necessary to defend against an

2           imminent use of unlawful force; Where there's no  
3           duty to retreat, as in most states, she's further  
4           justified in using deadly force if it's necessary  
5           to prevent forcible felonies. That's the norm  
6           throughout the country. Deadly force may be used  
7           only in cases of imminent death or great bodily  
8           harm that someone reasonably believes can only be  
9           prevented by using such force.

10                         It's not an easy defense to assert. In  
11           almost all states it's a defense. It's not some  
12           sort of immunity like Mr. LaBahn said. It's not a  
13           get out of jail free card that you play and then  
14           you're scot-free. And it certainly doesn't mean  
15           that you can shoot first and ask questions later.

16                         Everyday criminals assert flimsy  
17           self-defense claims that get rejected by judges  
18           and juries regardless of whether the given state  
19           has a stand your ground law. These laws aren't a  
20           license to be a vigilante or behave recklessly.  
21           They just protect law-abiding citizens from having  
22           to leave a place where they're allowed to be.

23                         In other words, in most states, "would be"  
24           victims of violent crime don't have to try to run  
25           away before defending themselves. That's why the

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debate over stand your ground--the real one, not the phoney war that we've been having lately, is nothing new. That's been going on back and forth for centuries. In ancient Britain, when the deadliest weapons were swords, a duty to retreat greatly reduced violent incidents and blood feuds. Firearms were also not as widespread in Britain until recently. So British law continues to reflect the historic deference to the constabulary, by which the King owes a duty of protection to his subjects.

That's obviously not part of our tradition. In this country at any given time about half the states have had stand your ground laws. So today's split is well within historical norms. Despite what gun prohibitionists claim, the no retreat rule has deep roots in American law.

As Miss Burke alluded at the Supreme Court stand your ground dates to the unanimous 1895 case of Beard versus the United States, in which the great Justice John Marshall Harlan the sole dissenter in Plessy (inaudible) v-Ferguson affirmed the right to armed self-defense.

In places with a duty to retreat crime

2 victims can be imprisoned just for defending  
3 themselves. And among those who often lost out  
4 under that old rule were domestic violence victims  
5 who turned against their assailants. Feminists  
6 pointed out that "you could have run away" may not  
7 work well when faced with a stalker or someone you  
8 live with.

9 Stand your ground laws are thus designed  
10 to protect law-abiding citizens. They're less  
11 controversial in the context of a home. It's bad  
12 enough to have your home burglarized but to then  
13 have to hire an attorney and fend off a misguided  
14 prosecutor or a personal - injury lawyer defending  
15 an injured criminal is too much to ask.

16 That's how we have the Castle Doctrine -  
17 recognized by all states -- which holds that you  
18 don't need to retreat when your home is invaded.  
19 When you extend that doctrine to public spaces - as  
20 again, most states do - that's where you get stand  
21 your ground.

22 What's been overlooked in the current  
23 debate is that these laws only apply to people  
24 under attack. So as Justice Oliver Wendell Holmes  
25 wrote for again a unanimous Supreme Court in

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Brown versus United States, "Detached reflection cannot be demanded in the presence of an uplifted knife." And the facts of those cases, while interesting, don't detract from what the legal principles they stand for. Nearly a century later and regardless of ones views on the scope of the Second Amendment I don't think we can demand more of crime victims trying to defend themselves.

Of course any self-defense rule bears the potential for injustice. For example in a two-person altercation one may be dead and the other dubiously claim self-defense.

These cases, like, Trayvon Martin's implicate the self-defense justification generally rather than the existence of a duty to retreat. If George Zimmerman was the aggressor then he committed murder and has no self-defense rights at all a whether the incidents took place in a stand your ground state or not.

If Martin attacked Zimmerman the only question is whether Zimmerman reasonably believed that his life was in danger, not whether he could have retreated. And if Zimmerman provoked the confrontation, even if Martin eventually

2           overpowered him, he lost the protection of stand  
3           your ground law.

4                       And it's not even clear, whether he knew  
5                       about that law or that people that do  
6           invoke it -- sure, their defense attorneys might,  
7           but it's not that common that, people on  
8           the street know that with any specificity.

9                       Of course the Martin/Zimmerman  
10          altercation is but one case and a high profile  
11          incident where stand your ground didn't actually  
12          play a part, so we shouldn't draw any policy  
13          conclusions from it.

14                      Hard, emotionally wrenching cases make  
15          not only for bad law but for skewed policy  
16          debates. While demagogues have used Trayvon  
17          Martin's death to pitch all sorts of legislative  
18          changes, what they really seem to be targeting, as  
19          it were, is the right to armed self-defense.

20                      With stand your ground laws, yes,  
21          prosecutors may need to take more care to show  
22          evidence to counterclaims of self-defense, not  
23          simply argue that the shooter could have  
24          retreated. So it's not surprising that a  
25          prosecutor's organization would be against the law,

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and it makes prosecutors work harder sometimes.

For those who value due process in criminal justice, which should emphatically include members of historically mistreated minority groups, that's a feature not a bug.

Thanks again for having me. I welcome your questions.

COMMISSIONER CASTRO: Thank you.

Mr. Labahn, is your opposition due to the fact that you don't want to work harder? Could you elaborate on --

MR. DAVID LABAHN: Not at all. Thank you for asking me that question. It's not an issue of working harder or not, the question is what is right and just. And to sit here and listen to things like, the Trayvon Martin had nothing to do with stand your ground is completely irrelevant.

Trayvon Martin had everything to do with stand your ground legislation. In fact it could not be more stark when one of the jurors was interviewed and said, "I -- I -- We had to reconcile this." Again, that subjective belief that he was under attack. That Zimmerman's head

2 was being pounded, and the fact that he could use  
3 the deadly force. That is right out of Florida's  
4 stand your ground legislation. And even more  
5 particularly Florida is dead on point that they  
6 provide the use of force by aggressor within their  
7 statute.

8 So again to sit here and listen that  
9 aggressors cannot use stand your ground in Florida  
10 is completely irrelevant and not accurate.

11 Thank you for allowing me to respond.

12 COMMISSIONER CASTRO: You're welcome.

13 Commissioner Yaki.

14 COMMISSIONER YAKI: Thank you very much,  
15 Mr. Chair.

16 A couple of comments. One, I was struck  
17 by Mr. Shapiro's reference to worrying about bad  
18 law coming out of sensational cases when in fact  
19 the stand your ground law was based on a  
20 sensationalized case involving two people in their  
21 RV in 2004, which was whipped up wildly in the  
22 media. And as several articles show or it was  
23 misrepresented quite amazingly to legislators.

24 But I wanted to talk -- ask Mr. LaBahn  
25 something and that is, you point out the

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2 difficulties in the prosecutor aspect of this but  
3 isn't there another way to look at this is --  
4 isn't this in some ways a delegation of your  
5 authority, the jury's authority, a judge's  
6 authority, a cop's authority, to a private  
7 individual to make decisions in a split second on  
8 whether or not to take the life of someone?

9 MR. DAVID LABAHN: Yes. Yes, it is.  
10 And that is something that -- it's the -- this is  
11 the only place that I know that you could have  
12 immunity where your activity is itself potentially  
13 criminal.

14 So what you just said and the decision  
15 to take a life is an incredible solemn decision.  
16 I've had plenty of opportunities in my career to  
17 carry a firearm, I've chosen not to do it because  
18 I'm not willing to take that responsibility  
19 because taking another's life I -- I don't know  
20 that there is another decision that is that grave.

