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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. - 3:30 p.m.

Date: October 17, 2014

Reported by:
Kathy Wescott, CSR

(Volume I, pages 1 through 108, a.m. session,
Panel Number 1)

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Present:

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Commissioner Michael Yaki

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Commissioner Roberta Achtenberg

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Marlene Sallo

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Commissioner Marty Castro (Chairman)

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Commissioner Karen K. Narasaki

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Commissioner Patricia Timmons-Goodson

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Commissioner Gail L. Heriot

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Appearing by phone:

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Commissioner David Kladney

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Commissioner Peter Kirsanow

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Panel Number 1:

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Senator Chris Smith

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Representative Todd Rutherford

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Mr. Ahmad Nabil Abuznaid

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CHAIRMAN CASTRO: I'm calling the meeting to order. I'm Marty Castro, Chair of the U.S. Commission on Civil Rights. And I want to welcome everyone this morning to our briefing on racial disparities and the stand your ground laws.

It is currently 9:06 a.m. on October 17, 2014. I am joined today by Commissioners Achtenberg, Commissioner Narasaki, Commissioner Timmons-Goodson, Commissioner Yaki, and Commission Heriot. Commissioner Kladney and Commissioner Kirsanow will join us by phone.

The purpose of this briefing is to determine whether there is a possible racial bias in the assertion, investigation, or enforcement of justifiable homicide laws in states with stand your ground provisions.

Experts at this briefing will present testimony on the personal impact of the laws, findings from their research, especially those research pieces regarding the racial dimensions of justifiable homicides and elaborate upon actions that are being taken by advocacy groups to alleviate concerns related to stand your ground laws.

2 Now stand your ground laws, some of us
3 are part of a larger issue. We see what happened
4 here in Florida. Other states obviously have
5 similar situations. We see what's happened in
6 Ferguson. Names like Trayvon Martin, Jordan
7 Davis, these are now part of the national fabric
8 of conversation about race and the impact about
9 race.

10 Whether laws are biased, implicitly
11 biased, explicitly biased. Those sorts of
12 questions must be answered not by anecdote, or
13 example, but by concrete research.

14 And it is our hope that the work that
15 the U.S. Commission on Civil Rights is doing on
16 this topic will present concrete statistical
17 information, much of which is lacking in this area
18 right now. To allow us to critically look at the
19 true impact of these laws.

20 Today we're going to hear from folks
21 from different perspectives and different points
22 of view. Our job here at the U.S. Commission on
23 Civil Rights is to shine our historic light on
24 these issues and separate the wheat from the chaff
25 of what is being said and what is being produced

2 on these topics, and present to the President and
3 Congress and the people of the United States our
4 opinion based on over 50 years of advocacy and
5 being a watchdog on civil rights as to what we
6 believe to be the impact of these laws on minority
7 individuals and minority communities.

8 I want to thank Commissioner Yaki for
9 his opportunity to bring this forward to us. I
10 will ask him to make a very brief statement and
11 then I will introduce the members of the panel and
12 we'll begin our briefing.

13 Commissioner Yaki.

14 COMMISSIONER YAKI: Thank you very much,
15 Mr. Chair, and thank everyone who is here today.

16 I called for this investigation. And
17 today while it's just a briefing it's part of a
18 broader -- broader discussion and broader analysis
19 by the commission.

20 This investigation is by -- today will
21 help the investigation. It is by no means an end,
22 but just a beginning of the analysis that will be
23 conducted by our staff. I did so because a year
24 and a half -- about two years ago I actually
25 started calling for this investigation, and it

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wasn't until last year that the commission had the resources and the personnel in order to start this -- down this path.

I did so because I'm troubled by stand your ground laws. I'm troubled by the fact that we have to have discussions about the deaths of African American men like Trayvon Martin and Jordan Davis. I'm troubled by conclusions and statistics showing racial disparity in the research of people like John Roman.

I'm troubled by the expansion of a common law doctrine that now allows people not only to defend themselves in their home, but converts it into a "shoot first" anywhere policy. And I'm troubled by the fact that despite its claims homicides seem to increase rather than decrease in states with stand your ground laws.

And I'm especially, as a member of the U.S. Commission on Civil Rights, deeply troubled by the fact that here we are in the 21st century and we are here to try to understand and study the implications, extent, and effect of bias, unconscious, implicit bias and its impact on laws like stand your ground. I hope today and in the

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2 days ahead that we will get evidence and hear data
3 and collect information that can help policy
4 makers, lawyers, judges, and others understand
5 better these laws and their impact on our society.

6 And I want to thank again everyone here
7 today. And I want to extend a special thanks to
8 our staff director, Marlene Sallo, for working so
9 diligently and hard on this matter with me. And,
10 again, I appreciate everything that she's done.

11 Thank you very much, Mr. Chair.

12 COMMISSIONER CASTRO: Thank you,
13 Commissioner Yaki.

14 So now on to some housekeeping matters.
15 So today's briefing is going to consist of a
16 number of panels. Our first is going to be made
17 up of -- all total of 16 distinguished speakers.
18 The first panel is going to consist of legislators
19 and advocates.

20 Panel two will consist of statistics
21 behind the stand your ground laws. And a guest
22 advocate speaker that will give us a real life
23 perspective on the consequences of the
24 implementation of stand your ground laws.

25 And ultimately panel three, with

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scholars giving us their perspective on this important topic.

Now during the briefing each panelist will have eight minutes to speak. After all of the panelists have made their presentations commissioners will then have an opportunity to ask questions of them. There will be an allotted time period for that to occur.

As I have in the past I will fairly recognize commissioners who wish to speak. Those commissions who were unable to get here that are on the phone, you'll have to designate -- shout out your name and let me know that you want to speak. Otherwise, the commissioners present just raise your hand and I will keep a list of who will be next.

So we also want everyone to adhere strictly to their time allotments so that we all have an opportunity to engage in the conversation on this important topic.

You panelists will notice there's a series of warning lights that have been set up. When the light turns from green to yellow that means you've got two minutes remaining. When the

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2 light turns red I ask you to wrap up your
3 statements. And just be mindful of other
4 panelists' times so we don't take away from
5 anyone. I certainly don't want to cutoff anyone
6 mid-sentence.

7 Again, I ask my fellow commissioners to
8 be considerate of the panelists and one another
9 and try to keep our questions and comments
10 concise. I know there will be followups and I
11 will allow that to a point, but we want to have
12 everyone have the opportunity to ask questions.

13 Once we do all this I think that we will
14 have the data that we need. So what I'd like to
15 do is first proceed with the panel that is before
16 us now, our first panel. I will introduce you to
17 the panelists and I will swear you in.

18 Our first panelist this morning is
19 Chris Smith, Florida State Senator representing
20 the 31st State Senate District.

21 Our second panelist is Todd Rutherford,
22 Minority Leader for the South Carolina State
23 House. Representing South Carolina's 71st House
24 District.

25 And let's see. Our third panelist is

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Ahmad Nabil Abuznaid a Legal and Policy Director
for Dream Defenders.

And for the first panel we were to have
Lucia McBath, the mother of Jordan Davis.
Unfortunately, she won't be able to join us today.
She sends her sincere apologies and asks that her
previously submitted statement be accepted for the
record in lieu of her testimony, which we will do.

So I will now ask the panelists to swear
and affirm that the information that you're about
to provide us as true -- is true and accurate to
the best of your knowledge and belief. Is that
correct?

SENATOR CHRIS SMITH: Yes.

REPRESENTATIVE RUTHERFORD: Yes.

MR. AHMAD NABIL ABUZNAID: Yes.

COMMISSIONER CASTRO: Thank you.

Senator Smith, please proceed.

SENATOR CHRIS SMITH: Thank you. And I
want to first welcome you to the sunshine state of
Florida. I appreciate you coming down here and
having this very important grownup discussion
about stand your ground. And I especially as a
legislator who deals with the budget really

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appreciate you coming to Florida.

My district is the 31st Senate District which is Broward County, which is Fort Lauderdale, about three hours south of here. Which is home of a lot of good shopping so after this feel free to trek down I-95.

I'll begin my remarks. In 2005 Florida passed the first stand your ground law becoming in the process the national pioneer for all subsequent tragedies and unintended consequences that have followed. We have seen the law used by aggressors as a license to kill by allowing anyone to escalate minor disputes into a deadly incident. Anyone to provoke a confrontation and then seek immunity under stand your ground, an escape hatch of fear of imminent bodily harm or death. While these provocations can occur anywhere at any time, aside from the most notorious cases, namely, the Trayvon Martin case and the Jordan Davis case.

Other less well known cases and incidents have occurred outside of family restaurants, bars, house parties, public parks, and as a result of road rage confrontations.

Within weeks of the national uproar over

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the killing of Trayvon Martin in 2012 I convened a task force of prosecutors, defense attorneys, law enforcement personnel, and scholars to review the law and make recommendations for legislative changes.

My task force issued a report and recommendations in May of 2012. Among the things my task force recommended were education of the public and law enforcement officers on the stand your ground law.

Two, creation of a system to track self-defense claims in Florida so we could identify any desperate (phonetic) treatment.

Three, allowing police to fully investigate all killings by detaining suspects, even when they claim stand your ground immunity.

Four, defining the term "unlawful activity" and clarification of the role of provocation, thus allowing the law exactly when people are aggressors such as -- that they should not -- when people are aggressors they should not be able to hide behind stand your ground after taking a life.

The Governor of Florida convened a task

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force and they also recommended that the legislature examine the term "unlawful activity" as to give guidance to court's on the proper application of the law with the intent to protect innocent persons.

The Governor's task force also agreed with my recommendations to educate law enforcement agencies, prosecutors, and judiciary on self-defense laws and to review the standards regulating neighborhood watch associations.

Despite the recommendations by my task force and the governor the legislature only looked at two of the recommendations, removal of immunity from injuries and deaths of an innocent third party. And review of 10/20 life, minimum mandatory in a narrow scope of cases involving stand your ground.

At this time the state still refuses to compile a comprehensive database of cases. Luckily, the Tampa Bay Times, the Urban Institute, and the American Bar Association and others have, and data shows disturbing disparity involving the impact of this law which remains bewildering to law enforcement, confusing to prosecutors, and

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misapplied by courts.

I noticed on your agenda that you have persons discussing the statistics and so I will not go through those statistics.

Just to recap that the overwhelming statistics show that it's the race of the victim which is most dispositive of the outcome of the cases. When the victim is black there are huge statistics showing that you're more likely to proceed with a stand your ground defense.

This year I filed a bill, a bipartisan bill, which did four of the things in which I discussed. It clarified the definition of aggressor, and made clear that people who start fights and chase victims down cannot later claim immunity or self-defense under stand your ground.

It provided guidance to judges and jury's about the legislative intent of the law. And it placed guidelines on neighborhood watch programs and allowed innocent bystanders to file lawsuits to recover injuries.

Even though the bill passed two committees it was later blocked from the Senate floor.

2 Still I provided the legislature with
3 yet another opportunity to right the wrongs of
4 this law. I proposed a simple, common sense
5 amendment to a bill being considered on the floor
6 of the Senate. My amendment would have specified
7 the how, when, and by whom of using the statutes'
8 defense.

9 It would have defined aggressor.
10 Stopped those who start and bring themselves to a
11 deadly fight from hiding behind the law's
12 protections. It would have simply added a
13 bipartisan statement of legislative intent which
14 would finally give notice to the public and
15 guidance to judges and juries about what the
16 legislature meant to achieve with stand your
17 ground statute.

18 My amendment would have clarified that
19 justification and immunity protections in the
20 statute were not meant to show aggressors,
21 vigilantes, and others -- and condoned other acts
22 of revenge. Yet, the Senate rejected these
23 concepts. My amendment was rejected along party
24 line votes with the majority party prevailing.

25 Over and over some legislators have

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disingenuously said that this -- that that tragic outcome was not the intent when we passed stand your ground. But that is cold comfort to anyone who has lost a family member to a senseless violence inspired in part by perpetrators belief that this law gives them absolute right to take a life and provide them immunity after doing it.

Adding insult to injury, when given the opportunity to clarify, clearly outline and statute, what exactly they meant when they passed the statute, some of my colleagues turned their backs on the opportunity, and in doing so turned their backs on many youth who tend to be victims of this egregious abuse of the immunities and defenses contained in the current law.

Even the -- notably, the one thing that the legislature did do this session was to expand stand your ground. Cynically invoking the case of Marissa Alexander to justify broadening the flawed law. Purportedly the purpose of the new expanded language was to help protect a person who fires a warning shot in circumstances where they would be free to use stand your ground to injure or kill someone. It provides that such a person cannot be

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prosecuted.

However, the new language goes further and does much more. It allows stand your ground claimants to have their records expunged if their charges are later dropped or they prevail in court. This will make it virtually impossible for the public to effectively track these incidents and thereby use the data to demonstrate desperate (phonetic) impact of the law.

COMMISSIONER CASTRO: Thank you, Senator, appreciate your presentation.

Representative Rutherford, you can have the floor.

REPRESENTATIVE RUTHERFORD: Thank you and good morning. And thank you for inviting me. And I apologize that I seem to have lost my tie in transit, didn't realize it until this morning when I was coming over.

And I do want to state first and foremost that while I am one of the legislator's that voted for the stand your ground law in South Carolina and continue to be one of its proponents I am interested in the conversation and the dialog this morning as to whether any changes can be made

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to make it any better.

In South Carolina I do believe that it will remain the law of the land, that it is not going anywhere any time soon. And as a lawyer I have used stand your ground successfully in one case and have another hearing coming up in November. And recently used it this week in another case. And have not seen the data to suggest that there's a disparate impact on African Americans, although I am very interested in Senator Smith's data and how we can look at that and make sure that that is not going on.

I will not remain a proponent of a law that clearly has a disparate impact on African Americans, although it has not been shown to me that that is the case currently in South Carolina.

The last case that I tried was the State of South Carolina versus Shannon Scott. It deals with one of the instances that Senator Smith brought about. My client was charged with -- when he was at home he received a phone call from his daughter who was being chased home from a nightclub by some female thugs. They chased her all the way to her house. He had his daughter

2 pull in the backyard. When he did the female
3 thugs out front fired a warning shot. They turned
4 around at the end of the street, cut off their
5 headlights and as they were approaching his house,
6 again he requested that they please stop. He
7 fired a shot. And that shot hit a second car that
8 was following the female thugs and killed a 15
9 year old individual in that car.

10 My client was charged with murder for
11 the death of the 15 year old child. It was a
12 senseless tragedy that never should have happened.
13 But one that could have been prevented, (A) by the
14 female thugs never following his daughter home.
15 And (B) by the police arresting the female thugs
16 and charging them with felony murder as would be
17 allowed in South Carolina. No clue why that did
18 not happen and on the stand the police, when
19 confronted with why they did not arrest them said,
20 "I don't know."

21 And so an innocent person shot, clearly
22 the wrong person shot. But my client Shannon
23 Scott simply defending his home, his castle, and
24 his family who were cowering on the floor in the
25 kitchen trying not to get shot.

2 The one this week was an individual who
3 was at home and some people tried to do a home
4 invasion on his house. Beating on his door with a
5 sledgehammer. They beat on it three different
6 times as confirmed by witnesses across the street.
7 He opened the door, did not realize that someone
8 had tried to get in until he saw the marks on the
9 door. He then went to leave his apartment. In
10 doing so he was confronted by an individual with a
11 gun. The other gentleman with the sledgehammer,
12 who he thought had a gun, the individual pointed a
13 gun at him, my client exited his vehicle, fired
14 several shots, one of whom hit the gentleman with
15 the sledgehammer. He was not prosecuted. Is
16 going to do a statement to the police and will
17 receive immunity under the stand your ground law
18 for that case.

19 The next one in November is an 18 year
20 old -- ah, he's a 17 year old child at the time,
21 was at a restaurant, fast food place, after a
22 basketball game. He -- it was a -- because it was
23 a basketball game with rival teams there was --
24 there were several words being thrown back and
25 forth in the restaurant. My client leaves the

2 restaurant, goes and gets in his vehicle and as he
3 is leaving the restaurant is approached by another
4 kid -- because these are 17 year olds -- who comes
5 up to his window, and the allegation is that the
6 victim in this case, or the person who was
7 stabbed, reached in the window and tried to grab
8 my client. And certainly put him in fear for his
9 life. My client reached out the window with his
10 knife -- the knife that his grandfather had given
11 him -- and he stabbed him one time, cut off the
12 bottom of his heart, and the victim died within
13 the next five minutes.

14 Tragic cases in every single instance.
15 But, cases that in South Carolina would have left
16 an African American male charged with a murder
17 charge that they would probably not be able to
18 defend financially. That would have left them in
19 jail in South Carolina typically for a year, two
20 years before they would have ever gone to trial.
21 And having the ability to use the self-defense
22 case law, South Carolina does not have a
23 self-defense statute prior to stand your ground so
24 you would have had to have relied on case law,
25 which suggests that you must retreat. That you

2 cannot elevate the use of force. Which in most
3 instances is troubling in and of itself, but
4 certainly in these cases, it would have led to the
5 most recent client, the child -- the basketball
6 game, because he used a knife on someone who was
7 unarmed, not able to avail himself of the
8 self-defense law.

9 It has been my opinion since I saw the
10 -- the proposal for stand your ground that the old
11 law, the old case law as it related to
12 self-defense was outdated. That people should not
13 have to live in fear. That you should not have to
14 measure your use of force by that which is being
15 used against you. That it was archaic and that it
16 continues to be.

17 I am troubled by the fact that someone
18 could act as a vigilante. But I do believe that
19 the courts, at least in South Carolina thus far
20 have rooted those cases out. Am troubled by the
21 fact that someone could be a wrongdoer and claim
22 that he was lawfully someplace where he should not
23 have been.

24 That case came up in South Carolina. A
25 gentleman that was in the middle of a home

2 invasion tried to claim that he was forced to do
3 the home invasion. And when he shot the homeowner
4 that he deserved immunity under stand your ground.
5 The judge laughed at it. Sent it up to the
6 Supreme Court and the Supreme Court tossed it out.

7 I am told by a number of lawyers who
8 have not given me permission to use their clients
9 names or their fact scenarios, but that there are
10 several other cases pending in South Carolina with
11 African American defendants who shot white
12 individuals who were the wrongdoers who are
13 seeking to claim stand your ground as an immunity
14 defense, but have not been able to do so because
15 they simply cannot get a hearing. It is -- the
16 evidence that I have seen in South Carolina, the
17 anecdotal evidence has been that it is more used
18 by African American defendants than it is by white
19 defendants.