21 But what you've done with this law by  
22 putting immunity in here, not an affirmative  
23 defense, but literally immunity, you're telling  
24 somebody that they can make a decision to do an  
25 otherwise criminal act and then seek this hearing,

2 as we've heard earlier in the panel "I want to get  
3 out real quick. I want to take a life. I want to  
4 stand behind -- it cannot be properly  
5 investigated. I cannot be detained. And I want  
6 to be able to walk free on a life and death  
7 decision." It is -- I don't know how to express  
8 it, it is so extraordinary.

9 COMMISSIONER YAKI: I mean it sounds  
10 like something where -- where an officer receives  
11 hours, and hours of training on the use of deadly  
12 force, on the use of determining whether someone  
13 poses a threat to them or not, and here we are in  
14 a situation where, essentially, in a public space  
15 where there could be any one of us standing  
16 around, you're giving the power to a single  
17 individual with very little guidance on what  
18 constitutes reasonable, what constitutes a threat,  
19 what constitutes deadly, and letting them make a  
20 decision.

21 MR. DAVID LABAHN: And thank you for the  
22 comparison between the law enforcement individual,  
23 which is only quasi immunity, and absolute  
24 immunity for a private citizen.

25 So if a law enforcement officer takes

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another life, first it must be within the course and scope of the employment, that law enforcement's employment. And in addition to that it is an objective standard. Would a reasonable officer in the same or similar circumstances have been required to use deadly force.

So, yes, from -- this is extraordinary to say without training, as you talk about very little guidance, that's what I tried to say in my statement. The courts here in Florida have bounced all over the place trying to figure out what this statute means, but with very -- with no training you get absolute immunity.

COMMISSIONER YAKI: And let me just take this one step further. And it goes to -- and in the context of a law enforcement officer committing such an act we have remedies within the department of justice to examine the behavior of a police department and whether or not in exercising that they're doing it in a way that has -- that has an unfair or disparate impact in terms of race.

When you take that out -- out of that equation and you're doing into a situation where

2 we have -- we're trying to get statistics that may  
3 or may not get reported or -- you can't get to  
4 that analysis about whether or not there is any  
5 racial -- any -- any overall racial animus  
6 involved to the extent that you can -- when a  
7 police officer had -- by reporting for an entire  
8 department justice can come in and determine  
9 whether or not that person or that department is  
10 acting in a way that is contrary to equal  
11 protection.

12 MR. DAVID LABAHN: Yes. And that would  
13 be the comparison here between the -- if you want  
14 to call it the Zimmerman case or the Trayvon  
15 Martin case and what's going on right now in  
16 Ferguson. Because in Ferguson you're seeing all  
17 that. You've got an officer under investigation  
18 on that and you have the justice department  
19 looking at the 1983 action, potentially, yes.

20 COMMISSIONER YAKI: Thank you.

21 MS. ELIZABETH BURKE: If I could just  
22 give you a quick quote from the President of the  
23 National District Attorneys Association when he  
24 was asked -- he stated that the stand your ground  
25 laws basically give citizens more rights to use

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deadly force than we give police officers and with less review.

COMMISSIONER CASTRO: Did you want to say something, Mr. Lott?

MR. JOHN LOTT: Yeah. You know, with regard to training, police have a much more difficult job than civilians do. If you're ever going to take a concealed carry class in Florida one of the things that they're going to emphasize is that you're not the police. The reason why you're being given a gun is to maximize the distance between yourself and the attacker there.

Police, when they come to a crime scene can't simply brandish a gun and watch the criminal run away. Police have to be willing to pursue the individual and to come into physical contact with them. And that's the vast majority of what police training involves is, how do you deal with somebody when you're coming into physical contact.

When you're talking about a woman who's dealing with an attacker, or an elderly person, the large strength differential that's going to exist there is going to mean once you're in physical contact you've completely lost control of

2 the situation at that point.

3 So to go and make comparisons between  
4 the amount of training and -- that civilians and  
5 police have, I think, is misleading.

6 I want briefly to say something about  
7 the Zimmerman case. Everything that David was  
8 just referring to in the case, you know, an  
9 aggressor, the different statements that he made  
10 were already true under the pre-existing  
11 self-defense law in Florida. What changed was  
12 whether or not there was a duty to retreat. The  
13 duty to retreat was never brought up in  
14 Zimmerman's case. In fact, even the prosecution  
15 basically conceded that Zimmerman was on his back,  
16 there was no place for him to go and retreat at  
17 that point.

18 That was the change in the law. And to  
19 go and reference the parts of the stand your  
20 ground law that were already in effect there, and  
21 I'm sure Ilya can probably say more about this  
22 too, but it doesn't seem to me to be exactly on  
23 target there.

24 COMMISSIONER CASTRO: Mr. LaBahn did you  
25 want to respond?

2 MR. DAVID LABAHN: I don't see how you  
3 separate one from the other. So when you put in  
4 the inferences, the subjective, the no duty to  
5 retreat and the very next section that -- that --  
6 you know, as he said, "Well they didn't -- they  
7 didn't amend that." How do you say, "Well, we  
8 gave all these new benefits and we expanded it,  
9 yet we didn't limit the ability of the aggressor  
10 to use force and so we didn't intend for  
11 aggressors to use force," to me is absolute  
12 nonsense.

13 I spent ten years in the legislature  
14 working on a lot of different statutes, it is an  
15 entire package. And the other thing that I think  
16 is continually misleading is to say it's not a  
17 stand your ground case because they didn't have a  
18 stand your ground hearing.

19 There is a lot more to it than just a  
20 stand your ground hearing. It's the -- it's  
21 subjective, objective, presumptions, you can't  
22 wrap an entire bill package and just say "This is  
23 the only one we want to talk about, it's all  
24 included."

25 COMMISSIONER CASTRO: Miss Burke, did

2           you want to say something?

3                       MS. ELIZABETH BURKE:  Yeah, and just --  
4           I just wanted to bring up an additional point on  
5           sort of historical self-defense coming -- growing  
6           out of common law and then being sometimes  
7           codified in state law.  But there was always a  
8           first aggressor limitation in, sort of, historical  
9           self-defense law, in that you could not be the  
10          first initiator of violence and then later turn  
11          around and invoke self-defense.

12                      And I think that's extremely important  
13          when we're reviewing the Trayvon Martin case.  I  
14          mean, let's face it this was a very bad result on  
15          every level.  And the stand your ground laws in  
16          Florida are clearly at issue in that case.

17                      COMMISSIONER CASTRO:  Commissioner  
18          Narasaki.

19                      COMMISSIONER NARASAKI:  Thank you,  
20          Mr. Chair.

21                      So my question is to Mr. Lott and  
22          Mr. Shapiro.  It's a series of questions that are  
23          connected.  So first is, I'm interested to  
24          understand whether you agree that it's important  
25          to have accurate comprehensive data to determine

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whether in fact equal protection is affected or not affected by this new law.

I know that -- that Mr. Lott is very critical of some of the analysis so I'm interested in particular whether the federal government should require data collection for -- connected to being able to get federal law enforcement funding, and if not, what would you do to correct the data situation?

Second is, do you support clarifying the law that shooters who want the benefit of stand your ground should not be pursuing the person that they are shooting, that once they begin to pursue them they become the aggressor, that they lose protection of the law?

The third is, I'm interested in understanding whether you believe that people should be able to claim immunity for civil liability when a person accidentally kills someone who's an innocent bystander?

And whether you have concerns about the fact that now that you've increased the area and circumstances under which someone can start shooting other people, whether that in fact is an

2 increased danger.

3 And the last is, are either of you  
4 concerned by the that fact Mr. Zimmerman, given  
5 his history seemed to have legal access to a gun?

6 MR. ILYA SHAPIRO: I'll -- start.  
7 And I'll defer the very first question about data  
8 to John, because that's clearly his bailiwick.