20 I can tell you that I watch the news as
21 everyone else and I am concerned about the Trayvon
22 Martin case, about all of the cases in Florida
23 that seem to be going in the wrong direction. But
24 I don't know that I've seen one where the stand
25 your ground law was used successfully and used in

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an immunity hearing in such a way as to create a disparate impact.

I welcome that data. And as you all, once I get that data if there is a change that can be made in the law I'd seek to do it.

Thank you.

COMMISSIONER CASTRO: Thank you, Representative Rutherford.

Next we'd like Mr. Abuznaid to present.

MR. AHMAD NABIL ABUZNAID: Thank you. Thank you to the commission for convening this initiative. We are extremely excited for the future results.

I'm here representing the Dream Defenders, a youth based human rights organization in Miami, Florida. Our organization was created in response to the tragic killing of Trayvon Martin. A national and international dialogue has been brewing around the harmfulness of stand your ground laws, also known by many as "shoot first" laws, and their implications for the right to life, non-discrimination and equality before the law. These stand your ground laws have, in a sense, legalized the devaluing and dehumanizing of

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minority lives in a very real way.

We have recently heard from the members of the United Nations Human Rights Committee that stand your ground laws are incompatible with the right to life. We have also heard great concern from the Inter-American Commission on human rights regarding many of these tragedies. It is imperative that the federal government ensures that state and local governments do not promulgate laws that violate rights as fundamental as the right to life and equality before the law.

Stand your ground laws amount to state complicity in the perpetuation of violence by its citizens. Furthermore, our society has a long history of racial discrimination and a system that to put it mildly has never been kind to its black and brown minorities. Since we understand that the system itself has had to be constantly revised to deal with its inadequacies related to minorities it should come as no shock that a law allowing vigilantes to use fatal force on the streets would disproportionately affect minorities. Obvious history and notions aside, research has shown that stand your ground laws are

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dangerous in terms of increasing levels of homicide and are discriminatory in their application as to race and gender.

Statistics based on a database compiled by the Tampa Bay Times of SYG cases in Florida since the passage of the law show that a defendant who killed a white person was more likely to be convicted of a crime than a defendant who killed a black person. White-on-black homicides are 250 percent more likely to be found justified than white-on-white homicides in stand your ground states. This disparity increases to 354 percent in stand your ground states. Moreover, the Urban Institutes Justice Policy Center conducted a study using the FBI's Supplementary Homicide Report for 2005 until 2009 and determined that less than 2 percent of homicides are eventually ruled to have been committed in self-defense, that number contains a significant split between stand your ground and non-stand your ground states.

Women have also been disproportionately impacted by stand your ground, especially those dealing with domestic violence. Florida has been home to the tragic handling of Marissa Alexander's

2 case. In a recent analysis of FBI homicide data
3 prepared by the Urban Institute comparing stand
4 your ground and non-stand your ground states and
5 examining the use of stand your ground laws in
6 cases involving women defendants, 13.5 percent of
7 cases where a white woman killed a black man were
8 found justified, whereas in contrast only 2.9
9 percent of cases where a black woman killed a
10 white man were found justified. Again, this
11 highlights the disproportionate -- thank you --
12 disproportionate role that race plays in
13 justifiable homicides and how that is overlaid in
14 cases involving women defendants.

15 The data also revealed that such laws
16 introduce bias against black victims and in favor
17 of white defendants. In cases where the defendant
18 was black and the victim was white, there was
19 little difference between the stand your ground
20 states and other states. However, when the
21 defendant was white and the victim was black 16.85
22 percent of the homicides were ruled justified in
23 stand your ground states and only 9.15 percent in
24 non-stand your ground states.

25 Even worse, blanket immunity and broad

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discretion to law enforcement offered by Florida-type stand your ground laws infringe on victims access to courts and their right to a remedy. The more recent case involving the murder of Jordan Davis and the jury's deadlock on his murder -- his murder count exposed just how much confusion stand your law -- stand your ground have introduced into the criminal process.

It took a second trial and jury to convict a man of a murder that everyone knew he committed. Why did the jury find trouble with the decision? Stand your ground laws of course, because they allow for subjective biases, implicit biases to guide decision making that could later be fortified by law. Sadly, most victims and or their families will never receive justice and worst off they will have to live without their loved ones for the rest of their lives all because someone thought they looked suspicious while walking through their father's neighborhood, or they disturbed someone's movie experience while texting the babysitter. As you may know, some of the most high profile tragedies we have witnessed in stand your ground have occurred here in

2 Florida. We have been the first state to enact
3 such a law and Florida should be the first state
4 to repeal such a law. The federal government must
5 support such a repeal. The federal government
6 must step in to condition funding to states based
7 on its ability to guarantee equal protection of
8 all of its citizens and elimination of laws that
9 hinder their ability to fulfill that duty.

10 On the ground here in Florida groups
11 like the Dream Defenders, Community Justice
12 Project, Power You, and others have been rallying
13 around communities concerned about that very
14 protection of our lives, which stand your ground
15 stands in the way of.

16 Unfortunately, the people's call for a
17 repeal has been ignored by the Florida
18 legislature. Not only that, but more legislation
19 being sent down the pipelines to gun us down,
20 including a so-called "warning shot" bill whose
21 advocates propelled it forward under the guise of
22 support for Marissa Alexander. But these
23 lawmakers have shown that they don't care about
24 Marissa. They don't care about Trayvon, Jordan or
25 our communities. Florida and other states are

2 currently looking at laws that would arm
3 schoolteachers with guns, and I would postulate
4 that it would not be long before one of our
5 teachers stands their ground against one of our
6 kids. We are not safe in our streets, our
7 neighborhoods, gas stations, movie theaters, and
8 soon to be schools.

9 Thank you.

10 COMMISSIONER CASTRO: Thank you. At
11 this point in time I would like to encourage
12 commissioners to begin to ask questions. I'll
13 cede the floor to Commissioner Yaki to begin. And
14 just identify for me then we'll keep a list.

15 COMMISSIONER YAKI: Thank you very much,
16 Mr. Chair. And this goes to all three panelists.
17 I was struck by the notion of due process, and I
18 think for, especially Mr. Rutherford who's a
19 lawyer as well. The issue of due process I think
20 is very important in stand your ground from a
21 number of different factors. But especially from
22 the standpoint of the person who may be the victim
23 of a stand your ground defense. That person may
24 be injured, that person may be dead, and not being
25 able to present his or her side of the story

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you've essentially ceded the authority to be judge, jury, and for lack of a better word, executioner to the person asserting that. And I guess, the question that I'm asking is, if you were confronted with a statistic, a scientific fact, that the research shows that people are more likely to act in a certain way based on unconscious racial stereotypes they may have within them. I mean, I'm not talking about somebody who says, "I'm a racist I hate, you know, blankity, blank, blank, or blank, blank." I'm talking about the studies that show that if you give a test to people there's a disparity in how people judge people based on what they look like. It doesn't matter -- it doesn't matter if they claim themselves to be racist or not. But the most current example's the fact that if you show -- if you talk about voter I.D. law to a white voter, but if you accompany that image with that of the image of a black person at the voting poll support for a voter I.D. law shoots up well beyond the statistical range. By the same token when you have these tests that test for implicit -- implicit bias a black person is much more likely

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to be shot by someone much more than a white person in these tests based on the fact that it's unconscious bias in the system.

So I'm just asking when you have a law like stand your ground which has in it essentially a, for lack of a better word, a trigger component in it to say I have to make a decision right here and right now, what am I going to do. And if there's a built in bias against finding for not shooting against a white person and for shooting against a black person how do you reconcile that as a legislator and a policy maker?

REPRESENTATIVE RUTHERFORD:

Commissioner, thank you for that question. And I can tell you that as a black man growing up -- who grew up in South Carolina I am well aware of implicit bias. And as the lawyer for the gentleman that, most recently in South Carolina, Levar Jones, who was shot by the trooper while simply reaching for his wallet. A trooper who I've known for 10 years. I can tell you that I understand also how implicit bias comes into play.

In that particular case Mr. Jones was requested by the trooper to get his I.D., he

2 patted his back pocket, not finding it there he
3 turned to go into the car and Trooper Groubert of
4 the South Carolina Highway Patrol shot at him four
5 times hitting him once in the hip.

6 The most troubling part was Trooper
7 Groubert's statement afterwards where he defined
8 or tried to define Mr. Jones as being an
9 aggressor. That he aggressively went into his
10 car. That he aggressively went into his case.
11 That he aggressively approached him. That he
12 aggressively -- none of which was indicated on the
13 video, but all of which, absent the video would
14 have been enough to clear Trooper Groubert.

15 Troubling because I still see members of
16 the South Carolina Highway Patrol when I go to
17 court who talk about race and that Trooper
18 Groubert is not a racist. And they missed the
19 point that he would not have done that if it were
20 not a black male, who looked unlike Trooper
21 Groubert. Who did something that Trooper
22 Groubert, in his mind, may have believed to be
23 aggressive. Because he was simply following his
24 commands.

25 I, like, Attorney General Holder was

2 walking in Georgetown when I was in college and a
3 cop walked up to me and placed his baton in my
4 chest and told me to cross the street. I said,
5 "Why?" And he hit me again with the baton and
6 told me to cross the street. And I crossed the
7 street. This was in 1989, this is not the '60s.

8 I am well aware of the bias that goes
9 on, but I also see the bias in the judicial
10 system. I've listened to the statistics that are
11 given and well aware that a white defendant in a
12 stand your ground case may have a better ability
13 to hire a lawyer to assert his stand your ground
14 rights than an African American defendant, that as
15 my client this week with the stand your ground
16 hearing he was able financially to bring me to the
17 scene to talk to law enforcement at the scene to
18 detail for them how this happened. And to mention
19 stand your ground to law enforcement before an
20 arrest was ever made. And I know that implicit
21 bias and racism run rampant throughout the
22 judicial system, especially in South Carolina.

23 It cannot be taken out of the system in
24 one fell swoop. And to suggest that by myself or
25 any other proponent of stand your ground is simply

2 ridiculous. I would be curious to know in --
3 within the statistics how much racism as a whole
4 played into the impact in the end. And that means
5 that the law enforcement officer didn't care that
6 stand your ground laws existed. There was a black
7 person with a gun and a dead white person and he
8 was simply going to arrest them anyway and ignore
9 stand your ground. Which I have had happen as
10 well. Stand your ground, the way that I intended
11 when I voted for it, the way that I stand behind
12 it as a proponent is meant so that people do not
13 have to live in fear. That you don't have to walk
14 down the street with your children and someone
15 intends you harm and you would have to retreat
16 back to the furthest place. You could not elevate
17 force. You could not do any of those things,
18 which to me negate common sense.

19 Now in saying that about common sense I
20 again use common sense and apply the fact that
21 racism is rampant in our system and I don't know
22 how to take it out. Implicit bias is rampant in
23 our system and I don't know how to take it out.

24 But in a situation where an individual
25 is using the law and the law as it is currently

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written in my case is, African Americans in some cases, wrongfully used by white Americans, but simply using the law as it is written judges are supposed to determine without the implicit bias, without the built in racisms that are in the system, are supposed to determine that someone is immune from prosecution. They are supposed to be the ones that determine reasonableness. If they're not doing their jobs in South Carolina we would look to remove them. But I don't know how to take that out of the system without taking out the ability of other persons to defend themselves.

COMMISSIONER CASTRO: Senator Smith.

SENATOR SMITH: If I can -- two points. When you talked about due process, looking at the Florida law, I haven't looked at the South Carolina law, due process also involves the officer on the scene. The Florida law is so ambiguous that it's not a judge making the determination it's an officer on the scene, because the way the law's written it says, "person cannot be arrested." And in the arrest definition it says, "detained." So the Florida law is so ambiguous that an officer coming up on a

2 scene in a park with a dead person and a person
3 holding a gun that says, "I'm invoking stand your
4 ground," realistically that officer cannot detain
5 that person, thus do a full investigation. We saw
6 it play out in the Trayvon Martin case where the
7 officers were confused as to whether we can even
8 detain Mr. Zimmerman.

9 And so when you talk about due process
10 that is a major problem in Florida. We're not
11 even getting to judges, we're not getting to
12 jury's. Officers on the scene are told within the
13 law, that we've tried to change, they cannot
14 arrest. An arrest is defined as "detaining" also.

15 And secondly I noticed in all of the
16 paperwork and I just heard, one of my pet peeves
17 when discussing stand your ground is when anyone
18 mentioned "retreat" today, remember Florida law
19 and I'm unsure of other laws, always had a word
20 that everyone neglects, it said, "safely retreat."

21 Prior to 2005 we had self-defense in
22 Florida that's often ignored. The Florida law has
23 always been, you had a duty to safely retreat.
24 There wasn't a "turn and run" portion of the
25 Florida law. It always had "safely retreat,"

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which is ignored. So please, as people discuss the Florida law today keep that in mind, prior to 2005 it had the words "safely retreat." It was never a concern of you having to run away from someone attacking you in public.

MR. AHMAD NABIL ABUZNAID: If I may add, I think that Senator Smith definitely contributed a couple of very important points, but I also wanted to add that while it's important that people shouldn't have to live in fear, due to stand your ground others have to live in fear now.

And also, looking at fear and breaking down fear and finding that a lot of times the fear is unfounded with -- Michael Dunn it was because hip hop music was blaring from the car. And Jordan Davis and his friends seemed to be like thugs to Michael Dunn. And, you know, to George Zimmerman, Trayvon Martin seemed suspicious because he had an implicit fear of black men in hoodies.

And so I think that people should not have to live in fear, however we should navigate that fear a little bit deeper and figure out where it comes from. You know, the fact is that if

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2 we're going allow for, you know, vigilantes to not
3 be afraid then those of us minorities who are
4 often viewed as threats by society might start
5 being very afraid of walking around our
6 neighborhoods.

7 COMMISSIONER CASTRO: Before I give the
8 floor to Commissioner Narasaki I actually have a
9 question. Well, we really have been talking about
10 this issue and it is talked about in a black/white
11 binary for the most part. Is there anything each
12 of you might be able to shed light on in terms of
13 the impact on Latino's when the stand your ground
14 laws are used?

15 SENATOR SMITH: If I can, Mr. Chair.
16 It's -- in part of my introduction I talked about
17 the lack of statistics. We can only go by what's
18 been reported in say the St. Pete Times and those
19 others. That's part of the problem, we don't keep
20 the actual statistics about black, white, and
21 Latino. A lot of times when you're looking at it
22 you can only go by if it was said that "this was a
23 black male," or it doesn't say, "this was a
24 Hispanic male." And so it's hard to really give
25 you a definitive answer and that was part of the

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2 concern that we have in Florida is actually
3 keeping statistics because part of what we
4 proposed is that if an officer comes up on the
5 scene in Hialeah and it's involving a Latino and
6 someone else and that officer determines that it's
7 a -- this is a stand your ground case, they could
8 go home. We wanted to make that officer keep
9 actual records that stand your ground, victim,
10 aggressor and perpetrator or however, so that we
11 can -- so that you can come back in 2 or 3 years
12 and discuss that.

13 So as you look at these laws please look
14 at -- it's hard to really answer your question
15 without anecdotally looking at facts because in a
16 lot of these states we don't require officers or
17 judges or prosecutors to keep actual statistics
18 that you can look at empirically in a year or two
19 to determine that.

20 MR. AHMAD NABIL ABUZNAID: I would also
21 like to add that often times, you know, who's
22 categorized as white, Latino, Hispanic, Arab,
23 Muslim, has a great weight in factors.

24 If you look at the Department of
25 Corrections, you'll look down at the list of

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inmates, you'll see all types of Muhammad, Ahmad all that and it says "white." So I think sometimes, you know, the way people are labeled has a great deal with our ability to keep these statistics.

REPRESENTATIVE RUTHERFORD: I've not seen that data in South Carolina and certainly would be interested in looking at making judges and law enforcement officers keep that data to see whether there is a disparate impact on Hispanic males as a class.

COMMISSIONER CASTRO: Thank you.
Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Mr. Chair. I want to thank Minority Leader Rutherford for sharing the stories of his clients. It shows how tragic all of these situations are.

I have two questions though. One is, does South Carolina law also include like Florida immunity from civil liability? And if so, what should the rights of the family who's lost a loved one who was an innocent bystander in that situation if there is immunity from civil liability because there's more than one victim in

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that case?

And the second is, it sounds like you do support data collection. Would you support the federal government tying funding for federal criminal justice funding to requiring states to set up sufficient reporting systems?

REPRESENTATIVE RUTHERFORD: I'll answer the second question first and say, absolutely. The collection of data is essential to the understanding of any law and its impact. And in these cases especially so because, like I said, in South Carolina I have not seen what I've seen in Florida. I could not stand here as a lawyer, and a proponent of justice, and look at what goes on in Florida and act like it's okay.

The first question is and -- now I'm losing the first question --

COMMISSIONER NARASAKI: Civil liability.

REPRESENTATIVE RUTHERFORD: Right, yes. South Carolina -- the stand your ground laws came out of the conservative group that sent the law to South Carolina. We looked at it, we passed it. It mirrors Florida's law. In fact, our case law in South Carolina initially came from Florida as

2 the Supreme Court looked at how to deal with stand
3 your ground cases. It not only offered civil
4 liability -- I'm sorry, civil immunity, it also
5 allows for the return of attorney fees if someone
6 is sued after they are found immune from
7 prosecution under a stand your ground case.

8 As to the victims and what the victims
9 can do, the problem gets to if you have a
10 situation where someone has truly availed
11 themselves of the stand your ground law, which is
12 difficult to determine. And I say that because if
13 a law enforcement officer comes out to the scene
14 and believes that an individual used self-defense,
15 that law enforcement officer's typically an
16 investigator at that level making that
17 determination, not just a line officer, but
18 somebody that has, hopefully, years of experience.

19 That person is determining that the
20 individual, the perpetrator in this case because
21 there's a shooting or a stabbing or whatever the
22 -- the -- it's the person that took the life. So
23 I don't want to call them the victim, but the law
24 enforcement officer may consider them to be the
25 victim.

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That he is determining that they didn't do anything wrong or that they simply acted in self-defense. Your stand your ground is somewhat of an articulation of self-defense.

In doing so stand your ground says they are not to be detained, they are not to be arrested. Which some people take -- well, they're not investigated. I disagree. I think that an investigator should, at least, in South Carolina an investigator would investigate a murder case not just a line officer.

That investigator determines that this person used self-defense, that they can articulate that they had a lawful right to be where they were, that they had a reasonable fear for their life, and that they acted on that fear and that belief. The investigator determines that they are clear and he's not going to detain or arrest them. Which, under self-defense he should not have done anyway. But, South Carolina, as I stated before had no self-defense law it was based on case law. So in order for an individual to be cleared in South Carolina they would have to have been charged with murder or charged with whatever the

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offense was --

COMMISSIONER NARASAKI: Yeah, I'm actually, though, I'm not focused on the criminal process I think it's -- I'm focused on the civil liability, which as you well know is a different standard. And the question here is, I'm not focusing on whether the person who felt fear, what he did versus the person who was causing the fear. I'm talking about the innocent bystanders who had nothing to do with either side of the equation, who nonetheless lost their lives. So what is the recompense for them?

REPRESENTATIVE RUTHERFORD: The recompense --

COMMISSIONER NARASAKI: And are you concerned that this stand your ground law could in fact create a huge public safety issue because now you're not talking about someone who's close to their home, but you're talking about someone who could be in a crowd wildly shooting. Is that something that you feel comfortable with, and if there's no civil liability do you feel like there might be a tendency for more of that to happen?

REPRESENTATIVE RUTHERFORD: No, ma'am.

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2 have a right to possess a firearm and the federal
3 government gave him 23 years in prison.

4 And so that's how they dealt with that
5 case. But would he have -- if he had shot, as he
6 did, and paralyzed someone would they be able to
7 sue him, he wouldn't have any assets for them to
8 be able to sue him anyway --

9 COMMISSIONER NARASAKI: Yes, but what
10 we're talking about in your case, your client had
11 a house.

12 REPRESENTATIVE RUTHERFORD: Right. So
13 -- well, he rented the house and so there was no
14 insurance.

15 COMMISSIONER NARASAKI: Well, I think,
16 you know, the issue about whether they would have
17 actually had money or not is not the question that
18 I'm asking. The question is, should there be some
19 kind of recognition in the law that something
20 happen to someone who is an innocent bystander?

21 REPRESENTATIVE RUTHERFORD: Thank you.
22 And, yes, to answer that question succinctly, an
23 innocent bystander who is shot can always sue,
24 whether they could ever collect is a different
25 story. Even under this they could sue someone

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that was cleared because -- well, when you say "innocent" it -- it gets dicey. And the short answer is, "I don't know."

COMMISSIONER CASTRO: Ah, Representative -- Senator --

SENATOR SMITH: If I can, I think you would -- the Florida law clearly says immunity even from civil liability. So I guess in your scenario -- or even in your scenario if the person negligently is defending themselves and then just sprays the room or something that in Florida even though they were negligent and just, you know, spraying a room they're immune from civil liability even though they were highly negligent as long as they claim stand your ground. And I think that is a concern. I don't know if your statute is that specific.

REPRESENTATIVE RUTHERFORD: The statute is that specific but I think -- I don't think you can negligently spray a room. I think if you're spraying a room you're not going to be cleared -- you should not be cleared under the statute by stand your ground. That's not defending yourself. That's negligently spraying a room.

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And there's a difference -- so if -- if someone can show me the case where someone is clearly defending themselves and found immune from prosecution by -- under stand your ground, and should be sued, I'd love to look at it. But you can't negligently spray a room and claim stand your ground, that's not the same thing --

SENATOR SMITH: There is a Miami case in which it happened, a drive-by shooting and a 3 year old sitting on her porch, the young man was defending himself under stand your ground, and when he shot at the guys shooting at him he hit a 3 year old sitting on her porch. He's immune from civil liability, we're not talking about the criminal case, we're talking about civil liabilities. So her family could not sue that perpetrator even though he's maybe judgment-proof because he's broke there still is a civil immunity from going after that person who shot.

REPRESENTATIVE RUTHERFORD: But as tragic as it is that 3 year olds parents should not be suing him they should be suing the people in the car that were shooting at him. That's what stand your ground says. And to take that to its

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logical conclusion --

SENATOR SMITH: That's what we're talking about --

REPRESENTATIVE RUTHERFORD: -- the suggestion is that the individual that was being shot at should, what, get shot? Should not be able to defend themselves? The civil liability for that 3 year old, for those parents of that 3 year old, goes against the initial people that started the shooting, not against the person that, unfortunately, and tragically, took the life of their 3 year old. So liability would extend not to the person that did the shooting, but to the person that caused the shooting to take place.

So, yes, the person that did the actual shooting would be immune, but the person that caused the shooting absent a collection, absent being able to do so, should be the one that is sued.

So they are not blocked from civil liability, the civil liability is taken from the person that is found immune and extended to the person that actually caused this to transpire in the first place.

2 In the case that I just mentioned in the
3 entertainment district it would be that they would
4 sue the person that pulled the gun. In the case
5 that I talked about initially where the people
6 were in their home, they would sue the girls in
7 the car, if all of these people are rich, and
8 understand that you have to have the ability to
9 pay.

10 But in the 17 year olds case there would
11 be no -- they would have nobody to sue because
12 their child was simply involved in -- and it's a
13 one-on-one situation. But anytime you've got an
14 innocent person who was hit, someone not involved
15 in whatever is going on, that person's civil action
16 is against the wrongdoer not the person that is
17 found immune.

18 COMMISSIONER CASTRO: Senator, did you
19 want to add something it looked like you were --

20 SENATOR SMITH: Well, I guess we're --
21 I'm a little confused. The wrongdoer even if --
22 when I gave the scenario of the person doing the
23 shooting from the car -- and I understand under
24 the Representative's scenario the person who
25 initially -- who initiated it and caused the

2 incident to happen should be the person liable.
3 But if the person that's actually doing the
4 shooting even though they're defending themselves,
5 if they defend themselves in a negligent manner
6 under the case law they're immune from -- from --
7 even in the case of negligence they're immune from
8 civil liability.

9 REPRESENTATIVE RUTHERFORD: Yes, sir.
10 And this is where this came up and this is prior
11 to stand your ground. And it came up several
12 times in the case that I tried with the 15 year
13 old deceased victim.

14 If someone robs a store and the store
15 owner has a gun and he pulls the gun to defend
16 himself and he accidentally hits someone else in the
17 store, do we say that store owners should not have
18 guns to protect themselves?

19 Do we mandate that the police always
20 shoot straight? Do we take guns from police
21 officers who mistakenly hit innocent victims? The
22 answer is, that the wrongdoer, the person that is
23 causing the problem in the first place, is the one
24 that's subjected to civil liability and criminal
25 liability. That's the way that it should go.

2 I understand that under stand your
3 ground we have an issue of whether this actually
4 -- whether this person is actually the wrongdoer.
5 And that's the bigger issue. But as it relates to
6 civil liability, the civil liability goes to the
7 person that created the wrong in the first place.

8 You can't say that someone negligently
9 shot if the only reason why they shot is because
10 they were being shot at. You can't mandate that
11 -- in the case that I just mentioned with the
12 South Carolina Trooper, at pointblank range he
13 fired at my client 4 times, he hit him once in the
14 hip and just barely on the side. He almost missed
15 him that time too, 4 times, pointblank range.

16 You don't mandate that people shoot
17 straight. You would hope that they would not have
18 to shoot at all. And stand your ground, in my
19 opinion, suggests that I have a right to defend
20 myself and I should not fear defending myself that
21 later on someone's going to say, "Well, you should
22 have shot better." And that was actually the
23 testimony from the police officer as to why he
24 arrested my client, he said, "He should have been
25 a better shot."

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That's not the law. That ain't the law for police officers. It's not the law for individuals. The law says I have the right to be clear, to free myself from thugs, from people that intend to do me harm. And that if I defend myself I should not be sued, nor should I be arrested, detained, or prosecuted because of it.

I'm expensive and if someone is arrested or detained and they have to hire me to defend them they have spent a lot of money doing so. And in doing so and they are initially found -- and they are eventually found immune from prosecution what the system has said is that you were wronged, you were wronged by police officers who may have seen you as a black man who killed a white person who they didn't want to find you immune at the scene so they arrested you. They made you go through this trial. That's wrong. And that happens. We can't take racism out of the system, but we can't also sit here and act like situations don't occur. And they will. And they will continue to where someone defends themselves and then finds themselves placed in a position where they have to avail themselves of the stand your

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ground law.

And once they do so civil liability is there. It is clear. And it goes against the wrongdoer, the perpetrator, not the person that defended themselves.

SENATOR SMITH: Every accident is not negligence, and I concede that. And Representative Rutherford you keep talking about "accident" and I concede that you don't have to be a perfect shot, but there are times when people are negligent. If it's an accident where your store owner, if he accidentally shoots someone, you must agree that all accidents are not negligence. We're talking about in cases where there is true negligence.

REPRESENTATIVE RUTHERFORD: I think by definition accidents are negligent, because if it's not negligent, then it's intentional. So you're only getting situations where someone either negligently did something or they intentionally did something.

You can do reckless. Reckless is they did it negligently but they should have known better. Someone that gets in an accident for

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speeding on a highway, they're going 10 miles over the speed limit, that's negligence. They're going 100 miles over the speed limit, that's reckless and there's a difference.

SENATOR SMITH: Well, I stand corrected, even in reckless in Florida you are still immune.

REPRESENTATIVE RUTHERFORD: But, again if the recklessness -- if the reckless act was brought on, simply by the person doing a wrong act, meaning that, my recklessness I'm firing because this person shot a gun at me we're not going to go back in South Carolina, and I doubt Florida will either, and say that when you are fired upon you can only fire one shot and that shot must be at the upper torso, at the head.

That's not the law. The wrongdoing is the person that caused this person to fire a shot. In the Trayvon Martin case, and I've said this repeatedly, what would have been interesting in Florida is if Trayvon Martin would have shot George Zimmerman and tried to avail himself of stand your ground, and was denied that by law enforcement and then by a judge. That's what would have been interesting whether a black man in

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a hoodie could avail themselves of stand your ground.

That's a test of the law. That's a test of the law. What George Zimmerman did, did not use your stand your ground. He simply said, "I'm white, he's black. Self-defense." People found that.

But if Trayvon Martin would have shot George Zimmerman, that's a test of the law.

The five -- it's five points, the entertainment district shooting where the young lady was paralyzed, that gentleman's family called me and I knew that there was a stand your ground case. I did not know that he was a convicted felon. That was going to be a test case in South Carolina as to whether they truly have the backbone to support when an individual that we know society -- whether he's Latino or African American has shot someone, an innocent white woman who's now paralyzed, whether he's going to be able to use the stand your ground defense.

They were able to skirt that by letting the federal government take it over, but that's a test of the law. That's a test of the law.

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COMMISSIONER CASTRO: Before we go on to Commissioner Achtenberg, actually Commissioner Yaki has an article here that is germane to the colloquy that was going on here.

Commissioner Yaki and then we'll go to Commissioner Achtenberg and then -- no, I know I've got a list here. It's Achtenberg, Patricia Timmons-Goodson, and then Gail.

COMMISSIONER YAKI: I just wanted to point out that cutting through -- cutting through all of this is that a South Carolina Judge has interpreted the statute to be identical to Florida and to grant civil immunity to an individual who -- who in exercising his or her stand your ground rights shot and killed an innocent bystander. I just wanted to put that on the record.

REPRESENTATIVE RUTHERFORD: Right, that's my case.

COMMISSIONER CASTRO: Commissioner Achtenberg, then Commissioner Timmons-Goodson, and then Commissioner Heriot.

And do any of the Commissioners on the phone want to indicate an opportunity to ask a question?

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COMMISSIONER KIRSANOW: Mr. Chair, this is Kirsanow, I may have one question.

COMMISSIONER CASTRO: Okay. I'll have you after Commissioner Heriot.

Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman. Senator Smith, my -- I have many grave concerns about the Florida version of the stand your ground law. The most significant of which is the interjecting of complete subjectivity into the self-defense law of Florida.

And by that I mean what used to be an objective standard, whether or not it was a reasonable person would have perceived the threat sufficiently to warrant his or her response with deadly force not whether or not a person with a, you know, a thin -- a thin skinned plaintiff or what have you, but whether or not this person perceived that they were in -- in danger of being -- having deadly force used against them they responded preemptively and in kind.

Can you explain the rationales being offered at the time that this revolutionary statute was adopted by the Florida legislature?

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2 What was the -- was there a precipitating event
3 that encouraged the legislature to throw out a
4 hundred years of common law and to change the
5 paradigm such that implicit bias is then baked
6 into the system?

7 We talked before about the limitations
8 to due process and the assertion was made, with
9 which I agree that given that there's implicit
10 bias abounding it affects everything that we do,
11 including what judges do, and what prosecutors do,
12 and what police do, and what persons on the street
13 do. But why bake in that bias into the
14 assumptions of this new law, what was the
15 rationale offered at the time, Senator?

16 SENATOR SMITH: It's funny that you
17 mention it, there was a case in North Florida that
18 was that cited as the impetus of this. It was a
19 -- it was after a hurricane, an elderly gentleman
20 and his wife -- and what was told to the
21 legislature by the proponents of it, there was an
22 elderly gentleman and his wife living in their
23 trailer after a hurricane and a man from South
24 Carolina who was working in Florida to help with
25 the clean up came to the gentleman's house, and an

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2 altercation ensued and the older gentleman shot
3 the young guy. And it was told that the older
4 gentleman was arrested and had to go through all
5 of these months of worrying about whether he was
6 going to be convicted, had to get lawyers and
7 everything. But it turned out to be a fallacy
8 once the purporters started looking into it later.
9 But just -- the climate in the Florida legislature
10 is the easiest law to pass is something, you know,
11 giving people more gun rights or tough on crime or
12 something like that.

13 And to go more to your concern it wasn't
14 thought that it would be such a subjective
15 standard. When it was passed and I voted against
16 it, but even colleagues of mine that voted for it
17 did not know and it wasn't fully explained that it
18 would be a subjective standard. And that's why
19 we've tried to go in subsequently and at least
20 move it to more of an objective standard. Because
21 as you've stated that's where the racial bias
22 comes in. That's where some of the concerns come
23 in because it's such a subjective standard that
24 people can avail themselves of this even -- not in
25 a reasonable circumstance. I don't reasonably

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2 think that I should shoot someone in a movie
3 theater because they threw popcorn at me. But if
4 it's subjective, if I go to a subjective and did
5 this person actually fear when the person stood up
6 and threw popcorn, they can avail themselves.

7 And so that's been some of the concerns
8 that we've had and some of the changes that we've
9 proposed to make it more of an objective standard
10 instead of subjective.

11 COMMISSIONER ACHTENBERG: And did the
12 legislature recognize that all of these judgments
13 would be made at the scene and essentially by the
14 officer? Did they understand that what had
15 traditionally been the prerogative of judges and
16 lawyers in courtrooms with due process,
17 evidentiary protections, et cetera, et cetera,
18 would now be pushed down to the investigating
19 officer to make some kind of, at least,
20 preliminary judgment about whether or not the
21 person had reasonable -- not reasonable fear,
22 whether the person had fear at all and I therefore
23 used deadly force against an aggressing, you know,
24 an aggressor?

25 SENATOR SMITH: At the time in 2005 I

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was the Minority Leader of the Florida House and I can honestly say this wasn't a big issue. When stand your ground passed, myself and two other lawyers that were in the Democratic Party, we wrote a letter -- we voted against it. And only about 12 of us did. The entire Senate, bipartisan, every member of the Florida Senate voted for it. It wasn't seen as a groundbreaking piece of legislation, and it sat actually dormant and not used until you started hearing about the Trayvon Martin case. So remember this passed in 2005, and when did you really hear about this law? After the Trayvon Martin case.

And now we've seen a plethora of cases come after it because people are starting to avail themselves and become embolden because they think, you know, "I got this great get out of jail ticket to do my aggression."

But, honestly, in 2005 members did not understand the full ramifications, non-lawyer members because we're, you know, legislature of a lot of people, did not understand the ramifications. And even the lawyers in the legislature didn't fully understand because it was

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such a new and groundbreaking piece of legislation. It was just sold on a political basis as "you shouldn't have to cut and run, you shouldn't have to retreat, you shouldn't have to turn and run. And this is the way of making -- giving your citizens a chance not to have to turn and run and get shot in the back."

COMMISSIONER ACHTENBERG: Thank you, Senator, I appreciate that.

COMMISSIONER CASTRO: Next we have Commissioner Timmons-Goodson, who will be followed by Commissioners' Heriot, Kirsanow, Kladney, and then Commissioner Yaki.

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

COMMISSIONER CASTRO: You're welcome.

COMMISSIONER TIMMONS-GOODSON: My question is for Representative Rutherford. One of the major criticisms offered of the stand your ground laws by opponents is that it so easily allows the escalation of fairly small incidents into deadly affairs.

And with that in mind I'd like to just explore with you for just a few moments your

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thoughts based on statements that you've made.

You've said early on that at the time that the stand your ground law was enacted in South Carolina that there was no self-defense law. That laws related to self-defense were outdated and archaic. That one could not elevate, I believe you said, the use of force.

In fact the common law was what was in effect. Is that not right? In other words, the judges used the common law, applied that to the facts that came before them. Is that right?

REPRESENTATIVE RUTHERFORD: They applied prior case law, exactly.

COMMISSIONER TIMMONS-GOODSON: Okay. And that prior case law was based on common law?

REPRESENTATIVE RUTHERFORD: That's right.

COMMISSIONER TIMMONS-GOODSON: Now you've also said that stand your ground or the stand your ground that you support means that people don't have to live in fear. That elevating -- not elevating force doesn't make sense to you.

First, I guess I want to know -- ask you to explain your thought that the laws that were in

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2 effect or applied relating to self-defense prior
3 to stand your ground laws, why they were archaic,
4 you know, what makes you say they were outdated?

5 REPRESENTATIVE RUTHERFORD: Well,
6 remember South Carolina had no statute on
7 self-defense. So it was simply based on your
8 ability to articulate your self-defense or why you
9 did something in a trial while you were on trial
10 for a judge, determine that are
11 absolutely right. You defended yourself. You
12 have a right to do so. And in doing so you should
13 be immune from prosecution.

14 The non-elevation --

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COMMISSIONER TIMMONS-GOODSON: Well, let me just ask you. How does that differ from any other defendant defending themselves in response to a criminal charge filed or a civil case where a plaintiff asserts something and, you know, one is called upon to gather your resources and to defend, I mean, how is that --

REPRESENTATIVE RUTHERFORD: Your liberty is not in jeopardy in a civil case. In a criminal case your liberty is in jeopardy. And so, for most criminal cases if a trial is going forward on a forgery or a fraud charge, what you're saying is that "I did not do this."

When it's related to self-defense then stand your ground requires that you say, "I did this. And I did this for this reason." And you're asking that a judge in an immunity hearing say, "What you did is reasonable." Or "What you did is unreasonable."