9 And I'll start with the last question  
10 because it goes to show how a lot of the  
11 questioning I think conflates a lot of different  
12 issues. Stand your ground laws are a very  
13 kind of narrow technical/legal point.  
14 Self-defense justifications are more broad and  
15 affirmative defense are also more broad.

16 Gun regulations and restrictions which  
17 a whole other sort of debate that's,  
18 beyond the scope of this hearing. You know, stand  
19 your ground laws are very narrow and very  
20 technical. The only difference in stand your ground  
21 jurisdictions versus non-stand your ground  
22 jurisdictions is what do you have to do if you're  
23 being attacked and it's possible to retreat  
24 If it's not possible to retreat, like in

2 the Zimmerman/Martin case then it's only about  
3 whether, Zimmerman -- committed the  
4 attack or whether he reasonably believed that his  
5 life was in danger, these sorts of considerations  
6 are concomitant to traditional self-defense  
7 considerations, not stand your ground laws in  
8 particular.

9 On the immunity point. For civil  
10 liability, well I think the laws there haven't  
11 really changed. If you're engaged in reckless or  
12 willfully gross negligent behavior you can be  
13 liable even if you're not intending to hurt  
14 somebody else.

15 But if you're acting reasonably or,  
16 -- exercising your right to  
17 self-defense, then, no, you shouldn't have  
18 liability. So the question the familiar  
19 question under tort law that exists in both stand  
20 your ground and non-stand your ground  
21 jurisdictions, again -- so if tort law needs to be  
22 changed somehow or recodified that's a separate  
23 issue from, the stand your ground law  
24 and its operation.

25 And as to shooters shouldn't be pursuing

2 or aggressors who should lose the right to stand your  
3 ground, absolutely, I agree with that. And I  
4 think that most if not all states have that in  
5 their stand your ground laws. And that's why the  
6 911 operator told Zimmerman not to pursue.

7 And that, as John was saying, is one of  
8 the major differences between people who lawfully  
9 -- citizens, private citizens who lawfully carry  
10 guns and the police -- the police have to engage  
11 and citizens do not.

12 COMMISSIONER NARASAKI: I'm sorry, you  
13 might have said it and I missed it, but did you  
14 answer my question about whether you were troubled  
15 that he had an access to a gun?

16 MR. ILYA SHAPIRO: Oh, Zimmerman?

17 COMMISSIONER NARASAKI: Yes.

18 MR. JOHN LOTT: I can answer that --

19 MR. ILYA SHAPIRO: I'm sorry?

20 MR. JOHN LOTT: I can answer that.

21 MR. ILYA SHAPIRO: -- I  
22 don't know the full facts of his -- you know, I  
23 understand that he had some alcohol issues in the  
24 past. I don't know if he had committed any  
25 felonies or done anything that was -- rose to the

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level of being deprived of a particular civil right to armed self-defense. You know, I'm -- you know, given what's -- what's happened since maybe there is more history to that. But in the abstract, you know, I guess, no.

COMMISSIONER NARASAKI: So -- and perhaps Mr. Lott would like to, I think, correct your understanding of what the Florida law says on civil liability. Unless the people that have been testifying all morning are wrong in how they characterized it to us.

MR. JOHN LOTT: Yeah, well I'm not a lawyer so I'll let Ilya speak for himself on that.

I -- I can answer the empirical questions that you raised. You know, to me the issue of Zimmerman getting a permit or not, you know, obviously Florida has given out -- what is it, like 2.6 million concealed handgun permits -- or permits to 2.6 million people since they first started being issued on October 1, 1987.

Right now there's like 1.4 million people who actively have permits. The average person who's had permits over that time has had a permit for something like 12 and a half years. So

2           you've -- 2.6 million people for all of those  
3           years. Florida, their website for example, has  
4           detailed data on revocations over time. If you  
5           look at firearms revocations between January 1,  
6           2008 and the end of 2011, they had 4 firearm  
7           revocations. But, revocations for any type of  
8           firearms related violation. That comes to  
9           revocation rate of about 1/10,000th of 1 percent  
10          in terms of the permits that were there.

11                         If you look at the entire period of time  
12          from 1987 on there was 168 revocations. You're  
13          talking about something that's akin to about a  
14          thousandth of a percent.

15                         So the bottom line to me -- and most of  
16          those revocations were for things that had  
17          absolutely nothing to do with violence. Most of  
18          them were people accidentally carrying a permit  
19          concealed handgun into a gun-free zone. Or people  
20          forgetting to have their permit with them when  
21          they would be stopped by police or something.

22                         And, so the issue here is are there --  
23          is there a safety problem in terms of people with  
24          permits somehow getting permits improperly, is it  
25          something that you can even measure.

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If you look at firearms revocation rates for Floridians it's actually --

COMMISSIONER NARASAKI: I -- I actually just wanted to know whether you're troubled or not, I don't need the whole --

MR. JOHN LOTT: No, I'm not troubled in general because if you look at the way the Florida's system's working it seems to work incredibly well. I mean --

COMMISSIONER NARASAKI: Well, 4 revocations out of 2,000 and whatever and there's no problem, okay.

MR. JOHN LOTT: Million. So the -- the rate that permit holders in Florida are involved in crimes with their permit concealed handgun is 1/7th the rate that police officers end up getting into trouble for firearms related violations.

COMMISSIONER CASTRO: Ah --

COMMISSIONER NARASAKI: Could he answer the data question --

COMMISSIONER CASTRO: Yeah, would you please.

MR. JOHN LOTT: Yeah, I'm sorry. The data question, look more data's great. Okay. I

2 use data all the time on stuff. I don't mind  
3 having data. The only thing I would ask is that  
4 if you're going to have data it needs to be more  
5 than just justifiable homicide and race.

6 COMMISSIONER NARASAKI: Right. So you  
7 would support tying federal funding to trying to  
8 get better data, is the question?

9 MR. JOHN LOTT: I'll leave that up to  
10 the politicians on how to -- what's the best way  
11 to try and go and do that. I'm just saying, sure  
12 there's a benefit from having more data in terms  
13 of being able to study things.

14 COMMISSIONER CASTRO: Commissioner  
15 Heriot, then Commissioner Achtenberg. And do any  
16 of the commissioners on the phone want to ask a  
17 question?

18 COMMISSIONER KIRSANOW: Yes, Kirsanow  
19 would like one question.

20 COMMISSIONER CASTRO: Okay.

21 COMMISSIONER KLADNEY: Kladney would  
22 like a question.

23 COMMISSIONER CASTRO: Okay. So  
24 Commissioner Heriot you're next, followed by  
25 Commissioners' Achtenberg, Kirsanow, and Kladney.

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COMMISSIONER HERIOT: Thank you,  
Mr. Chairman. I actually have just a quick  
question for Dr. Lott.

The previous panel, Dr. Roman,  
criticized an aspect of your work and I just  
wanted to give you a chance to comment on that.

MR. JOHN LOTT: Sure. And I appreciate  
that. Look, there are multiple things that John  
brought up. One of the things that he was --  
brought up was the superiority of using the  
justifiable homicide data for the United States as  
a whole versus the Tampa Bay Tribune data that was  
there, saying that it was, you know, an arbitrary  
quote "selective sample" that had been done for  
the Tampa Bay Tribune.

The Tampa Bay Tribune article is  
essentially the universe of stand your ground  
cases. It's not a sample. It has all the cases  
there. The problem that you have, if you want to  
talk about real sample issues, that's what the  
justifiable homicides -- in some years you have 14  
percent of the police jurisdictions in the country  
reporting justifiable homicide rate data. And  
there's even massive problems as Bill was talking

2 about earlier in response to questions from  
3 Commissioner Heriot, with regard to the fact that  
4 they don't go back and correct these things  
5 systematically. There's all sorts of errors even  
6 in that small percent that you have there. And so  
7 the question is, what places report? Why did they  
8 report it? What are the errors in their data  
9 that's there?

10 But here's -- here's the big problem and  
11 Commissioner Castro when you read that quote and  
12 as the end of it there it actually gets the  
13 opposite results, if you have a copy of his paper  
14 and I don't know if for some reason it didn't get  
15 up there. If you look at Table III of his  
16 reports, what he has is, he has a column for the  
17 rate of justifiable homicides for black-on-white,  
18 white-on-black, for non-stand your ground states,  
19 and for stand your ground states. If you look at  
20 the coefficients for the non-stand your ground  
21 states essentially, when a white kills a black he  
22 has a coefficient of like 41, and the coefficient  
23 of 7 for blacks killing whites. So it's a ratio  
24 of about 5.4 to 1. So it's saying whites who kill  
25 blacks are 5.4 times more likely to be found

2 justified in terms of the homicides than blacks.

3 But then if you look at the stand your  
4 ground states the ratio of the coefficients  
5 actually falls to 4. So rather than exacerbating  
6 it, he simply doesn't -- didn't read his  
7 coefficients correctly.

8 And so -- also when he talks about 10 to  
9 1, his regressions actually show 4 to 1 difference  
10 for stand your ground rather than the 10 to 1 that  
11 he was saying. And the problem that you have  
12 there is that when you bring up the type of things  
13 that Commissioner -- a commissioner earlier was  
14 asking him about the 3 to 1 differences just in  
15 terms of whether the person was armed. You pretty  
16 much can explain away the differences even just  
17 for one of the factors that are there.

18 And so -- and he also doesn't take into  
19 account whether all of the things that are  
20 statistically different in the right way and makes  
21 mistakes there in that too.

22 So his results actually showed the  
23 opposite of what he was claiming. Rather than the  
24 stand your ground laws exacerbating it, it  
25 actually reduces the difference in the coefficient

2           between black and whites that are there.

3                         And, you know, there are other issues  
4 we've been talking about with the general issues  
5 about justifiable homicide data. He does not  
6 attempt to account for any of the changes that are  
7 occurring over time in the data. He doesn't  
8 adjust it for the different places that are  
9 reporting over time. Lists -- he takes the data  
10 as if he doesn't understand any of the problems in  
11 the underlying data.

12                         I'll just give you one other trivial  
13 example. As I mentioned, over time more states  
14 are reporting the data. You have more  
15 jurisdictions reporting the data. Well, if stand  
16 your ground states tend to be adopting the, you  
17 know, relatively later in the period compared to  
18 the other states that are there just by having the  
19 time trend in there you're going to end up having  
20 them have higher rates of justifiable homicide  
21 than the earlier ones would be. And, you know,  
22 that's just a simple example of the types of  
23 biases that you create in there if you don't try  
24 to de-trend these things in terms of things like  
25 the number of places that are reporting.

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COMMISSIONER CASTRO: And just let me

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add for the record since Dr. Roman's not here

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right now we're going to ask him to supplement his

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response based on what you've explained today --

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MR. JOHN LOTT: I wish we could have

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debated on here. I've been emailing your staff --

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COMMISSIONER CASTRO: Well, we're going

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to -- well, this is not a debate, this is a

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hearing. But maybe one day we'll have a debate

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and you all could come in and we'll sell popcorn,

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but we're going to ask Dr. Roman to have the

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opportunity to present us with data along the

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lines of responding to what you said that way we

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have a complete record when we evaluate the data.

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Commissioner Achtenberg.

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COMMISSIONER ACHTENBERG: Thank you,

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Mr. Chairman. Mr. LaBahn I'm curious, does the

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Prosecutors Association typically take the kind of

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definitive position that you've taken with regard

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to stand your ground laws based on bad data, bad

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facts, and the fact that, you know, there's really

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not a departure here from the common law, at least

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according to some lawyers.

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I mean, I was quite frankly, quite

2           intrigued by the position of the Prosecutors  
3           Association, understanding as I do that you're not  
4           part of the group of typical suspects, you know,  
5           to be taking the position that you're taking.

6                         I'm wondering how you could explain to  
7           us how it is that your organization came to take  
8           this position?

9                         And then, secondly, could you talk to  
10          the commission about what it is you think the  
11          commission might be in a position to do about  
12          something that you seem to see as egregious as  
13          your prior testimony indicates.

14                        MR. DAVID LABAHN: Okay. Thank you. So  
15          first the question of taking legislative positions  
16          based upon bad data or -- or something in that way  
17          and also my organization itself.

18                        First, on behalf of APA, The Association  
19          of Prosecuting Attorneys, our National  
20          Association, we do not have a position on stand  
21          your ground laws. We have the Statement of  
22          Principles that is attached to my materials, but  
23          we do not either support or oppose, because as I  
24          said in my testimony, a lot of the states have  
25          implemented the laws, there's a separation of

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powers, once legislature passes this, the Executive Branch needs to enforce it.

As it relates specifically for instance here in Florida. Florida to Florida prosecutors -- the State Association opposed the legislation and the legislature went ahead and passed it anyway. And the majority of the states that have passed legislation back then, generally law enforcement has been opposed to it. The reason why, it isn't necessarily based on data, it is -- an example, what happened here -- this is legislation searching for a problem, instead of legislation addressing an issue or a problem. Having --

Even hearing that California is a stand your ground state surprises me immensely. I was a 10 year prosecutor there in that state, I prosecuted plenty of homicides and lots of violence, especially in Southern California.

I then spent 10 years at the State Association. I was running the California District Attorneys Association when the proponents of this legislation -- it was 2006, they brought it to Sacramento and they tried to put the bill

2 in. We laughed at it. We laughed that you're  
3 going to have criminal immunity and civil immunity  
4 for taking somebody else's life. We thought it  
5 was almost funny that -- you've got to be kidding  
6 me.

7 So to hear it's a stand your ground  
8 state, I would submit to you it's not. What  
9 happened in California, it went to its very first  
10 committee, which was the judicial committee and  
11 the judicial committee it never even got a motion  
12 because the trial lawyers had control of that and  
13 you're going to give civil immunity to -- the  
14 legislation was over.

15 What we instead would say is, and I  
16 would ask this committee is, this isn't is an  
17 entire legislative package, it's not as narrow.  
18 You could have changed the Florida law or it could  
19 have been done by just putting in a duty to  
20 retreat or wiping out that duty to retreat.

21 But that's instead not what this was.  
22 This is an entire package including the -- and  
23 we've talked about subjective versus objective.  
24 In the world of a prosecutor that's a huge change.  
25 That's not a minor little detail. In fact we've

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got to prove that beyond a reasonable doubt. The -- any place that the individual has a right to be, that's a vast expansion when you take Castle, which had been the home or even some of them even look at home, a place of employment, and some have even extended it to cars.

But then when you legislatively say "anyplace that you have a right to be," that's, again, a very vast expansion and a very big concern as it relates to how is this going to actually end up in the courts.

The presumption. The presumption of reasonableness in your own home. You don't need to have any sort of reasonable fear under this legislation and this draft. It was -- it was instead said if it's in the house you can shoot anybody no matter what you feel about them. If they don't have a right to be in your home you can shoot them dead. That presumption is extraordinary, you know?

And then, finally, as we just discussed the immunity. Just as when you are working to --supplement your record, I would ask that you look at the entirety of the Florida legislation and see

2           whether or not it's as has been suggested here  
3           that they just added duty to retreat or whether  
4           they added the four pieces. And that's what we've  
5           been doing on behalf of the Association is we have  
6           been tracking -- we've been working with various  
7           states on what does their legislation mean. And  
8           it's all up to each State Association whether they  
9           support it or oppose it or even the individual --

10                         But we have specific columns, if you go  
11           to our website, of the states that have done the  
12           expansion, and on the four points which states did  
13           which expansion.