In the case where the gentleman was involved in the home invasion and he tried to say, "I should be cleared under stand your ground." The judge sent it up. The Court of Appeals said, "No, give him a hearing." The judge gave him a

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hearing and denied him immunity. Period.

It is based on reasonableness. And I'll read you 1611.420 --

COMMISSIONER TIMMONS-GOODSON: That's -- that is -- well, we could go in different directions, but I hear -- and I didn't mean to cut you off. But I hear what you're saying. But you do have bond in cases that would have involved self-defense as you would have had bond offered in other cases in South Carolina, do you not?

REPRESENTATIVE RUTHERFORD: Yes, ma'am. And bond is based on -- what should be based on, simply someone's -- whether they're going to show back up in court. Whether they're a danger.

If they're charged with murder even under the stand your ground cases they would still have to go forward and get a bond. But at least at the bond hearing you'd have the right, as I did in the most recent case to say, "We believe that this -- that stand your ground is going to apply in this." And have a judge listen and agree or disagree and set bond accordingly.

Bonds are not meant to punish, but most often in murder cases they do exactly that.

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COMMISSIONER TIMMONS-GOODSON: Okay. So as I understand that the reason that your existing or the existing South Carolina laws relating to self-defense were viewed as archaic is that it required an individual to -- it required an individual to go forward and to defend themselves?

REPRESENTATIVE RUTHERFORD: To stand trial. And at trial only then could you defend yourself, not prior to that point.

COMMISSIONER TIMMONS-GOODSON: Okay. Second and last question. You say that stand your ground law to you means that you don't have to live in force --

REPRESENTATIVE RUTHERFORD: Fear.

COMMISSIONER TIMMONS-GOODSON: -- that it doesn't make sense to you that one would not be permitted to elevate force. I guess I'm left wondering why is it not common sense that if someone comes up and pushes you, that you push them back, or someone comes up and hits you with a fist that you hit them with a fist, why should -- I mean, why does it make such sense that you could elevate the force that you use to a gun or a knife in response to being pushed or hit with a fist?

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REPRESENTATIVE RUTHERFORD:

Commissioner, respectfully, I submit that you should have a right to not have people hit you with a fist. That you have a right not to be pushed. That you have a right not to wait and see what the next step will be once someone hits you in the face.

You should not wait to see whether you're going to be knocked out. You should have a right to pull that gun if you have one and say, "Leave me alone. I don't want to be bothered." And that's what the general assembly found. We have a right to live in peace.

And peace means that I'm not going to wait on you to hit me. I'm not going to wait on you to push me. I'm standing with my two children -- I have two little boys. And if you're going to walk up to me and try an assault me or one of them I'm not going to wait to see what your next step is going to be before I decide what I'm going to do.

That's what the general assembly found. And I think that's common sense.

COMMISSIONER TIMMONS-GOODSON: Thank

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you, sir.

COMMISSIONER CASTRO: Commissioner Heriot, you have the floor.

COMMISSIONER HERIOT: Thank you, Mr. Chairman.

Here's my problem with the discussion so far. It seems like a lot of what is being said here is not special to stand your ground at all, but rather could be an argument against the doctrine of self-defense in the first place. And I assume that nobody here is in favor of repealing self-defense as a basic doctrine here.

Representative Rutherford, I was impressed by your discussion a little while ago about implicit bias. Let me see if I can restate it and see whether you still agree with me.

The way that I see it, as you put it implicit bias is background. It's involved not just in stand your ground laws it's involved in every kind of law there can be including the exercise of basic self-defense.

So if we're talking about a non-stand your ground state one of the things that has to be guarded against, generally, is implicit bias

2 against black males, a trigger-happy person who
3 believes he's under attack, but isn't. You know,
4 he thinks the black male is about to attack him,
5 but it's not true, he pulls the gun. And, you
6 know, that problem's always there.

7 And that problem's there when we talk
8 about home invasions and the general Castle
9 Doctrine. And what stand your ground adds to that
10 is simply now there's this small number of cases
11 -- I think it's important to recognize stand your
12 ground applies only on very, very few cases. I
13 mean, you know, the result will turn on stand your
14 ground in just a shockingly small number of cases.
15 These will be the cases that don't occur in a
16 home. Do occur in some place where the person who
17 is exercising self-defense or supposedly
18 exercising self-defense believes reasonably that
19 he could retreat but chooses not to.

20 In most of these cases in public places
21 that's not going to be possible to retreat and
22 therefore stand your ground doesn't make any
23 difference you still have a right to self-defense.
24 And we're talking about this tiny number of case
25 -- cases where the defendant or the person who is

2 exercising or is said to be exercising
3 self-defense knows that he can retreat but chooses
4 not to, that's a very small number of cases.
5 Stand your ground adds an implicit bias problem
6 against the black male who is perceived to be
7 attacking.

8 But on the other hand it helps the black
9 male in the opposite position, the one who's
10 actually purportedly exercising self-defense, he
11 has to worry about implicit bias at the time of
12 trial whence the jury is second guessing him on
13 whether or not he could have retreated. They
14 weren't there. And they may be more likely to
15 find "Hey, you know, the guy says that he was
16 under attack, we don't believe him." Or "Hey, he
17 says that he could have retreated, we don't
18 believe him."

19 So implicit bias is everywhere in that
20 respect. And stand your ground doesn't add to the
21 problem for the black male it simply helps a
22 different category of black male.

23 REPRESENTATIVE RUTHERFORD: Absolutely.
24 You succinctly stated exactly what my position has
25 been. And I agree with you. I think that a lot

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2 of these cases that have been mentioned aren't
3 necessarily turning on stand your ground, but an
4 officer and an investigator's perception of what
5 is self-defense any way. And then he's saying,
6 "Well, because of stand your ground I'm not going
7 to arrest you -- I'm not going to detain you."
8 But it's his assertion of self-defense in using
9 that as a --

10 COMMISSIONER HERIOT: So the second
11 manifestation that I saw with this problem where
12 we seem to be moving between self-defense and
13 stand your ground and not recognizing that the
14 arguments were being -- made that apply to
15 self-defense too.

16 REPRESENTATIVE RUTHERFORD: Right.

17 COMMISSIONER HERIOT: Was -- in the area
18 -- Senator Smith, you mentioned the detain issue
19 in the Florida statute. But isn't that just what
20 the basic law would be with regard to self-defense
21 if police officers investigate a crime and it's
22 not a stand your ground case, it's just basic
23 self-defense, everybody agrees there was no
24 ability to retreat so stand your ground doesn't
25 make any difference. You don't arrest someone if

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the police officer concludes, "Oh, I believe based on what I know this was self-defense."

You wouldn't arrest somebody like that, would you? You wouldn't advocate that would you?

SENATOR SMITH: The concern with stand your ground, and it puts the officer in a very defensive posture. Before stand your ground I agree you need probable cause and you would do that. But stand your ground, now the officer now has a statute that says I cannot detain and also --

COMMISSIONER HERIOT: But he couldn't before could he?

SENATOR SMITH: -- ma'am, if I could --

COMMISSIONER HERIOT: On a self-defense case you couldn't -- he can't detain somebody if the police --

SENATOR SMITH: Within that statute it explicitly gives a civil liability to that police department if it's found that they were detained in a stand your ground case. So it couldn't before but that was case law and officers use prudent judgment. But now an officer has a statute -- a statute that says "I cannot detain,"

2 and "by the way if I detain I might get sued."
3 And so it affects the way that officer truly
4 investigates. As before he would just use
5 investigative skills and figure out do I have due
6 process. Now he has this hover above his head
7 saying, "Oh, my God, if I use my investigative
8 skills and I may be wrong I have a statute
9 particularly pointing to civil liability for me
10 and my department."

11 So it affects the officers use of his
12 investigative skills because now we've put in
13 statute -- not just common sense and case law, but
14 we've put in statute that you better not detain.
15 And by the way if you make the wrong judgment,
16 officer on the street, your department's getting
17 sued.

18 REPRESENTATIVE RUTHERFORD: Yes, but
19 that's exactly what should happen. You should not
20 detain people that simply defended themselves that
21 are not wrongdoers.

22 Commissioner, you're exactly right and
23 that turns on, in my situations, African American
24 males who are guilt -- who are dealing with that
25 implicit bias from police officers going, you

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know, "I'm not going to give you that benefit of the doubt."

And that police officer should be sued simply because he now is detaining Trayvon Martin, should he have shot George Zimmerman, saying, "Well, I'm not going to -- you're a black man in a hoodie I'm not going to give you that same defense."

The police should be sued when they are detaining and arresting people that are not wrongdoers.

COMMISSIONER HERIOT: The third area where I saw, again, getting off track and acting as if, you know, we're talking about stand your ground when in fact the argument that is being made would apply to self-defense generally was with the civil liability area.

You know, it's massively more important that, like, when people are exercising their right to self-defense just in an ordinary case where stand your ground wouldn't be involved, you've still got the problem of mistaken self-defense. You know, if the gun goes off and hits a third person or they were mistaken in the first place,

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they shoot someone reasonably believing that they are under attack, but wrong.

And, you know, I teach torts in law school. One of the cases in my book is *Crovocia* (phonetic) versus Raymond. It's not a stand your ground case. It's an old Colorado case from the early part of the 20th century where someone exercising self-defense reasonably, but mistakenly, they end up shooting someone and that person was not actually attacking them.

The law has been that as long as you're acting reasonably you're not liable. It doesn't strike me that we're really talking about something different here.

Now you can argue about whether or not that's good law. You know, maybe -- maybe it should be better policy to say that you're not criminally liable for use of self-defense, but if it turns out that you made a mistake, even if it was a reasonable one then you should be liable for civil damages.

If I am not mistaken, in ancient Rome that was what the law was. You had a right to self-defense as to criminal liability, but if you

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2 got it wrong and you shot somebody even though it
3 was reasonable and it turns out to have been wrong
4 you were civilly liable. And some people have
5 advocated such a rule.

6 But that's really quite detached from
7 the basic stand your ground issue. In a given
8 state could choose to make civil liability
9 available for mistaken use of self-defense that is
10 nevertheless reasonable or they could choose not
11 to. But it's not -- it's not the core issue we're
12 concerned with and I think we make a mistake when
13 we start analyzing particular states statutes here
14 and have they been drafted the best way possible.
15 As a federal commission we should be more
16 concerned with is the concept of stand your ground
17 a good concept or not. And, you know, if any of
18 you have a comment on that?

19 SENATOR SMITH: Ma'am, I would disagree
20 when you talk about the civil liability because
21 you keep getting to reasonableness and under prior
22 common law and course law -- case law even when
23 you're talking about civil liability you say
24 reasonableness. But under stand your ground and
25 stand your ground specific, you don't even get to

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reasonableness because it's a blanket, a blanket of -- of absolution of liability, you don't even get to reasonableness. If you're asserting stand your ground you never get to anyone determining whether you were reasonable. And me trying to defend myself against you and I just start shooting everyone. You don't get there because the statute written in Florida absolves you of any liability, even reckless -- reckless liability --

COMMISSIONER HERIOT: But my point is we're a federal commission, we don't like, you know, nickel and dime the state statute. If you don't like that aspect of the statute then the Florida legislature gets to change that. But that's not the basic concept of stand your ground, the basic concept of stand your ground is different from that.

You know, if South Carolina has a different statute and a different approach to civil liability. And Virginia, or Minnesota, or South Dakota have different approaches to that, this is not a commission convened to fly speck the -- the Florida statute. That's not the core concept of stand your ground.

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SENATOR SMITH: I thought -- this is a commission on human rights and if there is a --

COMMISSIONER HERIOT: Civil rights. Civil rights.

SENATOR SMITH: Civil rights. If there is a statute in a state in this nation that encourages people to act recklessly, and even though it may be nickel-and-diming in Florida, and I would hope that Florida would change that. But if Florida doesn't have the fortitude to do the right thing by its people I would hope that this commission would at least speak to giving Florida that fortitude to say "you know, what this statute is wrong because it encourages people to be reckless --

COMMISSIONER HERIOT: But the constitution doesn't actually work that way. We don't have authority to tell Florida how to --

SENATOR SMITH: -- encourage --

COMMISSIONER HERIOT: -- we have certain --

COMMISSIONER CASTRO: Order. Order here. We're talking over one another. The record's not going to be clear.

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But in the interest of time if I could ask Representative Smith to just wrap up what you're saying.

And Mr. Abuznaid, did you have anything to respond to on this? Otherwise, I'll when -- then I'll move onto the next commissioner. But, if you have -- when he's done if you have something to say, then we'll move on to Commissioner Kirsanow in the interest of time.

Mr. -- Representative do you want to finish your statement?

SENATOR SMITH: -- no, no --

COMMISSIONER CASTRO: Okay.

Mr. Abuznaid.

MR. AHMAD NABIL ABUZNAID: Yeah, I'd just like to say that I hope that I wasn't implying that there's something wrong with self-defense. I actually think if self-defense was so good we should have left it that way. And so I don't think, for me, I get the Castle Doctrine, I get why that was important. I think that's why there was a distinction made that the Castle Doctrine would empower American citizens to protect their home. But stand your ground said,

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"You know what, the castle is your entire world now. The castle is the movie theater, the castle is your child's school."

There was a Broward County case where a kid got arrested for assault and battery and the -- I think it was in the Fourth Judicial Circuit, the case was overturned because of stand your ground. And so the reality is, it's irresponsible law. Self-defense is great, stand your ground is not.

COMMISSIONER CASTRO: Okay. We're going to move on to Commissioner Kirsanow followed by Commissioner Kladney.

Commissioner Kirsanow, are you there?

COMMISSIONER KIRSANOW: I am. I'm here. Thank you very much. Can you hear me okay?

COMMISSIONER CASTRO: Yes.

COMMISSIONER KIRSANOW: Okay. I think that the impetus for this hearing largely was the Trayvon Martin case. And I just want to be sure that we have on the record at least if one of the witnesses is aware of this and I'm not sure which one might be aware of it, but, Mr. Rutherford, do you know whether or not Trayvon Martin invoked

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stand your ground defense?

REPRESENTATIVE RUTHERFORD: George Zimmerman. My understanding is he did not invoke that, although --

COMMISSIONER KIRSANOW: I'm sorry, George Zimmerman.

REPRESENTATIVE RUTHERFORD: -- although law enforcement would have known about the existence of it. My understanding is that George Zimmerman did not invoke it, no.

SENATOR SMITH: Can I answer that? Can I --

COMMISSIONER KIRSANOW: Was it part of the charge to the jury?

REPRESENTATIVE RUTHERFORD: Yes.

SENATOR SMITH: There were two -- if I can chime in. There's two -- there's two things of the stand your ground. There's the procedural aspect of stand your ground which is invoking it and having the procedural hearing in front of a judge to invoke stand your ground.

George Zimmerman did not avail himself of that procedural aspect of stand your ground. But when you talk in Florida stand your ground is

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2 self-defense. And within the jury instruction
3 that was used by George Zimmerman's case and any
4 other self-defense case in Florida there's no
5 separation between stand your ground and
6 self-defense.

7 And so although he did not avail himself
8 of the procedural aspect of stand your ground, he
9 certainly availed himself of the substantive
10 aspect of stand your ground. It was used in the
11 Trayvon Martin case.

12 COMMISSIONER KIRSANOW: Second, I'd like
13 to ask in terms of there's been a lot of
14 discussion about, you know, someone shooting
15 straight, or shooting recklessly, or shooting
16 negligently, I guess I'll pose this to
17 Mr. Rutherford who sounds a little bit like me. I
18 hope for your sake very sincerely Mr. Rutherford
19 that you don't look like me.

20 But the -- well, let me put it this way.
21 I live -- I'm a black male living in what is
22 generally considered in Cleveland a high crime
23 neighborhood. And in the last, I'd say, three
24 decades I've probably been in situations three,
25 possibly four times where I could have invoked if

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it were available stand your ground defense. But what strikes me is something similar to what Justice Holmes said over -- more than 90 years ago, when he said, "The law does not demand detached reflection in the presence of an uplifted knife."

Mr. Rutherford, in the circumstances where you've defended people invoking a stand your ground defense, how quickly do these circumstances evolve? I mean, when someone is attacked do they have time to think about the consequences of their actions or is this life and death?

REPRESENTATIVE RUTHERFORD: In the situations where I've been involved it has been life and death. And I think you bring about a great point as I have failed to see the distinction between stand your ground and self-defense except that stand your ground says that you don't have a duty to retreat outside of your home.

And that is one of the biggest distinctions, and truly the only distinction, and the one that I would say is archaic.

I do look like you except I'm not a

2 black male living in Cleveland, I'm a black male
3 living in South Carolina. And I have not had the
4 -- and fortunately, had to defend myself anytime
5 recently. But I would suggest that anyone that
6 does is simply acting on common sense and
7 self-defense and still faced with the test of
8 reasonableness. Reasonableness does not go out of
9 the window based on stand your ground.

10 And there are a number of cases where
11 people have tried to use stand your ground
12 procedurally and been turned down from doing so.

13 Stand your ground was used as a jury
14 charge in the George Zimmerman case, but it was
15 used to say that he did not have a duty to retreat
16 outside of his home.

17 But, again, I ask who among us asserts
18 that you should have to retreat outside of your
19 home. Why are we encouraging thugs to approach
20 people and telling people that they have a duty to
21 retreat before they act on it.

22 Why are we saying that people must run,
23 retreat, turn your back. It was stated in Florida
24 it said "safely retreat." That was not the law in
25 South Carolina, it was retreat. And in many other

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places where stand your ground was passed.

What we are saying is that you have a -- an opportunity and a duty to defend yourself, to defend others, and in acting on that you will not be prosecuted. You will receive procedurally immunity from prosecution.

COMMISSIONER KIRSANOW: Thank you. And one last question. I heard, and I didn't know which witness that it was, indicate that the U.N. Human Rights Commission found stand your ground incompatible with the notion of right to life.

Did I hear that correctly?

MR. AHMAD NABIL ABUZNAID: Yep, that's correct.

COMMISSIONER KIRSANOW: Whoever testified to that do you know when the Human Rights Commission -- the U.N. Human Rights Commission made that statement?

MR. AHMAD NABIL ABUZNAID: Yep, absolutely. It was during the review of the ICCPR. It was held in March of 2014.

COMMISSIONER KIRSANOW: So this would be the same Human Rights Commission that has those human rights and pro-life exemplars such as

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Russia, Saudi Arabia, Pakistan, Libya, Syria, and
Uganda, correct?

MR. AHMAD NABIL ABUZNAID: Could you
repeat the question, please?