14                         And that's why we start our research at  
15           2005, because I would submit to you prior to 2005  
16           the concepts that have been talked about today,  
17           especially these immunity provisions, presumptions  
18           and such, didn't exist before this legislative  
19           piece came forward.

20                         So that is the reason why we did it. We  
21           would -- and always on behalf of prosecutors I'm  
22           now working in Washington, we're always ready to  
23           come to the table. There are plenty of problems  
24           within our justice system. We like to have the  
25           data behind it. We like to know what the problem

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is.

And, especially, on behalf of prosecutors we're trying to make things safer. And that's why we continually come to the table to try to make the justice system work better. Not easier, not faster, but better. And work on legislative reforms.

This has never been one that we have seen to be a problem, and hence need to work on a reform.

ILYA SHAPIRO: Can I clarify something?

COMMISSIONER CASTRO: Sure.

ILYA SHAPIRO: Mr. LaBahn said that he was surprised that I classified California as a stand your ground state. As I think I was explicit, a lot of the stand your ground states are common law stand your ground states.

And among the 31 or so states that you count as -- that I count as stand your ground states, there's a lot of variation in the legislative package or what the common law protects or what have you. So I don't remember the California specifics right now, but whether it's, you know, just protecting in your car or

2 place of employment, like Mr. LaBahn said, those  
3 31 states include protections beyond the home.  
4 That's what basically works as stand your ground,  
5 and that's why this innovation in the law which as  
6 I said isn't an innovation it's 150 years old, is  
7 just pushing the normal Castle Doctrine in the  
8 home which certainly doesn't --

9 COMMISSIONER ACHTENBERG: So you're  
10 talking about an expansion of the places from  
11 whence one can claim the stand your ground  
12 defense. Is that what you're talking about in  
13 terms of California?

14 Do we have the subjective standard? Do  
15 we have immunity?

16 COMMISSIONER YAKI: It's -- it's -- a --

17 COMMISSIONER CASTRO: Go ahead.

18 Commissioner Yaki, go ahead, please.

19 COMMISSIONER YAKI: I need -- I need to  
20 -- with all due respect to Mr. Shapiro that --  
21 he's wrong. It's not -- California is not a stand  
22 your ground state. There are -- there are  
23 instances in -- there are some very vague jury  
24 instructions that talk about the fact that if  
25 you're being -- if someone's trying to kill you,

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2           you don't have to sit there and be killed, but it  
3           doesn't -- it's not a situation that -- that  
4           imposes the same kind of immunity from liability.  
5           They're all different -- they're all different --  
6           this is where -- this is where in some ways we're  
7           conflating the idea of self-defense with stand  
8           your ground. It is not a stand your ground state.

9                         It is like many other states, a  
10           self-defense state, but California Supreme Court  
11           has never opined to this day the extent to which  
12           that extends beyond -- beyond the home.

13                        COMMISSIONER CASTRO: Commissioner --

14                        MR. ILYA SHAPIRO: I've never -- sorry.

15                        COMMISSIONER CASTRO: No, go ahead.

16                        MR. ILYA SHAPIRO: I've -- I've never  
17           claimed that California is a stand your ground  
18           state, if we're defining stand your ground as  
19           accepting the package legislation modeled after  
20           Florida. That's certainly not what I intended to  
21           mean.

22                        COMMISSIONER CASTRO: Commissioner  
23           Achtenberg, I'm sorry, I cut you off.

24                        COMMISSIONER ACHTENBERG: No, that's  
25           fine Mr. Chairman. That clarification is

2 sufficient.

3 COMMISSIONER CASTRO: Okay.

4 Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: I think that

6 Commissioner Kladney had his hand up first.

7 COMMISSIONER CASTRO: Okay. You have

8 very good eyesight Commissioner Kirsanow.

9 (Laughter).

10 COMMISSIONER KLADNEY: Such courtesy, I

11 have to tell you.

12 I'd like to ask. I think it's

13 Mr. LaBahn, from the prosecutors office and

14 anybody else on the panel. I just want to get

15 this clear, when we refer to the Florida statute,

16 and I'd like to refer to the Florida statute

17 because I think from the testimony that I've heard

18 there's like -- like every state there's little

19 changes to statutes all over -- that are similar

20 in nature, but they aren't exactly the same, but

21 -- so it's my understanding that the stand your

22 ground law allows an eggshell shooter to walk away

23 from a shooting because their psychological

24 perception of the world and individuals for the

25 shooting, whatever it was, regardless of what

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society believes to be a reasonable threat.

Is that correct?

MR. DAVID LABAHN: Yes. Especially if you are describing that eggshell, and because it's a subjective standard there still is a reasonable -- does that person reasonably believe that an eggshell person who believes that they're under imminent danger has the right to use deadly force.

MS. ELIZABETH BURKE: And can I just -- can I expand --

COMMISSIONER KLADNEY: Yes, in a second. Let me just ask -- add one more question there.

And then a police officer who is not elected by the people makes a decision as to whether an arrest takes place or not?

MR. DAVID LABAHN: Yes. Again, specifically in the Florida statute, which hasn't been addressed here, but it's extraordinary. The Florida statute flat out says that -- and it gets it backwards. It says that -- let me find the exact language.

"As using this subsection -- and it's 776.032 No.1. "As used in this subsection, the term criminal prosecution includes arresting,

2           detaining, custody, and charging or prosecuting  
3           the defendant."

4                         And then in Number 2 it comes forward  
5           referencing Number 1. It says, "A law enforcement  
6           agency may use standard procedures for  
7           investigating the use of force as described in  
8           subsection 1, but the agency may not arrest the  
9           person for using force unless it determines that  
10          there is probable cause that the force that was  
11          used was unlawful."

12                        And then 3, which was talked about,  
13          there's attorney fees and court costs and  
14          everything else if that arresting -- if that  
15          agency makes a mistake.

16                        This turns the law enforcement agency,  
17          and as you said, the officer, yes, it makes that  
18          patrol officer almost judge/jury and it's not  
19          their job. They ought to be investigating the  
20          shooting, not getting to the point of a probable  
21          cause determination, especially right after the  
22          shooting itself.

23                        And that's why you have situations like  
24          was seen on TV with George Zimmerman, they -- they  
25          had initially taken him into custody, and then

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they took his cuffs off and had him walk home --  
or let him go home.

It puts the agency in a very strange  
position. And they really ought not to be making  
that decision, especially at the time of the  
shooting. It ought to be properly investigated  
and then submitted. That's the way the process  
should go and it really should never be the patrol  
officers trying to make some sort of decision at  
the scene. "Do we arrest him, not arrest him, do  
we have probable cause, or not have probable  
cause?"

COMMISSIONER CASTRO: Miss Burke, you  
had something that you wanted to add?

MS. ELIZABETH BURKE: Yes, I did just  
want to draw attention to the fact that 776.012 is  
the reasonable expectation that you -- you know,  
you believe that your life is in danger.

But, 776.013, which is a presumption of  
fear in the home goes even -- even went a step  
further under Florida's stand your ground law, in  
that if you are in your home and you shoot and  
kill someone you're presumed to have a fear. So  
you don't actually have to be afraid at all.

2           There is a legal presumption created which then  
3           the state would have to overcome.

4                        So that just takes things a step  
5           farther. And certainly much farther than any  
6           common law definition of self-defense.

7                        COMMISSIONER CASTRO: Commissioner  
8           Kladney, are you done?

9                        COMMISSIONER KLADNEY: I am,  
10          Mr. Chairman.

11                       COMMISSIONER CASTRO: Okay. Now it's  
12          your turn Commissioner Kirsanow.

13                       COMMISSIONER KIRSANOW: Thanks,  
14          Mr. Chair. I would also like to thank all of the  
15          panelists this has been very informative.

16                        I'm willing to be persuaded that stand  
17          your ground is a bad idea. And I've got a great  
18          deal of interest in and respect for Mr. LaBahn's  
19          perspective for example. Although, those of us  
20          who are in the first lines of defense for our  
21          families and neighborhoods like mine I'm not quite  
22          yet persuaded that standing alone, stand your  
23          ground is a bad idea. But that's not the --  
24          that's not the commissions charge, it's whether  
25          stand your ground results in discriminatory

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treatment of those involved in the confrontation  
or of an equal protection violation.

So I've got a couple of questions for  
Mr. Shapiro. First, Mr. Shapiro, are you aware of  
any evidence that any quote - unquote "stand your  
ground legislation" that's been enacted has been  
done so with any discriminatory intent?

MR. ILYA SHAPIRO: I'm not.

COMMISSIONER KIRSANOW: Are you aware of  
any stand your ground legislation that is not  
(inaudible) neutral?

MR. ILYA SHAPIRO: I am not.

COMMISSIONER KIRSANOW: And Mr. Lott you  
talked about coefficients with respect to -- I  
can't recall whose data it was. I think it was  
Mr. Roman.

Do you know whether or not the Tampa Bay  
Tribune data or any other data show whether or not  
or were just aggregated by, for example, the  
effective concealed carry laws, use of drugs by  
the attacker, whether the attacker had a weapon or  
the type of weapon that he had or any other things  
that may have had a bearing on a one-to-one  
correlation in black to white statistics in this

2 issue?

3 MR. JOHN LOTT: Well, the Tampa Bay  
4 Tribune data had very detailed data on whether a  
5 weapon was present, what type of weapons were  
6 present, who initiated the attack, what types of  
7 data was available, whether you had witnesses,  
8 forensic information that was there, what property  
9 it occurred on, when it occurred, what time it  
10 occurred. It has very detailed information on  
11 those things.

12 You know, with regard to the Roman  
13 stuff, I'll just mention the coefficients. I  
14 reproduced his table -- in fact, I just have a  
15 screen shot in my report, so if you want to look  
16 at it you can see it in my report.

17 COMMISSIONER KIRSANOW: Thank you.

18 COMMISSIONER CASTRO: Any other  
19 commissioner -- Commissioner Timmons-Goodson, go  
20 ahead.

21 COMMISSIONER TIMMONS-GOODSON: Thank you  
22 very much, Mr. Chair.

23 As I sat here it occurred to me, I was  
24 wondering if any of our witnesses would care to  
25 offer any thoughts on how they see implicit bias

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as it relates to these stand your ground laws.

MR. DAVID LABAHN: I'll -- I'll go first on that. That's why I'm most troubled by the subjective standard is the implicit bias is going to play into that -- I'm going to say every time. It is -- what that person is perceiving, and let's go with the Jordan case, because that's the verdict that came back, and ultimately even with stand your ground, after a second trial, the jury came back and said, "No, we don't think that it was imminent or reasonable." But it was -- the conversation -- it was a white older male shooter and young black victim. And the fact that there were 4 in the minivan when they were playing the music. The -- the -- the shooter was in there first. The van comes in, they're playing loud music. He calls it rap music, thug music, I think there's different things that this panel has said. And he asked the person to please turn the music down. And they initially did. And then they turned the music back up. And that's when now things started to escalate. Again he asked them to turn the music back down. This time they did not. He started yelling at him. And Jordan



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2 But for someone who's not comfortable with that,  
3 and that different sort of cultural feeling they  
4 can feel that that's an aggressive movement toward  
5 them. And because here we're talking about the  
6 use of deadly force that likely can take  
7 somebody's life.

8 So the more different the individuals  
9 are the more likely that this provision will come  
10 into place. And that's why when you look at the  
11 shootings that have got a lot of attention there  
12 has been both a racial and an age difference.

13 COMMISSIONER TIMMONS-GOODSON: Thank  
14 you.

15 Mr. Lott.

16 MR. JOHN LOTT: Yeah, with regard to the  
17 implicitness or explicitness you can look at the  
18 data rather than an anecdotal story. And because  
19 the Tribune data has the age, has the many other  
20 differences there with regard to the individuals.  
21 All the differences that were just raised are in  
22 -- essentially in the Tribune data set.

23 So you can control for those to see  
24 whether they make a difference. And in fact, even  
25 after you control for those things you find no

2 statistically significant difference in terms of  
3 the way -- the sentence depends upon either the  
4 race of the victims or the race of the person who  
5 fired the gun.

6 COMMISSIONER TIMMONS-GOODSON: Are you  
7 saying that you can control for implicit bias --

8 MR. JOHN LOTT: Well, it should be -- if  
9 there's implicit bias it should be observed in the  
10 final outcomes, right? It should be observed in  
11 terms of whether or not somebody's less likely to  
12 end up with punishment than another person. If  
13 he's saying that there's implicit bias because an  
14 older white male is going to be given deference in  
15 this case, then it should affect the probability  
16 that that older white male's going to end up  
17 facing a penalty or not.

18 COMMISSIONER TIMMONS-GOODSON:  
19 Mr. LaBahn it looked like you wanted to say  
20 something.

21 MR. DAVID LABAHN: Yes, if -- if I may.  
22 I was not suggesting that older white males are in  
23 any way always going to be bias towards young  
24 black males. Instead what was going on in my mind  
25 and I think we heard this statistic was 34 percent

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2 of the cases where the age difference, when the  
3 individual was older and you had the racial  
4 difference, that 34 percent of those cases in fact  
5 were deemed to be justified. That's where I  
6 suggest is -- the implicit bias comes in when you  
7 move it from being an objective standard, would a  
8 reasonable person in the same or similar  
9 circumstances have acted in that way. To the  
10 subjective standard is, what did that individual  
11 believe. That -- once you've got a subjective  
12 standard now the implicit biases weigh in on that  
13 decision to take another life.

14 MR. JOHN LOTT: The reason --

15 MS. ELIZABETH BURKE: Could I --

16 MR. JOHN LOTT: -- the reason why you  
17 don't take a statistic just like that by itself is  
18 there's so many other things that differ across  
19 these cases. Whether it's somebody's armed, who  
20 initiated it, other aspects, you know, whether  
21 it's black-on-white or white-on-black. Those are  
22 the reasons why you use the whole data set to try  
23 to control for those other factors.

24 And I'm saying, when you control for  
25 them the data set's publically available or you can

2 run your own regressions on it.

3 When you use all of the data that's  
4 available on the Tampa Bay Tribune data set there  
5 you don't find any statistically significant  
6 difference in the outcome. You may think by just  
7 looking at one average there, you can infer  
8 something there, but you're leaving out a huge  
9 number of other factors that the Tampa Bay data  
10 set records.

11 COMMISSIONER CASTRO: Commissioner Yaki,  
12 and then Commissioner Heriot.

13 COMMISSIONER YAKI: I'll let  
14 Commissioner Heriot go first.

15 COMMISSIONER CASTRO: Okay.  
16 Commissioner Heriot, go ahead.

17 COMMISSIONER HERIOT: Oh, okay. I'm not  
18 sure where all of this subjective versus objective  
19 stuff is coming from in the statute. I'm looking  
20 at the Florida statute here and it says, "A person  
21 is justified in using or threatening to use force,  
22 except deadly force against another -- let me get  
23 to the point -- "to the extent the person  
24 reasonably believes that such conduct is necessary  
25 to defend himself or herself."

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Where's the part about subjective? Can you direct me to that?

MR. DAVID LABAHN: Sure. It is -- it is -- that is a subjective standard, that it's the --

COMMISSIONER HERIOT: Reasonableness is a subjective standard?