COMMISSIONER KIRSANOW: Is this the same
U.N. Human Rights Commission that has the human
rights exemplars on the commission such as Russia,
Saudi Arabia, Pakistan, Libya, Syria, and Uganda?

MR. AHMAD NABIL ABUZNAID: Are you
asking if those are the people that sit on the
committee or are those the people --

COMMISSIONER KIRSANOW: Yes.

MR. AHMAD NABIL ABUZNAID: No, I believe
the committee was made up of, you know, Israel --
several other states, but I don't remember Russia
being one of them, but it was several nations. I
believe also that information could be found
online.

COMMISSIONER KIRSANOW: I think it can.
Thank you.

COMMISSIONER CASTRO: Thank you,
Commissioner Kirsanow.

Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you,

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Mr. Chairman. My -- my question seems to revolve around procedure -- due process. I don't -- I don't understand this -- I think it's Representative Rutherford who's talking about people shouldn't have to be arrested.

Well, in process today in criminal law police don't have to arrest anybody. They can investigate. They can turn their information over to the district attorney. The district attorney can decide whether to charge or not. And at least that's the process in my jurisdiction, it may not be that way in South Carolina.

But it seems to me -- and I think this is a question for the entire panel. That when you put a police officer who is trained to be an investigator, not a decision maker, in charge of making a decision, then his investigation, once he makes that decision in his mind is all angled toward that decision that he has made. And therefore, I assume when you have this immunity hearing he is going to be on the witness stand defending his decision, where in the past the police officer -- the neutral, would come to court in a preliminary hearing, which I assume would be

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akin to an immunity hearing. And a neutral judge would make a decision as to whether there was probable cause or there was self-defense.

Although I do understand that many criminal defendants refuse to provide -- at any case, in a preliminary hearing.

So if someone -- if you all could discuss this kind of aspect to -- in relationship to the law I would appreciate it. Try and enlighten me a little.

REPRESENTATIVE RUTHERFORD: In South Carolina you are -- a preliminary hearing, where a hearing is determined -- is held to determine whether the case proceeds to the grand jury is not a right and can be taken away by a prosecutor who simply seeks to indict.

At a preliminary hearing in South Carolina a defendant is not avail -- he cannot put up any evidence it is only put on by the state.

And a law enforcement officer who arrests someone unlawfully should be sued. A law enforcement officer that arrests someone who should not have been detained or arrested should

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be sued anyway.

I think this statute only makes it clear -- it does that in Florida, it doesn't necessarily do that in South Carolina.

But, again, procedurally, what this does is allow someone, in my cases, African American males to avail themselves of the judicial system in front of a general sessions judge, what people on the street would call a big court judge. I don't know if they're Supreme Court judges or circuit court judges in Florida. But they would be a general sessions judge who has the ability to give them immunity. Taking that decision solely away from law enforcement where it has -- where it was invested all up until this point. There's no one that can tell me --

COMMISSIONER KLADNEY: But, but, you're the one who says that the old self-defense law was -- it was case law, it was all over the place.

REPRESENTATIVE RUTHERFORD: In South Carolina, yes.

COMMISSIONER KLADNEY: When in fact I would assume that you had jury instructions explaining exactly what the elements of

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self-defense were.

REPRESENTATIVE RUTHERFORD: If you did not meet with the elements of self-defense in South Carolina you did not get a jury charge to that effect.

So a judge had to determine that you could even -- that he would even give that charge before he would do so.

COMMISSIONER KLADNEY: So -- excuse me. So what's -- where does stand your ground then become different than self-defense? If it is different from self-defense outside of procedurally, explain it to me.

I mean, you have to be in fear of harm --

REPRESENTATIVE RUTHERFORD: Outside --

COMMISSIONER KLADNEY: -- you get to defend yourself. And the charge to the jury is the definition of the law.

REPRESENTATIVE RUTHERFORD: Right. Procedurally self-defense differs from stand your ground because stand your ground is going to give you an immunity hearing. So procedurally it differs that way.

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Outside of that it differs because it takes the common law doctrine, the common law Castle Doctrine and extends that to wherever you may be. You never had a right to -- you never had a duty to retreat in your home. Now that duty to retreat goes away when you're outside of your home as well. It says that you have the right to live unmolested.

COMMISSIONER KLADNEY: So you -- you really are saying if someone starts angering me and I get angry and I throw a punch, he can take a gun out and shoot me. Is that correct?

REPRESENTATIVE RUTHERFORD: I'm saying that if someone angers you --

COMMISSIONER KLADNEY: Is that correct, yes or no? Yes or no, sir? Yes or no, if I throw a punch at someone can they take a gun out and shoot me?

REPRESENTATIVE RUTHERFORD: Yes. You should not throw a punch at someone.

COMMISSIONER KLADNEY: Thank you. That's fine. Thank you.

REPRESENTATIVE RUTHERFORD: Yes. The general assembly has consistently found in states

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where they've enacted this that you should have a right to live unmolested. That you should have a right to expect to be left alone with your home, your business, and your vehicle, and wherever you may stand. And this assertion that you should be able to walk around, whether it's a commissioner or anybody else, punching people in the face without the -- without them having the ability to defend themselves, to me, just does not make sense. We negate the fact that --

COMMISSIONER KLADNEY: -- you've never been in an alcohol-fueled situation and you've never seen a fight occur like that?

REPRESENTATIVE RUTHERFORD: I've never been in a what?

COMMISSIONER KLADNEY: Alcohol-fueled situation where alcohol is driving the parties?

REPRESENTATIVE RUTHERFORD: I don't drink, but I have been in a number of situations where people were fueled by alcohol and doing wrong.

In South Carolina we also allow you to carry your gun into a bar if --the bar owner does not put up a sign and prohibit you from doing

2 so.

3 However, in doing that we mandate that
4 concealed weapons permit holders that are going
5 into a bar can have absolutely no alcohol. So if
6 a concealed weapons permit holder in South
7 Carolina was in a bar and had a weapon on them and
8 was, as in your scenario, punched in the face,
9 would they have a right to defend themselves?
10 Absolutely.

11 COMMISSIONER CASTRO: But if the gun's
12 concealed --

13 COMMISSIONER KLADNEY: Would anyone else
14 on the panel like to comment --

15 REPRESENTATIVE RUTHERFORD: -- the bar
16 owner would have a sign on the door saying "No
17 concealed weapon permits allowed." And the
18 concealed weapons permit holder has a duty --
19 having a concealed weapons permit must check the
20 sign on the door before he goes in.

21 COMMISSIONER CASTRO: Here's what I'm
22 going to do. We're technically out of time, but I
23 want to -- two commissioners -- Commissioner
24 Kladney you need to wrap it up, I've got two
25 commissioners who want to ask two brief questions,

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Yaki and Narasaki.

So Commissioner Kladney if you could just finish your questioning and then I'll go to Commissioner Yaki and then Commissioner Narasaki and then we'll conclude the panel.

COMMISSIONER KLADNEY: I would just -- Mr. Chairman, I'd just like to let the other panelists comment on Representative Rutherford and my question if they could do so briefly.

MR. AHMAD NABIL ABUZNAID: This is Ahmad Abuznaid. I would just like to say that the issue here isn't concealed carry permits, the fact of the matter is even without that provision requiring concealed carry permit holders to not drink alcohol the gentleman could just step outside of the bar and then unload a clip into, you know, whatever person he was deemed afraid of.

So I think that, you know, we can get lost in discussing permits and whatnot, but the issue here is stand your ground and the fact that it's unreasonable.

REPRESENTATIVE RUTHERFORD: That would be neither stand your ground nor self-defense. You cannot walk out and shoot --

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MR. AHMAD NABIL ABUZNAID: But --

REPRESENTATIVE RUTHERFORD: -- that would not be stand your ground.

MR. AHMAD NABIL ABUZNAID: -- but if the altercation spilled out to the exterior of the bar and you were in fear of your life --

REPRESENTATIVE RUTHERFORD: -- if you're still getting beat up and assaulted outside of a bar, from the inside all the way to the outside, you should probably defend yourself.

MR. AHMAD NABIL ABUZNAID: But also stand your ground doesn't require that you're beat up. So the gentleman could be walking towards your direction yelling obscenities at you --

REPRESENTATIVE RUTHERFORD: Why is it that we are required --

COMMISSIONER CASTRO: Commissioner Yaki has a question and then we'll go to Commissioner Narasaki and conclude the panel. Thank you.

Commissioner.

COMMISSIONER YAKI: Yes, thank you very much. I remain -- I guess I remain troubled by some of what has been said here today. I don't think -- I think we do actually have an obligation

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to nickel-and-dime some of these statutes because we're here because Trayvon Martin and Jordan Davis were victims of these statutes and those people were not nickel-and-dimed.

I'm not going to ask a question I'm just going to make a very brief statement.

Mr. Rutherford, I appreciate your passion. I understand that you believe that what you're doing is in the best interest of African Americans who live in fear of walking the streets. But what we have here is data that shows that in all states that have stand your ground homicide rates go up rather than go down.

The data shows that if you are an African American claiming stand your ground defense you are much less likely to get it granted than if you are a white person claiming it and if your victim is black.

You talked about whether or not Trayvon Martin would be able to have used that, but Trayvon Martin is dead. And he was not able to say "I was acting in self-defense," when George Zimmerman approached him.

The problem with all this is that people

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2 are dying. More people are dying than would have
3 died before. In your situation that you talked
4 about if someone throws a punch at me I have the
5 right, according to you, to take out a gun and
6 shoot him.

7 Now if the person -- if I think the
8 person's gonna throw a punch at me I have the
9 right to take out a gun and shoot him. If I -- if
10 the person threw a punch at me and missed and we
11 walk outside and I see him walking toward me I can
12 take out my gun and shoot him.

13 In all of these cases someone gets hurt,
14 someone dies. And you're essentially giving
15 someone who is not trained like a police officer,
16 as Mr. Kladney was saying. Does not understand
17 how to judge a situation, has not taken
18 proficiency courses in shooting so as to minimize
19 casualties to civilians, and yes, you're right,
20 cops do sometimes miss and they shoot the wrong
21 people. But for the most part they're trained,
22 and we have an expectation that they should be
23 trained to not sort of spray their gun anywhere.

24 And you're essentially giving ordinary
25 citizens the right to draw and fire wherever they

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may be at any specific place and time.

That's the problem with stand your ground is that the castle is no longer the castle. The question of reasonableness when someone breaks into your house is a lot different than when you're in an open theater or in an auditorium such as this, the judgments are a lot different and the result is that someone dies.

And the stats show people die. More people are dying -- more people are dying because of this. And as great as you are as an attorney and as expensive as you are of an attorney -- even though you forgot your tie today -- to, you know, in terms of defending people who you believe were asserting their rights -- and I agree that they should be able to assert their rights if it was self-defense. Stand your ground is different from self-defense because the way it works, the way -- the situation in which it occurs, the environment in which it happens is much different than if you're inside your home or if you're in absolute imminent fear of someone else taking a gun at you and the gun is out there and you have to do something.

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Those are the exceptions that prove the rule of the old common sense Castle Doctrine. But stand your ground takes that and perverts that to an extent that I am concerned about. And especially for African Americans who do not get the benefit of it as white defendants do. Who are the victims of it more than whites are. I think those are the things that I'm concerned about.

COMMISSIONER CASTRO: Thank you, Commissioner Yaki.

Commissioner Narasaki, you have the last question.

COMMISSIONER NARASAKI: Thank you.

I just really want to thank all of the panelists for the discussion, it's been very illuminating. And it's clearly a very passionate subject for everyone.

So my understanding, and I appreciate Commissioner Heriot's efforts to try to untangle the issue of how stand your ground is different from the Castle Doctrine. I want to make sure I understand it correctly.

So my I understanding is (A), that it gives you more leeway to escalate, it doesn't

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require equal force, but you can more quickly
escalate.

(B), you don't have to be in your home
or in the vicinity of your home so that makes it
more likely that innocent bystanders, in fact,
will be around and more likely to therefore be
collateral damage.

Three, my understanding is that there is
more subjectivity to the fear that's allowed.
That it's not a reasonable person standard. But
in the case of -- so there was a case of a guy who
shot a Chinese American neighbor. The Chinese
American neighbor was actually going to his own
home next door. And the guy who shot him said,
"Well, I was in fear of my life because all
Chinese know Karate and can kill me."

So that would be his subjective fear.
But I hope most of us would not think that was a
reasonable person's standard -- meet that
standard.

So if this is all -- so I want to (A),
ask Mr. Abuznaid, is this a correct understanding?

And (B), the argument seems to be
because we're here -- the reason the commission is

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looking at this is because there's a question about equal protection under the law and whether in fact these laws are victimizing African Americans, are being applied differently in a way that hurts minority communities.

But the argument that seems to be being made by some is that in fact it is helping African Americans, so I want to know since you are clearly not in support of the law where -- how -- where's the conflict in that?

How is it that it helps -- does it help enough to change your mind?

MR. AHMAD NABIL ABUZNAID: So to your first question, that list did seem accurate. And I would just add in addition that stand your ground eliminated the duty to safely retreat, which is what we had in Florida. And I think for people that had issues with self-defense that would have been the change that I would have advocated for, just simply require someone to safely retreat if possible.

To your second question I think, you know, with everything going on in Ferguson, with everything going on in the State of Florida, young

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black and brown men and women don't feel safe.
Now whether that is because of police brutality
and excessive force, or vigilantes, or people like
Michael Dunn who don't like thug or quote-unquote
"thug music," which is hip hop.

People are being subjected to being
threats of society when they really just want to
live. They really just want to prosper peacefully
in their communities. Trayvon Martin was walking
to his father's home. I mean, if we are to accept
that in any day in today's society a kid can get
gunned down walking to his father's home simply
because another man has the right to stand his
ground, I think we've lost all faith in our
society.

I think that, you know, the example was
drawn up by the commission member about being
punched in the face, now, what would you teach
your child is what I would implore folks to think
about. Would you teach your child to punch back
or to fire their gun off? Or do you teach your
child, "You know what the person that punched you
was wrong, we're a society that does not condone
violence, we condemn it. And we'd like to have a

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peaceful society."

Now maybe that's Utopian and could not exist, but I -- I just say that we've seen it now -- bubble into our schools. People are in fear of their lives and they deserve better and we should do better.

COMMISSIONER CASTRO: Thank you, gentlemen for a very engaging panel, we appreciate it. We went over a little time, but it was very informative.

Yes, Senator.

SENATOR SMITH: Mr. Chair, just two quick things if I can --

COMMISSIONER CASTRO: Quickly.

SENATOR SMITH: -- very brief. Commissioner Heriot brought up a great point, there is a thin line between stand your ground and common law self-defense and we're getting blurred in that line.

My only point would be that with the invocation of stand your ground and cases that subsequent -- you're going to see more and more of these cases. Between 2005 and Trayvon Martin there are very few cases. But now people have in

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their mind, at least in Florida, that they have this great "get out of jail free card." So we're working towards stopping what's coming not what has happened.

And lastly, the point that was made earlier about data collection and if that's something that you can address that would be tremendous, of maybe requiring these states to do data collection. Although I want other changes to stand your ground, but God bless you if you can get states to at least keep the data and that will help your job and my job as we go forward.

COMMISSIONER CASTRO: Thank you, Senator. That will be an excellent recommendation.

Thank you all and we appreciate your time. So as this panel cycles off we ask panel two to begin to come forward.

Commissioners will take a five minute break as the panel begins to assemble.

(Midmorning recess was taken. End of Volume I, proceedings resume in Volume II.)

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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

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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. - 3:30 p.m.

Date: October 17, 2014

Reported by:
Kathy Wescott, CSR

(Volume II, Pages 1 through 99, a.m. session, Panel
Number 2)

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3 Present:

4 Commissioner Michael Yaki

5 Commissioner Roberta Achtenberg

6 Marlene Sallo

7 Commissioner Marty Castro (Chairman)

8 Commissioner Karen K. Narasaki

9 Commissioner Patricia Timmons-Goodson

10 Commissioner Gail Heriot

11 Dr. Sean Goliday

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Appearing by phone:

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Commissioner David Kladney

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Commissioner Peter Kirsanow

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17 Panel Number 2:

18 David Harris

19 William Krouse

20 John Roman

21 Arkadi Gerney

22 Attorney Benjamin Crump

23 Katheryn Russell-Brown

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COMMISSIONER CASTRO: If we can get the
commissioners to come back up to the podium,
please.

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Okay. I'm going to call the second
panel to order. Let me briefly introduce the
panelist's in the order in which they will speak.

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Our first panelist is David Harris, Law
Professor at the University of Pittsburgh.

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Our second panelist is William Krouse
from the Congressional Research Service.

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Our third panelist is John Roman of The
Urban Institute.

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Our fourth panelist is Arkadi Gerney of
the Center for American Progress.

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Our fifth panelist is Benjamin Crump --
who is just taking his seat now -- attorney for
Trayvon Martin, Jordan Davis, and the Michael
Brown families.

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And our sixth and final panelist is
Katheryn Russel-Brown, Law Professor at the
University of Florida Law School.

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I will now ask each panelist to swear or
affirm that the information that you are about to

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provide to us is true and accurate to the best of your knowledge and belief. Is that correct?

PANELISTS: Yes.

COMMISSIONER CASTRO: Okay. As you know you'll have eight minutes, each of you. So Professor Harris, please proceed.

MR. DAVID HARRIS: Thank you very much. I want to tell the commission I appreciate you having this hearing. And appreciate your invitation.

Stand your ground laws are the most far reaching changes we have had to self-defense law in this country in many, many decades.

The bottom line for these laws is that they lower the potential legal cost of using deadly force. There's a lot of talk already about the empirical evidence and there will be more. I won't go into that right now.

I've been asked to come here to talk about implicit bias, which was mentioned earlier by Commissioner Yaki and some others.

I want to ask what role, if any, would implicit bias have in magnifying, changing, focusing, the effect of stand your ground laws?

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2 Unconscious, unintended, but very real bias, how
3 would that play into stand your ground laws in
4 practice?

5 Let's first start by defining implicit
6 bias. When we think about racism, typically, we
7 think about, sort of, the old school, in your
8 face, calling names sort of racism. But the last
9 20 years of research into the way people think has
10 really changed the whole way that we should be
11 thinking about racism as well.

12 What this has told us, this research
13 over the last 20 years, is that what scientists
14 call "implicit bias" is actually far more common
15 than any kind of old school sort of racism.

16 When we talk about implicit biases, what
17 we are talking about is unconscious favorability
18 or favoritism towards whites and a negative
19 feeling toward blacks, just to use the same binary
20 that we've been using here all morning.