MR. DAVID LABAHN: It's a --

COMMISSIONER CASTRO: Let's not talk over one another, please, everybody. Let the witness speak.

MR. DAVID LABAHN: And -- that's what the courts have inferred. This is -- that the person reasonably believes --

COMMISSIONER HERIOT: That's nonsense.

MR. DAVID LABAHN: -- that is a subjective standard not an objective standard. The Beard Case was talked about earlier --

COMMISSIONER HERIOT: In what universe is that -- that a subjective standard? I mean, that's nutty, it's got to be reasonable. How do you determine reasonableness -- it's always with reference to what a reasonable person would do.

MR. DAVID LABAHN: No, no, no, it's not a reasonable person standard. It is a person's --

2 COMMISSIONER HERIOT: I beg to differ --

3 MR. DAVID LABAHN: -- there is -- very  
4 significant difference between a person who  
5 reasonably believes and a reasonable person  
6 believes. And the statute is what the person  
7 believes, not what a reasonable person is. I will  
8 quote you the language out of Beard so you can see  
9 the difference. The Beard --

10 COMMISSIONER HERIOT: I'm a torts  
11 professor. You know, this is what I do for a  
12 living, is I talk about what's the reasonable  
13 person standard. You know, you're talking to the  
14 wrong person. And if you think this is going to  
15 be a question of --

16 COMMISSIONER CASTRO: -- could you just  
17 let him respond.

18 COMMISSIONER HERIOT: Clearly not.

19 UNKNOWN PHONE SPEAKER: Let him answer  
20 the question.

21 COMMISSIONER CASTRO: Mr. LaBahn, go  
22 ahead.

23 MR. DAVID LABAHN: I -- I -- I don't  
24 know if I can come back, because when it is a  
25 reasonable person standard it says reasonable

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person. It doesn't say person who reasonably believes. It's been very clear. There hasn't been any question. You can look at the Zimmerman --

COMMISSIONER HERIOT: There is now.

MR. DAVID LABAHN: -- yeah, you can look at the Zimmerman case, this was intended to be and is, a subjective standard not an objective standard. If it was an objective standard you would not have the prosecutors -- have so much difficulty with it. And if this panel comes back and says "objective standard is preferred," that would be a great assist.

COMMISSIONER CASTRO: Commissioner Yaki and then Commissioner Narasaki.

COMMISSIONER YAKI: Yeah, I'm a little troubled by -- I was even troubled by Mr. Roman's criticism of the Tampa Bay -- and by the way, it's the Tampa Bay Times not the Tribune, I think that they would be upset that their -- that they were part of a different news organization.

The data that they have is actually data that I find very useful because it goes into a lot of subsets and hard data, charging sheets,

2 et cetera that I think are not necessarily those  
3 that are reported as part of the normal databases  
4 that are collected by the federal government.

5 In fact it's one where I believe that we  
6 have the ability to go even further and use that  
7 kind of model for research in terms of other  
8 jurisdictions as well.

9 I think it's important to put that in  
10 there because one of my issues with regard to  
11 trying to take the notion of implicit bias and  
12 simply apply it at one part of the stage, is that  
13 when you look at how the stand your ground statute  
14 is formulated implicit bias can be there at any  
15 particular stage. It can be at the moment that a  
16 person decides that someone is a threat to them.  
17 It can be there the moment when the investigating  
18 officer upon hearing the persons assertion of  
19 stand your ground, makes a decision right then and  
20 there, "Well, it was a -- it was a -- "This person  
21 talking to me is white, the person attacking was  
22 black," not that he's a racist, but there could be  
23 right then and there a decision, "Okay, I'm going  
24 to let this person go and worry -- and then decide  
25 later on whether or not there's probable cause."

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And going to the point where the judge makes a decision at an immunity hearing. It can be at any different locale, and I think that's why we need to look at the data in all sorts of areas to determine whether or not there is that kind of thing there. But that's just a statement about that.

My question was actually for -- for Ms. Burke. And it goes to -- could -- should we -- would we even be talking about the impact of stand your ground if it were not for the correlation between stand your ground laws and the status of gun laws in the states in which it exists?

MS. ELIZABETH BURKE: Right -- I mean, stand your ground -- stand your ground clearly has grown up around a time when the gun laws are becoming more lax. Guns are becoming more available. There's no longer -- for a person to carry a concealed weapon. There's no longer a necessity to show that you have fear. That you need that be armed on a public street.

It used to be if you needed a concealed weapon that you could apply for a permit. That

2           you would go to your sheriff, your police officer,  
3           they would know you from the community, and they  
4           would make a determination of high moral character  
5           of a non-dangerous personality, and the fact that  
6           you needed a gun, perhaps you were being stalked,  
7           perhaps you worked in a very dangerous  
8           neighborhood and moved cash at night. There was  
9           all sorts of reasons that a reasonable society  
10          would say "this person needs to be armed for their  
11          self-defense." And that situation was working  
12          very well.

13                         But, at the behest of the gun lobby  
14          those laws have been relaxed in a historic sweep  
15          throughout our country. And at this point there  
16          is really no telling how many people walk around  
17          now with concealed weapons on them at all times.

18                         And implicit bias then becomes a deadly  
19          bias, I think, because suddenly a fear that maybe  
20          would have made you uncomfortable and scared and  
21          you'd get in your car and leave, now people are  
22          holstered up and they feel the right to if anybody  
23          disrespects them to, you know, shoot them.

24                         And the issue of civil liability and the  
25          fact that this law protects people from negligent

2 shooting is another travesty because, you know, I  
3 thought it was a very interesting discussion with  
4 the prior panel about the 15 year old in the car  
5 behind the thugs who was shot and killed and had  
6 no recourse -- her family had no recourse to bring  
7 a suit against anyone.

8 One of the panelist's said, "Well,  
9 that's how it should be. You know, someone acting  
10 in self-defense isn't going to have insurance for  
11 that." But, in fact, we see concealed carry  
12 insurance as a new product. You carry your gun  
13 with you everywhere, so the websites say, you  
14 know, you're more likely to be involved in an  
15 incident and need legal representation. So for  
16 \$14 a month now you can have insurance against  
17 just exactly that kind of shooting, right, of  
18 spraying a crowd and then saying, "Gosh, I was  
19 terrified."

20 So, in answer to your question, I think  
21 you'd have to see them arm in arm.

22 COMMISSIONER CASTRO: Mr. Lott and then  
23 Commissioner Narasaki.

24 MR. JOHN LOTT: Yeah, thanks. Just as a  
25 response to Miss Burke. We have data

2 cross-states. We have data in terms of the  
3 different rules, the types of rules that she's  
4 looking at. Let's them look to see what revocation  
5 rates differ. And in fact there's no  
6 statistically significant difference in terms of  
7 revocation rates for the states that have the  
8 types of rules that she's having or the states  
9 that are more liberal.

10 MS. ELIZABETH BURKE: Mr. Lott -- I  
11 mean, Mr. Zimmerman's gun has not been revoked.  
12 His license has not been revoked so I would  
13 question the viability and the inappropriateness  
14 of the revocation laws.

15 COMMISSIONER CASTRO: And I've got to  
16 believe that the revocation procedures, processes  
17 and resources vary state by state, so they may not  
18 even have folks who are regularly investigating in  
19 some of these states as revocations. So I don't  
20 know how that can be a distinction point, but --  
21 Commissioner Narasaki.

22 COMMISSIONER NARASAKI: Yes, thank you.  
23 I actually find it that it doesn't necessarily  
24 prove that the system is working if there aren't  
25 any revocations. I actually believe that proves

2 that perhaps it's not working. It's like when my  
3 90 year old grandmother in California got her  
4 drivers license renewed without an exam. That  
5 did not make me feel any better about the driver's  
6 in California and getting on the road.