21 It is unconscious, these biases are not
22 known to the people in whom they operate. They
23 operate and exist even in people who have
24 perfectly strong egalitarian conscious beliefs and
25 would articulate them to you.

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They operate without the knowledge of those who have them and they do -- they can affect actions.

So how do we know this? I'll tell you just a little bit about it, try to put it in a nutshell. We've been -- there's a lot of research on this subject, but by far the most prominent research involves a test called "The Implicit Association Test" or IAT.

This test involves a use of a computer and the viewing of partial pictures of faces along with positive words and negative words.

When I say "partial pictures of faces," I do have a little sample here. I've got copies -- I'm sort of old school myself, so no PowerPoint on this I'm afraid. I'll be glad to pass them around.

You can see it's from the base of the forehead, the eyes, the nose, and just below the nose. It's enough of the face so that it's clearly recognizable whether the person being pictured is either African American or European American.

What happens here is that test takers

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2 see on the screen, they see a face and a word and
3 they are asked to make associations by clicking on
4 a computer key. It's really not that complicated.
5 At first they are -- please -- at first they are
6 asked to associate a white face with a positive
7 word or concept. And a black face with a negative
8 word or concept.

9 And when they click the computer is
10 measuring the speed at which they click and the
11 differences might be in milliseconds, but a
12 computer is perfectly capable of measuring things
13 at that level.

14 They are then asked, the test takers
15 are, to click when you have an association between
16 a white face and a negative concept, a black face
17 and a positive concept.

18 After all of the clicking and testing is
19 done what you end up with is sort of a measurement
20 of the strength of associations in this particular
21 person's thinking.

22 The test has been taken by millions of
23 people. I think the last thing that I read was 13
24 or 14 million. You can take it online. I have.
25 And your data is used as part of the overall

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results. You are asked for demographic data about yourself, but you are not identified.

The results are that you get a measurement of the test taker's thinking. Does it take the test taker longer to click on associations between black and positive words than it does white and negative words, and vice-versa.

And it produces a measurement of the degree of bias that a person has toward whites, toward blacks, positive or negative.

The results of these tests -- this testing I think always surprises people a little bit -- before they've heard of it before.

75 percent of all test takers over these millions of tests taken exhibit a bias to one degree or another against blacks and for whites. It is -- this bias toward whites, against blacks shows up in 88 percent of all white test takers. But, also, interestingly in about 40 percent of all African American test takers.

Now this does not mean, I want to be clear. This does not mean that racism is somehow excused because it's unconscious. It does not mean that because everyone shares these

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characteristics, it's fine. Or that the victims are somehow to blame for racist treatment. And it certainly does not mean that the impact of whatever racist treatment there might be is any less because it comes from an unconscious place.

What it does mean is that racial biases need to be understood as being much more common and found in many more people than we used to think. Even if they're unaware of it the effects can be the same.

Now let's talk briefly about effects in the remaining time. Can this affect conduct, and especially within the context of something like a stand your ground law. And the answer to it is, yes. Even though these biases are unconscious they operate.

Implicit -- excuse me. Implicit bias, the research on this ties neatly into work done by social psychologist's about what are called heuristics. Heuristics is just a fancy word for rules of thumb. We all use rules of thumb and in psychology the researchers think of this as ways to make quick decisions. Have a rule that allows you to make very quick decisions in an environment

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with very low information at a very high rate of speed and to preserve your cognitive resources. So we use heuristics all of the time to make decisions as human beings.

When you combine the idea that there is implicit bias and heuristics -- what some of the research has shown -- especially research by Philip Atiba Goff of UCLA, is what he has called the "suspicion heuristic." You have a negative view of blacks for the most part, implicit. This leads to beliefs that blacks are prone to criminality. That they are violent. And there is a lot of other research besides Mr. Goff's that goes in this same direction.

So what you get is an automatic very rapid association between blacks, that is not just about negativeness, but also about violence and criminality.

Now in the specific context of stand your ground laws what this will mean is that more people will think of black people they meet as dangerous, as criminal, and as violent. And that is going to result in more blacks being the victims in stand your ground shootings. It also

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2 has the other effect of when a white person or
3 somebody goes to court and says, "I stood my
4 ground," and the victim is black, the jury
5 harboring those very same biases will be more
6 inclined to acquit when the victim is black.

7 Thank you very much for your time. I
8 look forward to your questions.

9 COMMISSIONER CASTRO: Mr. Krouse, you're
10 next.

11 MR. WILLIAM KROUSE: Thank you for
12 having me. I have the privilege to work as the
13 Legislative Analyst at the Congressional Research
14 Service housed within the Library of Congress.
15 CRS provides nonpartisan research to Congress.

16 I need to make a small disclaimer here.
17 The views, ideas, and the information that I'm
18 about to present are my own and cannot be
19 attributed back to the Library of Congress or CRS.

20 COMMISSIONER CASTRO: We understand
21 that. Thank you.

22 MR. WILLIAM KROUSE: Thank you. Also
23 this live presentation is not in any way intended
24 to be an evaluation of stand your ground laws.
25 Rather what I'm about to present to you are some

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very basic baseline statistics. We have data on murder and non-negligent homicides and also on the justifiable homicides.

The data are imperfect and are incomplete, but it does tell us some things and it cannot be ignored. So I want to discuss briefly data limitations and definitions and then murder and then justifiable homicides. And I want to stress that this is principally about justifiable homicides by private citizens and not law enforcement officers, also I may give you some preliminary data on both. And then I want to look at interracial and intraracial justifiable homicides that involve blacks and whites.

So my two data sources are the Uniform Crime Reports, the FBI vets this data every year and publishes it in the Uniform Crime Reports or Crime in the United States. It's available on the FBI website.

Whenever they get a report on a homicide they also go back to the state and local reporting agencies and ask for supplementary information on those homicides and that's published in the supplementary homicide reports.

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That information isn't -- isn't available as the Uniform Crime Reports, however, but through the efforts of certain academics it has been - FOIA'd and it's available on the University of Michigan Website.

The Supplementary Homicide Reports suffer from certain very serious limitations. One, Florida does not report in a manner that is accepted by the FBI. I think it has to do with a technicality on the offender/victim relationship, familial relationship. And it's just on that point alone according to the Bureau of Justice Statistics that the data is not compatible. So that seems to me something that could be fixed possibly.

Other states and localities more importantly do not participate, do not participate fully, and/or only participate intermittently in this Supplementary Homicides Reports Program.

Making things more difficult these reports do not always reflect the final disposition of these cases. Like the UCR, federal and travel (phonetic) law enforcements do not report to the -- Supplementary Homicides Report

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Program.

So I just wanted to give you the definitions here. I have one slight mistake here, it should be instead of "murder and non-negligent manslaughter" it should be "non-negligent homicide." At the time I was preparing these -- these slides there was a good deal of debate about what exactly non-negligent manslaughter meant or non-negligent homicide.

A non-negligent homicide will be a homicide that's not accidental, it's the willful killing of another human being. And then justifiable homicides by a police officer, will be a killing done in the line of duty. And then for private citizen it would be the killing of a felon during the commission of a felony.

That's the FBI definition. And so what I'm about to tell you is that when you look at these cases, case by case, you can often make distinctions of your own on whether these definitions would fully meet those cases or not.

In the UCR, the justifiable homicides are tabulated separately from murder and non-negligent homicides. So they're two -- in two

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different data presentations. However, in the Supplementary Homicide Reports it's all merged together but it's coded so that you can separate them out.

So I'm presenting this graph here just to give us the big picture backdrop on murder and non-negligent homicide victim rates. As we can see we had some bumps in the '70s, '80s, and '90s. And then violent crime in murder and firearm related murders trailed off with a couple of bumps in the 2000's.

Then I give you the raw data as published by the FBI and Justifiable Homicides. One would think that law enforcement agencies reporting on these matters would be fairly reliable. And it also has it by weapon.

We're less confident about the reliability of the data for justifiable homicides as reported by law enforcement agencies, by private citizen. However I want to say that the data that I'm about to present to you on justifiable homicides involving blacks and whites with firearms consists of about 80 to 90 percent of the incidents that are included in this table.

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So just for comparison sake I thought I'd line up justifiable homicides with murders and non-negligent homicides. And this is for 1987 through 2011, you can see that they trended somewhat similarly in the first part of that time period. And then when the murders trailed off the justifiable homicides continued to go up.

It has been suggested to me that this one possibility could be, that this is more zealous reporting by law enforcement. And so I just gave it for the shorter time period which is covered more recently with regards to the stand your ground laws.

And notice how the bumps in the murders go up tremendously when you shorten your time period. But, again, the justifiable homicides in either category continue to go up.

And then these are murders. We can see that most murders are intra -- intraracial when they involve blacks and whites. And that in a small number of cases they're interracial. And these are the justifiable homicides with firearms involving blacks and/or whites. And we can see that blacks and whites avail themselves of

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justifiable homicide almost on -- in equal numbers.

However, in white-on-black incidents it's a ratio of about 6 to 1, to black-on-white justifiable homicides. That ratio remains about the same, this is the stranger on stranger murders in this slide. And when we look at the ratio of justifiable homicides, white-on-black versus black-on-white, that ratio stays about the same at 6 to 1.

And we're looking at in any given year white-on-black justifiable homicide incidents they range about from 25 to 30 with a slight increase in the latter five year period.

So -- and we see again the cluster of white-on-black along with black-on-black and white-on-white justifiable homicides there.

So I wanted to sum this up by saying that if you go to Gary Kleck in Point Blank, he estimates that we under-report justifiable homicides by private citizens by about two, three, maybe four-fold. So you're looking at, over this 10 year period, about 250 cases or 25 cases a year of white-on-black justifiable homicides.

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And in the interest of determining what sort of circumstances are going on here I would suggest that you might want to look at each one of those cases on a case by case basis. But if you were to look at comprehensive data you might be looking at anywhere between 50, 75, to 100 cases per year. So if you did it for a 10 year period that'd be a thousand cases.

I have 10 seconds left and I just want to --

COMMISSIONER CASTRO: You've gone over, but it's all right. Just wrap it up real quickly.

MR. WILLIAM KROUSE: Okay. The Supplementary Homicide Reports data is available as I said on the University of Michigan website. And that concludes my presentation. Thank you.

COMMISSIONER CASTRO: Thank you, Mr. Krouse.

Mr. Roman, you have the floor.

MR. JOHN ROMAN: Thank you very much. I want to thank the commission for accepting my testimony today. I want to apologize to the commission that my tie did not make it down here with me --

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COMMISSIONER CASTRO: What is it with the ties -- is there a tie thief around here?

MR. JOHN ROMAN: -- I apologize for the lack of decorum. And the ties in the lobby by the way are totally inappropriate.

So I work for The Urban Institute which is a non-partisan non-profit social and economic policy research organization. We were founded in the '60s to try and add evidence to debates about important social welfare questions.

I've worked in the crime and justice center at The Urban Institute since -- for 17 years. So this is exactly the kind of issue that we would like to weigh in on and bring data to the question to see if we can facilitate a better understanding of what we're trying to accomplish here.

I'm going to talk about the same data that Bill talked about, we used it in our analysis, so I thank you very much for using four minutes of your testimony that I don't have to explain what the data are.

But, I want to -- I want to make a point before I get into our analysis, which we did a

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couple of years ago, and that we've revisited a couple of times since then and it seems to be very stable and shows some of the things -- many of the things that Bill suggests.

And that -- that is the idea here that I think is under-reported, which is that the goal of a stand your ground law is to solve a social problem. And the social problem it portends to solve is that people are getting convicted for killing people when they were actually acting in self-defense.

There is no evidence to support the idea that that is actually ongoing. If you look at the exoneration literature you cannot find -- you might be able to find a couple of cases where somebody has been exonerated when they act in self-defense, but that's not why people are wrongfully convicted, they're wrongfully convicted for lots of other reasons.

So we set out to solve a problem that we don't even have any evidence was ever a problem to solve. So our first question of the day is, does stand your ground achieve its objective? Do more people who commit a crime are they found to have

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been justified in committing that homicide?

So we asked that question. And then we asked the question, is there an unintended consequence of these laws that people who act in self-defense or found to have acted as justifiably, ah, committing homicide, if there's racial discrepancies in the rates at which those justifiable homicide findings occur.

And then we want to ask if there are characteristics of people that differentiate them. Characteristics of the case that differentiate them with respect to the finding that a homicide is justifiable.

And I just want to make a couple of comments on the Supplementary Homicide Data. We used the same data that Bill talked about, 2005 to 2010, is our primary report. We've revisited it since then and added new data as it's become available and the findings don't really vary that much. So the one that we've documented the best is the 2012 studies. And that's what I want to talk about today.

In the 2005 to 2010 study there were 83,000 homicides in that six year period. In

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order to say anything about the race of the victim and the race of the offender, of course we have to know something about the offender. And we don't always know who did it so we can't always say that, so we end up with the data set of about 53,000 people.

The Supplementary Homicide Data are limited in some important ways that are worth discussing. One is that, like Bill said, we have to rely on how local law enforcement codes these things and we have no way to independently validate whether what they've -- the decisions that they've made before a verdict occurs are accurate or not. So we sort of have to trust them.

There's a lot of missing data like I said. And then there's some very important caveats to be made about context that I want to revisit at the end, which will be in four minutes.

So what we find is that in two and a half percent of cases where there's a homicide, the homicide is ruled to be justified. One comment I do want to make is when we talk about white-on-white, white-on-black, black-on-white, or

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black-on-black, I received a lot of criticism about using those definitions because of course Mr. Zimmerman has some Hispanic origins and people said that that's an important matter. The FBI data are coded according to the guidelines from the census bureau and so there is no ethnicity in there, there's just simply race. So he would have been coded as white.

There are other important matters in the Supplementary Homicide Report that we wanted to control for when we did our more expansive statistical analysis like whether a firearm was used, whether there were multiple victims and offenders, whether these people were strangers or not, gender, age.

So what do we find? So -- my apologies. So we find some really interesting things, so what we find is -- the first question is, is stand your ground effective at doing what it intends to do, which is to increase the rate at which homicides are ruled to be justified. And it turns out that it is.

So the overall rate at which homicides are ruled to be justified in the data that we look

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at is two and a half percent. It's 3.7 percent in stand your ground states. And 2.1 percent in non-stand your ground states.

And I just want to make one quick caveat about what I mean by a stand your ground state. We looked at 6 years of data and lots of states went from being a non-stand your ground state to being a stand your ground state during the period that we examined. We think about each year and state independently.

So if a state is a non-stand your ground state in 2005 and 2006, passes a law in 2007, in those first 3 years it's in the non-stand your ground grouping. And in the last 4 years it's -- 3 years it's in the stand your ground grouping -- because I think that issue has come up when people have been critical of this study.

Okay. And then we get into the unintended consequences of whether there are racial disparities that are associated with this change -- whether there are racial disparities with the application of the finding of justifiable homicide and then whether it changes over time.

The first question is -- is what is the

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rate at which black-on-black homicides are ruled to be justified? It's 2.4 percent. The overall average is 2.5 percent. It's no difference. White-on-white it's 2.2 percent, compared to 2.5 percent, basically no difference.

In homicides where the shooter is black and the victim is white, those are ruled to be justified 1.2 percent of the time. In cases where the shooter is white and the victim is black those are ruled to be justified 11.2 percent of the time. Ten times more likely if the shooter is white and the victim is black, than if the shooter is black and the victim is white.

If you look at the data before and after a state becomes a stand your ground state you see those same discrepancies. You see white-on-black homicides are justified 9.5 percent of the time. And black-on-white homicides are justified 1.1 percent of the time.

After a state becomes a stand your ground state the disparity gets even bigger. Black-on-white homicides are ruled to be justified at about the same rate they were in non-stand your ground states, 1.4 percent compared to 1.1.

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White-on-black homicides are ruled to be justified 16.8 percent of the time, where they were 9 percent before.

So I just want to say that we ran a bunch of really complicated statistical analyses that I won't bore you with to try and make sure that we weren't confusing the effects of other things like the type of firearm used, or their age, or the, you know, other things, and we find the exact same thing. When we add additional years to the data, we find the same thing.

So if -- you know, so the question on the table is, in 9 seconds is this, do these disparities -- could these disparities be explained by processes other than racial discrimination? And the answer is if you look at other racial disparities across the system is -- these disparities are so much bigger than other disparities in terms of sentencing, and death penalty, and arrest rates, and stop and frisk's that it's really hard to believe that that is true.

Thank you very much. I look forward to your questions.

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COMMISSIONER CASTRO: Thank you,
Mr. Roman.

Mr. Gerney.

MR. ARKADI GERNEY: Thank you. First of
all I'd just like to thank the commission for
having me here today and accepting my testimony.

My name is Arkadi Gerney, I'm with The
Center for American Progress, a think tank, based
in Washington.

My testimony is going to focus on the
intersection of stand your ground laws with lax
laws around concealed carrying of firearms that
put guns in the hands of people who have prior
criminal histories or run-ins with law
enforcement.

And I'm going to start by illustrating
one particular case.

In 2005 a young Florida man was -- went
to a bar with a friend of his. His friend was
arrested for underage drinking and -- and that man
became agitated according to police reports, and
pushed a police officer and was ultimately charged
with two felonies.

Those felony charges were ultimately

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reduced and then later waived when the defendant entered a court-ordered alcohol education program and a court-ordered anger management class.

One month later he had a -- issues with his fiancée and that led to another run in with law enforcement. And ultimately a temporary restraining order filed against this person.

Under federal law, had the court issued a permanent domestic violence restraining order this man would have been barred from purchasing or possessing a firearm. But it was a temporary order and in most states that is not a bar to purchasing a firearm. And this man in fact did purchase a firearm. And in 2009 obtained a gun carry permit from the State of Florida.

Let's jump ahead to 2013. In 2013 this same man had an incident where according to police reports he threatened his estranged wife with a firearm. She ultimately declined to press charges. Two months later in 2013 the same man was arrested and charged with felony assault for pointing a shotgun at another woman, his girlfriend at the time, during an argument.

And then just last month this same man

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got in an argument with a driver and threatened to kill him. That driver called the police, but ultimately also declined to press charges.

This man did one other thing during this period which is, on February 26, 2009 he shot and killed an unarmed teenager named Trayvon Martin.

So George Zimmerman's history with firearms, run-in's with the law, are interesting. However none of these incidents resulted in a criminal conviction for Mr. Zimmerman. And under federal law this pattern of incidents is not sufficient to bar Mr. Zimmerman from possessing firearms.

But remarkably, none of these incidents and not these incidents in their totality have rendered George Zimmerman ineligible to have a special license from the State of Florida to carry a concealed firearm. A license that he has to this day.