7 So I have a question about -- well,  
8 first, on the issue of reasonable amount versus  
9 reasonable belief. You know, Professor Cynthia  
10 Lee's written a book about the extent to which a  
11 reasonable man-standard still has some  
12 subjectivity, right? Depending on what group is  
13 deciding what a reasonable man would do. But, it  
14 has more objectivity than saying, "Well, putting  
15 myself in the position of someone who's an older  
16 white man, not used to being around minorities,  
17 feeling threatened and disrespected, I might say,  
18 you know, I wouldn't feel threatened, but I could  
19 see that that guy might reasonably feel  
20 threatened. That to me is a very different  
21 standard, and in fact rewards people for being  
22 biased, and I'm concerned about that. I don't  
23 think that's something that should be rewarded.

24 What I am interested in understanding is  
25 that, in the issue of implicit bias, it's not just

2           how the justice system treats you, but it's also  
3           the question of when are you going to get shot.  
4           Right? And that's the irrevocable fact that in a  
5           split second your bias allows you to shoot someone  
6           and then the legal system either treats that --  
7           treats everybody fairly or not fairly after what  
8           happened. So I think that's maybe where we're  
9           sort of parting ways, Mr. Lott.

10                        I do want to know though, do you believe  
11           that there's implicit bias? Do you believe that  
12           there's bias in the system that would cause you  
13           any kind of concern, if in fact implicit bias  
14           exists? Or is it just that you're trying to argue  
15           that the data doesn't prove that in fact it's  
16           resulted in any inequity?

17                        MR. JOHN LOTT: I'm happy to accept that  
18           there's surely biases that people have in many  
19           different ways. I'm just saying in this  
20           particular case we have a very useful data set  
21           that we can go and look at to see whether it  
22           effects the final outcome.

23                        I want to talk for a minute in terms of  
24           your example with your grandmother getting the  
25           driver's license. What we would do then is we

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would look to see what happens to accidents, we could look at accident rates for people who are 75 to 80. Okay? We can do the exact same thing --

COMMISSIONER NARASAKI: Her 85 year old sister ran into a police and she did not get her license revoked either.

MR. JOHN LOTT: No -- but, even if you don't look at revocations, you can look at things like murders. You can look at accidents. You can look at what happens in murder rates or accidents in other states based upon the types of rules.

And in fact what you find is that the states that have easier rules for getting permits actually have bigger drops in murder rates because you have more people being issued permits.

And so it's the exact opposite -- if you -- the ultimate thing that you care about then when you were talking about what happens with stand your ground laws somebody gets shot -- well, let's look to see what happens to all murders. When you look at that and you control for the gun control laws that Miss Burke says needs to be accounted for there -- you see drops there in murder rates -- you have fewer lives lost. And I

2 agree that's a very important bottom line.

3 So it's not just looking at revocations,  
4 I agree revocations are just one possible way of  
5 looking at it, but you need to look at other  
6 factors and I look at all of those different  
7 things.

8 COMMISSIONER NARASAKI: Can I just ask  
9 you for a clarification on that because we have  
10 thousands of pages that the great commission staff  
11 have pulled together for us to prepare for this  
12 hearing, and I really want to thank the staff for  
13 the incredible job that they've done so far, but  
14 in my reading I recall repeatedly seeing that in  
15 fact in stand your ground places murder went up,  
16 am I wrong? Am I confused?

17 COMMISSIONER CASTRO: No, you're right.

18 COMMISSIONER NARASAKI: So I'm confused  
19 by what you're arguing.

20 COMMISSIONER CASTRO: I'm sorry,  
21 Miss Burke did you want to respond?

22 MS. ELIZABETH BURKE: -- 8 percent --

23 MR. JOHN LOTT: Well, can't I just  
24 respond --

25 MS. ELIZABETH BURKE: -- I think it was

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the --

MR. JOHN LOTT: The Texas A & M study.

And what I tried to do -- oops, there it is. What I tried to do was just go through and tried to explain to you kind of what happened with the Texas A & M study -- there's also a Georgia study, but both of them are very similar.

Texas A & M really looked at only laws between 2005 and 2010, no explanation for why they didn't look at other periods. A very narrow window in terms of crimes -- rates that they looked at. They didn't control for any other types of laws that Mrs. Burke -- Miss Burke was just making argument needed to be accounted for because it would affect the rate and the possible problems that would occur. There's -- it's really amazing cherry picking that goes on --

COMMISSIONER NARASAKI: But -- but, homicides either went up or down.

MR. JOHN LOTT: No, but -- the point is -- let me give you an example. They not only look at stand your ground laws, it's been a misnomer they also look -- have in there Castle Doctrine states. So someplace like Illinois for example,



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say that, let's get away from Mr. Roman's data and let's go back to Mr. Krouse from the Congressional Research Service and his slides which showed that -- that overall there's been an uptick in the homicide rates starting around 2005. And then -- and that certainly beginning in 2005 there's a very big uptick in terms of justifiable homicides. And now -- I just want to say this one thing which is, what Mr. Lott said actually kind of goes to the point that I was trying to make with Miss Burke which is, you can -- you can -- and, you know, people say -- I noticed that Mr. Shapiro liked it -- liked to say that, "Then Senator Barack Obama voted to expand the Castle Doctrine in Illinois." But then again Illinois has very tough gun laws. But we're talking about, when we look at some of the states where you have not so tough gun laws, where you have the Florida models stand your ground law, and you have the data -- the data that Mr. Roman and others have, and the Tampa Bay Times have, that's where we have -- that's where we see the disparity. That's sort of the -- that's sort of the cocktail that I'm concerned about. That is -- that is, quite



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2 one of our national conferences we've trained on  
3 that. On behalf of APA we've been involved in two  
4 now, racial justice summits of -- especially  
5 within our role of prosecutors within the system,  
6 how can we make sure that we're doing no harm.

7 So I wanted to directly address and say,  
8 that on behalf of prosecutors we recognize  
9 implicit bias exists, it's how can we counteract  
10 it, and make sure that certain other things are  
11 fair. So thank you, sir.

12 COMMISSIONER CASTRO: Thank you. And  
13 thanks to each of you and to all of the panelists  
14 today. This information is going to be very  
15 helpful to us as we prepare our report.

16 I also want to acknowledge and ask all  
17 of our staff that are here and especially the  
18 staff that have been involved in putting this  
19 together over the last several months to please  
20 stand and be acknowledged, we really appreciate  
21 your work.

22 (Applause.)

23 COMMISSIONER CASTRO: This could not  
24 have happened without all of you and we really do  
25 appreciate that.

2                   Lastly, the record for this briefing is  
3 going to remain open for the next 30 days. If  
4 panalists or members of the public would like to  
5 submit materials they can mail them to the: U.S.  
6 Commission on Civil Rights, Office of Federal  
7 Civil Rights Evaluation, 1331 Pennsylvania Avenue  
8 Northwest, Suite 1150, Washington, D.C., 20425 or  
9 via e-mail to publiccomments@usccr.gov.

10                   The exact time is now 3:35 p.m. and this  
11 meeting of the U.S. Civil Rights Commission is now  
12 adjourned.

13                   Thank you.

14                   (Hearing was adjourned at 3:35 p.m.)

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17 (Meeting was concluded. This is the end of volume III)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF POLK

I, Kathy Wescott, Certified Shorthand Reporter, do hereby certify that I was authorized to and did report in Stenotypy and electronically the foregoing proceedings and evidence in the captioned case and that the foregoing pages constitute a true and correct transcription of my recordings thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 28th day of October, 2014, at Lakeland, Polk County, Florida.

Kathy Wescott, CSR  
Court Reporter