In some states the temporary restraining order, the lengthy history of run-ins with the law, of the shooting of Mr. Martin would have been sufficient for that license to be revoked or never have been issued in the first place. But not in

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Florida.

So the trial -- Mr. Zimmerman and his acquittal, I think leaves some -- has certainly raised questions about stand your ground laws. And as John, and others on this panel and the panels that you'll hear before you will talk about, I think, particularly two potential effects of stand your ground laws. And there's a growing body of evidence behind those effects, which is that they seemed to increase lethality and there seems to be a racially disparate impact in how they're applied.

But this other body of law -- this body of law that put the gun in Mr. Zimmerman's hands in the first place, this body of law that made him feel authorized to be a self-appointed armed community watchman is something that demands examination as well.

And in Florida we know that in stand your ground cases 63 percent of the defendant's used firearms to kill their victims. Stand your ground doesn't only apply to firearms. You can defend yourself under stand your ground laws or claim self-defense under stand your ground laws

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through any means, but we know from all kinds of evidence that firearms increases the lethality of that attempt at self-defense.

And we know that in Florida 1 in 3 people who committed a homicide using -- and used the stand your ground defense had previously been charged with committing a violent crime. So the archetype of the good guy with the gun, which does appropriately apply to most concealed carry permit holders, most concealed carry permit holders do not have prior run-ins with the law. Most concealed carry permits do not have a record like Mr. Zimmerman's, does not apply to all concealed carry permit holders.

And different states have very, very different processes for evaluating who should get this special license to carry a gun.

In the strongest laws the states have given the licensing authority, typically a local law enforcement agency, very broad discretion to determine based on the arrest record and other -- and other indicators whether or not someone should get a concealed carry permit.

Additionally some states provide some

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limited discretion to the licensing authority to issue or revoke a permit based on a certain -- certain narrower categories of discretion. And most states apply some additional categorical prohibitions that go beyond the federal prohibitions on gun possession.

A number of states, at least, exclude people convicted of misdemeanor, crimes of violence, at least, if those convictions were recent. But not all states do that.

And what we know and -- or what I would leave you with is that it's not -- you know, the question before you is not whether someone should have a right to self-defense. We've had that right through common law for hundreds of years in this country. The question before us is not whether Americans should be able to get a permit to carry a concealed firearm.

In 1980 there are 18 states had no concealed carry, today all 50 states have some process for issuing concealed carry permits and some capacity for people to get them. All 50 states.

The question is, what should the scope

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of the self-defense law be? Does it need to go beyond the traditional scope? And who should get that permit to carry a concealed gun?

Because when you put it together and you're putting guns in the hands of people who have clear -- a clear pattern and practice that suggests that they may create a risk to public safety, and you're reducing the threshold to use lethal force, more people are going to die.

COMMISSIONER CASTRO: Thank you, Mr. Gerney.

Mr. Crump.

MR. BENJAMIN CRUMP: Thank you to the commission for allowing me to testify this morning. And I apologize that my testimony is not in PowerPoint presentation. My staff has been very busy up in Ferguson, Missouri. So please accept my apologies for that, but we will submit the testimony that I present to you in a very short fashion.

I want to talk as the attorney for Trayvon Martin, as well as Michael Giles, two real individuals. Real life individuals. Young African American men who have been severely

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affected by the stand your ground laws.

And I want to talk about, as an attorney, the application of those laws. And I want to talk about it from three frames of reference.

Number one, from a constitutional perspective. Number two, from a judicial perspective. And number three, from a societal perspective.

But I want to begin by borrowing what Mr. Roman said about stand your ground, because as I've said in many, many, occasions stand your ground was a solution looking for a problem. There was nothing wrong with self-defense. It had operated for over 200 years just fine. There was no need, and to this day, still there's no need for the stand your ground law.

So we start with the constitutional application of how this law has been arbitrarily applied. Before the law's passage there was an average of 12 justifiable killings per year. Since stand your ground passed that average has grown to 36. To date 32 states have passed similar laws boosted by the National Rifle

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Association and the conservative corporate backed American legislative exchange counsel -- Alec (phonetic).

Since the shooting of Trayvon Benjamin Martin the law's constitutionality is being questioned.

Now the argument is that one has the right to defend oneself in the face of imminent danger and is treated as constitutional in nature. I, along with Miss Lucia McBath, who was supposed to appear before you, have joined forces with some other lawyers to bring a constitutional challenge in the State of Georgia to stand your ground.

And what we are looking at in the simplest sense of the word, is that the law is unconstitutionally vague and warrants its enforcement prohibited by a legal injunction. Because what's at issue is what constitutes a reasonable fear?

It is without question that the determination of reasonableness of ones fear and the implication of self-defense will differ an application if the decedent is an unarmed, elderly white woman as opposed to an unarmed young black

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man, our complaint states.

Does the reasonable person stand up with regard to the use of self-defense when an individual is standing one's ground offers different levels of protection to individuals based upon their race.

And I don't want to read our whole complaint, but I'm picking out parts that I think are pertinent.

By not defining what actions create a reasonable perception justifying the use of deadly force the act potentially deprives all of Georgia's citizens of the right to life without due process of law and contravention of the 14th amendment of the United States Constitution, as the law is so vague as to not apprise a person of common intelligence of the bowels of lawful behavior.

By creating a right to kill based upon an individuals reasonable fear without defining what circumstances would demonstrate reasonable -- the act will potentially deprive individuals of their lives without due process of the law, as reasonable is not defined there is no way for an

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individual to comport his actions within the confines of the law and that's to prevent being slayed due to reasonable fear of another.

I submit to you ladies and gentlemen of this commission, it has been longstanding in the courts of America -- we go back to Bernard Goetz in New York, and the People-v-Goetz, cite 68 New York 2nd District. Courts around the country have accepted that race of an individual is relevant evidence in determining the reasonableness of a claim of self-defense.

So what do parents, American citizens, of little black and brown children tell them when they are confronted with people like Bernard Goetz or anybody else as it relates to the reasonableness of you being a threat.

You better fear -- the courts have said that you can -- that is a factor. And so I move on to the judicial application in consideration of my time.

Stand your ground is a pretrial motion. A pretrial motion. When you look at how it was applied in the Zimmerman case, they said, "We're not going to argue stand your ground." We're not

2 going to bring it up -- first they said they
3 would, and then they said, "No, no, we're not
4 going to argue it." Because if it's applied the
5 way that it's supposed to be applied you bring it
6 up as a pretrial motion and it's before the trial
7 ever begins. If you win it, you win it. You go
8 home, there is no civil immunity attached to you
9 or anything, you are completely exonerated.

10 But if you lose it you cannot bring it
11 up again during the course of the trial. You
12 can't wait 'til the jury instruction and say, "Oh,
13 you have a right to stand your ground." That's
14 why it's unconstitutionally vague from a judicial
15 perspective.

16 Thirdly, and lastly, what my grandmother
17 says is, "The real life perspective of how we
18 apply these laws."

19 Trayvon Benjamin Martin didn't get the
20 benefit of stand your ground. Marissa Alexander
21 in Jacksonville, Florida who had an altercation
22 with a documented domestic violent spouse, shot
23 one of the shots in the air is facing 60 years in
24 prison.

25 Michael Giles, even more extreme. A

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2 young 25 year old military officer serving his
3 country. Has served twice in the middle east, was
4 down in Tampa, Florida, came up to Tallahassee
5 visiting his college friends, there was an
6 altercation not involving him at all. The people
7 in the altercation, by their testimony, attacked
8 him. While he was being hit and kicked he pulled
9 the licensed gun that he had a permit to carry,
10 shot him in the leg. Glazed his leg, the gentleman
11 was out the next day. He's says, "Stand your
12 ground it doesn't work for black people." He was
13 sentenced to 25 years in prison.

14 Because of time I don't have the
15 opportunity to go into the facts of how egregious
16 Michael Giles' case is. But he is sitting in
17 prison now for 25 years and Trayvon Martin's
18 killer is walking around free.

19 COMMISSIONER CASTRO: Thank you,
20 Mr. Crump.

21 Professor Russel-Brown.

22 MS. KATHERYN RUSSEL-BROWN: Thank you
23 for the opportunity to meet and speak with this
24 revered and august group with a 57 year history.

25 I want to note that I'm also here in my

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capacity as the Director for the Center for the Study of Race and Race Relations at the University of Florida.

Next year 2015 marks the 150th anniversary of the passage of the 13th amendment, the amendment that abolished slavery. Section two of that amendment empowers Congress to uphold this amendment by legislating what would have been deemed badges and incidents of slavery.

And I would suggest that in some ways what we're talking about here today, what the argument is with regard to the impact of race, and in particular -- ah, I'll look at the stand your ground law, is about these -- these legacies and about badges and incidents of this legacy of slavery in this country.

I'd like to offer a few recommendations for the commission to consider with regard to addressing issues of racial bias.

First of all the need for racial impact statements. Many have written about this, Mark Mower at the Sentencing Commission -- excuse me, at the Sentencing Project in particular, has written eloquently about the need for racial

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impact statements. And what I would make the case for is that they shouldn't be limited to one particular type of -- or piece of the justice system, not just with regard to sentencing for example, but that racial impact statements should be required for any new laws. Anything that has to do with sentencing in the criminal justice system that there should be some attempt to look at what the outcome will be when these laws are adopted. And a few jurisdictions, a few states have in fact passed racial impact -- or passed the requirement for racial impact statements, including Iowa was the first.

And so we're obviously at a point now where we have stand your ground laws, at least, in 33 jurisdictions. At least half of the states have statutes on stand your ground laws so this is -- the law has already -- these laws have already been passed. So what we're really talking about now is post-implementation assessment of the racial impact of these laws.

And so I would suggest that at a minimum that any states that are considering stand your ground laws should have to have some kind of --

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should have to have some kind of -- do some kind of racial impact statements for them.

In some ways talking about stand your ground -- and I'm glad that I'm the last person on the panel in some ways because what has come before has been that -- what we're talking about goes beyond just one particular aspect of the criminal justice system, we're not just talking about stand your ground, because stand your ground doesn't operate in a vacuum. We're also talking about policing. We're also talking about race. We're also talking about images of race. We're also talking about history.

And so it's important to keep in mind that we're talking about pre-arrests. We're talking about arrests. We're talking about what happens within the justice system about the decision to charge. All the steps along the continuum of the criminal justice system to sentencing to post-sentencing. So all of this matters in terms of needing to take, really, a criminal justice racial census. Needing to consider what the bigger picture is.

Earlier this year there was a bill

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introduced, the Justice Integrity Act of 2014, HR-3907. And this bill is designed to -- it was designed to increase public confidence in the justice system. And address any unwarranted racial and ethnic disparities in the criminal process.

Now this goes into, obviously, detail into the bill, but that racial -- establish a pilot program on racial and ethnic data, defendants and victims. That this information would be gathered and a look at whether or not -- and to what degree race impacts outcome in cases and it would end in a report by an advisory group which, I'm sure members of the commission know that this group would include someone from -- from the commission.

So I would argue for making this justice integrity, judicial -- Justice Integrity Act Law. That Congress should pass it. That the states should have similar laws and that minimally that there should be some racial impact, racial impact statements should be made for any proposed criminal legislation.

Second, we need to have more than a

2 conversation on race. There's a general ignorance
3 about the role that race has played in the
4 development in history of this country. You can
5 graduate from high school in this country without
6 ever learning about seminal aspects of U.S.
7 history involving African Americans in particular,
8 about slave patrols, about black codes (phonetic),
9 about the Klan, about white race riots, about
10 lynching, sundown towns, the Tuskegee Syphilis
11 Experiment, redlining, freedom riders, white
12 Flight, mass incarceration. These are things that
13 young people can graduate from high school and
14 really never have had any detailed discussion,
15 conversation, reading about.

16 And this points to a large scale failing
17 in our system of public schooling. And I think we
18 missed an opportunity to teach on race. So every
19 year or so we experience a major racial incident,
20 typically, a criminal one involving the killing of
21 someone African American or some language used
22 indicating racial hatred. And so there's really
23 -- in some ways a kind of an epic race fail.

24 And we seem to come back to the same
25 place that we're talking about, images of race, in

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particular images of African Americans that the perception is that black somehow equals deviants, somehow equals crime, what I call the "criminal black man," one word. And that this is -- this is -- this is where we are.

I'd like to point out that in the State of Florida there is a mandate that there's supposed to be some history taught on race in the K through 12 curriculum. And that this should include the history of African Americans, including the history of African people before the conflicts that led to the development of slavery, the passage to America, the enslavement experience, abolition, and the contributions of African Americans to American society.

Well, why is this important? Because we can't wait for incidents and be reactive to these incidents involving race, involving images of race, addressing issues of implicit bias after they've happened. We have to do something about what people know about, what they experience with regard to race.

So let me just say in conclusion that with regard to one last recommendation and this

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supports what has been said already by Professor Harris and that is more data, more information on implicit bias. And I would just also like to add that in some of the research there have been -- have included studies including police officers who have shown that they too make the connection between race and something negative about African Americans in that association.

Thank you for your time.

COMMISSIONER CASTRO: Thank you, Professor. At this point I'm going to open it to commissioners for questions.

And, Commissioner Yaki.

COMMISSIONER YAKI: Yes, thank you very much, Mr. Chair.

I have a question for the panel. I think -- I think it's fairly simple but it probably isn't. If you are -- one of the rationales for stand your ground has been that it will enhance the protection of people in society. And my question sort of goes to the heart of why we're here today. And that is, if you're an African American are your protections enhanced by stand your ground laws?

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MR. DAVID HARRIS: I know that others are going to testify Commissioner about the empirical evidence and some already have, but I think -- there is no evidence that this is protecting -- that it makes anybody safer in a sense because homicides increase in states with these laws. And it does not, as was also advocated, in the initial run up to these laws, they do not seem to stop other kinds of serious crime either.

So I think that there's no -- there's certainly no evidence that this is making anyone safer. And as far as whether it makes African Americans safer, just go back to Dr. Roman's research, there's real evidence that this introduces a level of bias into the system. It increases the bias that might already be there, because as a number of people said this morning, there is already background bias in the system but it makes it -- it just makes it more so.

COMMISSIONER CASTRO: Commissioner Heriot --

COMMISSIONER ACHTENBERG: I think he asked the panel --

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COMMISSIONER CASTRO: Oh, I'm sorry.

MR. JOHN ROMAN: So I'd like to say something about that as well. I think that -- so I testified earlier that the evidence is that if you look at these cross-race patterns of victims and offenders that the stand your ground -- application of a stand your ground law in any state increases the likelihood that any cross-race victim offender combination will be more likely to be found justified except for black-on-white homicides, which don't change.

So I think two things are going on there that are really important. One thing that is going on there is that this law is in fact increasing the number of times that people are found to be justified for taking somebody else's life without any prior evidence that that was a problem.

One, that people were being wrongfully convicted. And that applies to whites shooting whites, or killing whites. Blacks killing blacks, and whites killing blacks -- but not to blacks killing whites.

So it's making a disparity that's

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already pretty big even bigger. And the other thing that it's doing that we haven't talked much about here is it's doing it in a really haphazard manner. So if you believe that -- that we've increased the number of justifiable homicides -- homicides that are found to be justifiable and you don't see any prior evidence that there was a problem with wrongful convictions in these cases then basically what you've done is doubled the number of times that justice isn't served. And you've doubled the number of times that justice isn't served, but not for blacks when they're involved in a homicide with whites.

So it just seems to make the disparities more haphazard and less just.

MR. BENJAMIN CRUMP: No.

MR. JOHN ROMAN: That's a better answer than mine.

MS. KATHERYN RUSSEL-BROWN: No. No, there's no empirical evidence to support the claim. It's something that comes up whenever there's new criminal legislation that because blacks are disproportionately victimized by crime, by serious crime, that they will benefit if the

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law is harsher, but there's no -- there's no support for that.

COMMISSIONER CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: Thank you, Mr. Chairman.

Mr. Krouse, I need to understand a little better about the data collection that you were talking about for justifiable homicides. I'm feeling a little lost particularly when you said that justifiable homicides may be massively under reported.

I assume that's not true of actual homicides. I mean, the homicides -- the ones that are classified as murder and voluntary manslaughter -- for that matter involuntary manslaughter.

So could you tell me how this works? At what point do police departments report a homicide? I mean, sometimes I assume a homicide occurs, they don't know whether it is a justifiable homicide, a murder, or a manslaughter. How does this work?

At what point do they report it? If

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they report it early do they then go back and amend and say, "Okay, this was justifiable or this one was murder." How often do they do that?

MR. WILLIAM KROUSE: Well, there's no fixed procedure it's by agency by agency and they fill out a form for the FBI. And it can be at any process they decide they're going to report on it. So these reports reflect data collection at various stages of an investigation. But, you know --

COMMISSIONER HERIOT: Are they constantly being amended? I mean, I'm really quite lost here --

MR. WILLIAM KROUSE: No, they're not constantly being amended. So they send in the report --

COMMISSIONER HERIOT: So something could be reported -- there's a murder that turns out to be a justifiable homicide and it never gets recorded, right?

MR. WILLIAM KROUSE: There's a possibility that there are justifiable homicides that are recorded that are later found to be murders and vice-a-versa murders that are later

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found to be justifiable homicides. And neither the UCR nor the SHR reflect that.

COMMISSIONER HERIOT: So my understanding is that when it comes to justifiable homicides that there's no requirement that -- that police departments be doing that, and perhaps over time we've seen more and more police departments reporting those and that that could drive these statistics -- you suggested that in one of your charts.

MR. WILLIAM KROUSE: Well, I find it interesting that you used the word requirement because this is one of the -- one of the fascinating things about America and the FBI and state and local law enforcement, this is all grassroots. This is state and locals coming to the FBI, and the FBI saying, "Yeah, it's a good idea to collect this data. And to the extent that you'll provide it to us we'll be happy to compile it for you." Same with criminal history records. And I don't want to get into the legalities of Congress or the federal government requiring states to do certain things, but in general we don't require them to submit these records, they

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do it on their own.

 However, as I pointed out, it's somewhat intermittent. We're much more confident about the just straight up murder and non-negligent homicide data than we are on the justifiable homicides. We're much more confident about the justifiable homicides by law enforcement. But Gary Kleck in Point Blank has estimated, and I think this is -- has stood to some academic scrutiny, that the justifiable homicides carried out by private citizens are under reported in both the UCR and the SHR.

 COMMISSIONER HERIOT: So -- and over time I take it, you know, if it's true that we've had more and more agencies reporting this then we would get, probably, a bias in the stats that would make it look like the number of justifiable homicides is going up. Is that --

 MR. WILLIAM KROUSE: It's been -- it's been suggested that that might be the case. Might be.

 COMMISSIONER HERIOT: If I --

 MR. WILLIAM KROUSE: But, we have no firm evidence that that is the case.

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COMMISSIONER HERIOT: But the chart that you showed I think -- sure -- the chart you showed was limited to a certain time period and I didn't get a chance to see it. How long a period was that?

MR. WILLIAM KROUSE: It's 2001 through 2010.

COMMISSIONER HERIOT: So do you have any information about whether or not there has been an increase or a decrease or -- or -- you know, are more and more agencies reporting this or is that not true?

MR. WILLIAM KROUSE: I didn't have an opportunity to glean that from the SHR data but that could be done.

COMMISSIONER CASTRO: Mr. Roman.

MR. JOHN ROMAN: So, it's a great question, right. I mean, these data are flawed. They're fundamentally flawed and I think you did a wonderful job earlier of describing how they're flawed. And it's -- it's voluntary reporting, you know, it's what we have.

But I think what's really important in understanding these data is that it's not the

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overall increase in the number of places that are reporting and the overall number of homicides that we have some understanding of, what matters is really, do the proportions change. Right?

If we go from, you know, two and a half percent justified to almost four percent justified, it sort of doesn't matter if we're getting better compliance or less compliance or whatever it is, what matters is that that proportion of the number of justify -- homicides that are found to be justified is increasing -- ---regardless of whatever --

COMMISSIONER HERIOT: In the stand your ground states you're talking about there?

MR. JOHN ROMAN: Right. That's correct. Yes.

COMMISSIONER CASTRO: Okay. I'm going to ask a couple of questions, and we're going to have Commissioner Narasaki, Commissioner Achtenberg.

We're also going to want one of our staff members Dr. Goliday to ask some questions and then any other commissioners who indicate so.

My two questions -- the first one is one

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that I asked the earlier panel. Well, you know, as we are really talking about this in the black/white binary and I know there are limitations on the data that's being reported, but do you all have any information on the impact of these laws on Latino's or other ethnic minorities or religious minorities such as Muslim and Arab Americans?

Anybody?

MR. WILLIAM KROUSE: Well, sir, I can tell you that I've spent the past year very carefully looking at multiple victim murders in the wake of Newtown, and that's a very complicated question because I've went back and I've identified the names of the victims and the offenders in those incidents where four or more people were shot to death.

And when you look at that it's very difficult to tell. If you're Hispanic, that's a matter of ethnicity, it's not a matter of race. So you can be a black Hispanic, you can be a white Hispanic, for that matter you can be an American Indian Hispanic.

And when you look at people who are of

2 Middle Eastern descent they're usually always
3 considered white in the UCR. So there are
4 limitations. And this all goes back to an OMB
5 (phonetic) Circular. And it's the way that we
6 collect data on race and ethnicity in the United
7 States.

8 And I can't remember the exact year, but
9 we haven't always collected data in the UCR or the
10 SHR on ethnicity. It's a fairly recent thing,
11 within the last decade or half.

12 COMMISSIONER CASTRO: Okay. Thank you.

13 Mr. Roman, I don't know if you've had
14 the chance to -- I don't know if any of you have
15 had the chance to see the written testimony of
16 other witnesses that have appeared or will appear,
17 but in the afternoon panel we have John Lott of
18 the Crime Prevention Research Center. And in his
19 written remarks -- I don't know, have you seen
20 those, Mr. Roman?

21 MR. JOHN ROMAN: I have not.

22 COMMISSIONER CASTRO: I'm going to read
23 you an excerpt and I'd like to hear your thoughts
24 on it. He actually, specifically, addresses your
25 report -- The Urban Institute Report.

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He says, "In contrast to the Tampa Bay Tribune data a recent Urban Institute study by John Roman claims to have found stand your ground laws appear to exacerbate those racial differences as cases all over are significantly more likely to be justified in stand your ground states than in non-stand your ground states."

"Roman acknowledges that his data lacks details available in the Tampa Bay Tribune data. The data here cannot completely address this problem because the setting of the incident cannot be observed. Indeed Roman's estimates contain virtually none of the information available in the Tampa Bay Tribune Report data set."

"For example, his data has no information on whether any eyewitnesses saw the confrontation or whether there existed physical evidence. And it has no information on who initiated the confrontation, where the attack occurred, or the type of case."

"Nevertheless even using the limited information Roman draws the wrong conclusion from his analysis to the extent to which the Urban Institute Study proves anything," he says, "It

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proves the opposite of what Roman claims."

Could you address those concerns?

MR. JOHN ROMAN: Sure. I would be delighted to. So I think -- so there's a couple of things going on here. So, you know, there's an old saying in statistics, "All statistical models are wrong, and some are useful."

And the question is, which of these statistical models are most useful? So the Tampa Bay Tribune analysis is really what we would call in the social science a convenience sample. They just got what they could get.

And if you want to understand the whole of the stand your ground issue, and the whole of the justifiable homicide you want to go to as broad a sample as you can obtain. Or if you want to go to a small sample that you want to dive really deeply into, you want to make sure that it's a random selection so that you can say things about the cases that you didn't get data on. So this is the choice that we have.

So the Supplementary Homicide Report data does not contain information about the context. That's a very important limitation of

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the data, and I think that we acknowledged that in the report. But it does contain -- it's not -- it's not -- it's not a sampling strategy, it's every single homicide that occurred in this period -- it's a census.

So on one hand we have information about every single case that happened. On the other hand the Tampa Bay Trib looked at a couple hundred cases that they could get data on and try to draw some inferences from it. I think it all sort of helps to paint the picture.

But, you know, I mean, I teach statistics at the University of Pennsylvania and, you know, I would prefer that my students would work with data that's more of a census, and if they can't get that then sort of a random probability sample. And if they can't get that then a convenience sample like what the Tampa Bay Trib did would probably be the last resort for me.

COMMISSIONER CASTRO: Thank you.

MS. KATHERYN RUSSEL-BROWN: And related to that -- I just want to go back to the question that you asked earlier about moving past the black/white binary area. That in that data, that

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the Tampa Bay Times collected they do have information on Hispanic's as victims and as offenders using stand your ground.

COMMISSIONER CASTRO: Right. Ma'am, thank you. I did see that. And it's an interesting paradox there if I understand that correctly that Hispanic's are more likely to not be convicted when they're using the stand your ground laws, but they are also more likely to be the victims of shootings involving white shooters.

So I guess I'll ask Mr. Lott a question about that in the other panel, unless some of you have the answer to that, but --

So at this point I'd like to cede the floor to Commissioner Narasaki, then Commissioner Achtenberg, then Dr. Goliday.

Commissioner.

COMMISSIONER NARASAKI: Thank you. So I have a few questions that some of you can answer. I'm interested in whether there is implicit bias research about Asian's, Latino's, Native American's, and Arab American's that should cause us concern in relationship to the stand your ground laws?

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I'm also interested in hearing about -- we've talked a lot about the data deficiencies, I'm interested in any recommendations you think we should consider about how do we address the gaps that exist?

Should the federal government, for example, consider tying a grant for law enforcement support to better data collection on the state level?

And then third -- so, this morning we had a member of the state legislature in South Carolina say, "Well, it may be true that eventually someone will be able to prove that they acted in self-defense and be able to clear themselves. That the challenge is that until that time they're held in jail, they have to spend funds defending themselves, and in some states you could be held for a very long time deprived of your freedom."

And in his view -- I think he's a defense attorney it sounded like. In his view stand your ground has helped people in those situations who should be free, be free up front, instead of having to try to get themselves through

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what can often be a challenging criminal system.

And then my final question is to Crump, which is, you talked a lot about the unconstitutionally vague notion of reasonable perception. So this morning we had this debate about how different is stand your ground from the traditional self-defense laws. And so this notion of reasonable fear if you could explain that difference because we had a lot of debate about that this morning.

Thank you.

MR. DAVID HARRIS: Commissioner, I'll try on your first two questions. If you go to the existing website for the implicit association operations -- I think it's now called Project Implicit -- ProjectImplicit.org. You will see a number of different implicit association tests. I haven't been to that site in a little bit myself, but I remember that there are now implicit association tests about testing biases in all kinds of situations.

I do remember -- I think at one point there was one involving Asian populations, and another involving Muslims. There are gender ones.

2 There are same sex relationship ones. So there's
3 quite a variety of this and it's there for looking
4 -- and the test taking, whether this would be a
5 concern whether those kinds of implicit bias would
6 be a concern in any stand your ground state, I
7 would say, yes. The question is going to be
8 whether you have any particular population in the
9 stand your ground state that you're focusing on
10 that is going to end up using the statute -- or as
11 the victim in a shooting.

12 And if you have a substantial enough
13 population I would think that these questions of
14 implicit bias would apply in those cases too.

15 Your second question about tying federal
16 funding to data collection, I think that that is
17 an idea that has a lot of merit. And I would
18 simply point out that the federal government not
19 having the ability to tell local law enforcement,
20 "You will do this, you will do that," or to tell
21 states you're going to have certain kind of law.
22 That's obviously what the Constitution says, but
23 the power of the purse rules.

24 When in a misguided attempt, perhaps one
25 remembers, to have a 55 mile an hour speed limit,

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remember those days? The federal government said, "Well, you don't have to, but no more highway money." And guess what happened?

They had -- there was a controversy about the legal limit for drunk driving. The federal government wanting it to come down to .08 in states that did not have that limit. "Well, you don't have to do it, but if you want that highway money think about it." And guess what happened?

So this is something that Congress has done, the Executive Branch has been part of for many, many years, and many different circumstances, and I think that this is one where they should do it too.

MR. WILLIAM KROUSE: I have just a couple of things to add insights there. One, Congress does have power of the purse but the discretionary plot is shrinking with every passing year.

Two, the amount of money that we devote to state and local law enforcement has shrunk -- particularly in light of 9/11, and it's now in the Homeland Security bucket, if you will.

And third, the state and local law

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enforcement grant program has a number of ties added on to it already, penalties for this, penalties for that to encourage states, if you will, through a carrot and stick type process to do this or that.

I would suggest possibly is that one of these things is a priority that can be set for the FBI to just strengthen, to encourage the states that we need better data, that our data has somewhat diminished over the years and we could use better data. They oversee this and there's a compact that everyone enters into. So it's one of the great things about America, it's grassroots. But if you don't have strong leadership, and the National Academy of Sciences has two books on this and I recommend them to you on foreign related violence and the statistics that are available, and also what's happening in the Bureau of Justice Statistics, you might want to take a look there for different insights and pathways you might be able to take to encourage better data collection.

COMMISSIONER NARASAKI: If I can ask one more question. Because you explained the challenge with Hispanic data -- ethnic data,

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right, but Asian is a race category --

MR. WILLIAM KROUSE: Yes, Asian Pacific Island --

COMMISSIONER NARASAKI: -- yeah, so -- right. So is there data available on how stand your ground laws effect them on both sides of the equation?

MR. WILLIAM KROUSE: Not specifically. I mean, you'd have to go and you'd have to look at, you know, Asian Pacific Islanders that were involved in justifiable homicides, you know?

From there you'd have to make a determination by looking at the reporting agency and the month and the date of the incident to determine what the circumstances were and determine whether stand your ground, Castle Doctrine, or some other factors were at play.

COMMISSIONER NARASAKI: But the data's there, just somebody has to look at it --

MR. WILLIAM KROUSE: Yes. It's there but it's incomplete and you would be looking at a very, very fine cuts from a percentage point of view.

MR. JOHN ROMAN: Can I -- can I just

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offer two thoughts on that? So -- so, I mean, I have the data here for -- so for the 6 year period, in Hawaii for instance there were 77 homicides. Four were ruled to be justifiable. In the Virgin Islands there were 15, there were none.

So, I mean, we have all the data, we have the code, we could certainly do it. I'm much -- I'm much more comfortable, I think, in the quality of the data because I don't -- because -- the thing to remember is, is the quality of the data changing in some way related to justifiable homicides over time?

The quality of the data may be changing, the volume of the data may be changing, but there's nothing that would make you think it has anything to do with justifiable homicide. Which is, you have to understand this data set is, you know, 80 variables. And the variable that we're talking about is 1 value 80, you know, in a list of 80 different circumstances. Right?

And so the idea that somehow the reporting is changing as a function of this 1 value of this 1 variable with 80 levels, it's just -- it's impossible for me to believe.

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The other thing I would say is, and the other -- I would take slight objection to is, I think that you either have to mandate the data collection or it won't happen.

In the late 1990's, back when I was a young man. The Bureau of Justice Statistics embarked on an exercise to create the NIBRS, National Incident-Base Reporting System, which is basically the Supplementary Homicide Report data, it's actually even more complete than that for every kind of crime. And they pushed it out to the states, and they asked the states to do this, and the states wouldn't do it. Right?

They got partial compliance in 8 or 9 states and total compliance in just a couple of others. We live in a completely different IT world then we did in 1998, and 1999, and 2001 when this thing really basically petered out. Right?

The cost to local police agencies to comply with this kind of data collection requirement is so trivial compared to what it was in 1998 that I just don't see it as being a huge ask. And it would inform -- last thought, I'm sorry -- it would inform so many different

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questions beyond just what we're talking about today that are really important in reforming these criminal and juvenile justice systems.

MR. ARKADI GERNEY: Just to add, we released a report in September of last year which had a number of recommendations, and one of them basically mirrored what Mr. Krouse just said, which is to have a year long process to work with the states to improve the data collection around justifiable homicides, but at the end of that if it didn't improve to withhold some portion of discretionary burn justice assistance grant money which is the principle justice department grant funding streamed to the states.

COMMISSIONER CASTRO: Anybody else?
Mr. Crump.

MR. BENJAMIN CRUMP: I think that she asked a question about reasonable fear and so I can address that. I'll refer to the academic, great data, and this is a fascinating conversation. I thank the civil rights commission for doing this, but I want to point specifically as it relates to the reasonableness of the fear. I did get an opportunity to talk about Michael

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Giles, so hopefully I can interject that in my response.

Michael Giles, 25 year old African American, never convicted of a crime his whole life. Mother and father, military. Brother, military. He's in the military. A good citizen. From everybody's standpoint this bar fight that he has nothing do with, he's attacked, the testimony is the guy was looking for the next person he saw to knock out. His testimony is that he lunged at him with the full weight of his body trying to knock him out. While he's on the ground and people are kicking and hitting him he takes the permit -- the gun that he has a permit in his ankle, and shoots the guy in the leg. He is -- scratches his leg. He's let out of the hospital in a matter of hours.

He goes to court, stand your ground, if it should apply to anybody it's him. I mean, let's be real when you think about what happened to Trayvon, somebody's following you and say they all get away -- Mr. Gerney broke it down very clearly the history of Trayvon's killer.

You look at the history of Michael

2 Giles, there's nothing there. But when you come
3 to the reasonableness of fear and how this law's
4 been applied, it's startling because the testimony
5 was first based on attempted murder. The victim
6 got on the stand and said, "No, he wasn't trying
7 to kill me. If he was wanting to kill me he could
8 have shot me." So the prosecutor had to drop
9 that. But the prosecutor still insisted on going
10 forward on the case, on aggravated battery.

11 And so what you have -- what happened,
12 the jury came back because they thought "Well,
13 aggravated battery is lesser and they don't have
14 to deal with the sentencing." And they convicted
15 him not knowing that he was going to get 25 years.

16 So I know I'm going a little around your
17 question but I want to bring it back because you
18 look at Marissa Alexander, you look at Georgia,
19 you look at all of these things and you say,
20 "Well, if Mr. Giles would have been a white male
21 would he have got greater stand your ground
22 consideration?" If Marissa Alexander had been a
23 white female would she have gotten greater stand
24 your ground consideration?

25 And I'm sorry I don't have all of the

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data because as I understand it they don't really want the data. They don't want to present it out there because I know the Congressional Black Caucus asked that question about, "Well, who are the victims of stand your ground and who are the beneficiaries of stand your ground?" And they asked the state and the state didn't get anything back. As it relates to the -- representative -- State Representative from South Carolina, you look at that and you scratch your head and you say, "Well, we do want it to be an important thing when somebody decides to take somebody's life." When you decide to kill somebody, that you don't want it to just be so arbitrary that we have a law that says you don't have to try to solve it with conflict resolution, you don't have to try to resolve it peacefully, just take your gun out and shoot them because remember --- we have self-defense." Under self-defense, you know, the law is different you have a duty to retreat if it's reasonable and safe that you can do so. But under stand your ground you have no such duty. So we have a lot to do with the application, what's real and how it's being applied. So I would hope

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2 that as far as collecting the data is important,
3 but looking at how these courts around America,
4 not just in Florida, but around America -- in
5 Louisiana we have stand your ground cases all the
6 time I'm involved in. Arizona -- and when the
7 victim is black or brown they are criminalized and
8 the implicit biases are put on thick. The person
9 who's dead on the ground as an excuse to justify
10 what the killer has done.

11 COMMISSIONER CASTRO: Okay. So I'm
12 going to go to Commissioner Achtenberg, followed
13 by Dr. Goliday, followed by Commissioner
14 Timmons-Goodson. And do any of the commissioners
15 on the phone want to get on the list?

16 COMMISSIONER KIRSANOW: Peter Kirsanow
17 here, I think I may have a question.

18 COMMISSIONER CASTRO: Okay, Commissioner
19 Kirsanow.

20 Commissioner Achtenberg, you have the
21 floor.

22 COMMISSIONER ACHTENBERG: Thank you,
23 Mr. Chairman. I have in the great tradition of my
24 colleagues, I have two questions.

25 My first question is to

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Dr. Russell-Brown. You say in your written testimony that if there were ways to make implicit bias explicit that might have some salutary effect on all of these matters.

Could you further describe ways of making implicit bias explicit that might be things for this commission to consider when we get to recommendations should we conclude that implicit bias is actually an equal protection or due process problem when it comes to the administration of justice and the racial disparities that may -- that the statistics may suggest exist.

MS. KATHERYN RUSSEL-BROWN: The point that I'm -- the point that I'm making there is that we need to -- I guess it's always -- play the piano with all ten fingers. Right? That we need to consider implicit bias. We need to look at it. We need to see what impact it has on people's perceptions of fear, calculating fear, the empirical research, the sociological research, criminological research, supports that whites see African Americans as symbols of fear, that there are these direct associations and indirect

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associations made. So the implicit bias and the perceptions of what race means, that's there. But in terms of, sort of, nuts and bolts, you know making the connection to what's actually going on in the criminal justice system I think that we -- and that's why I made the recommendation about the racial impact statement. We have to take a look at what's actually going on on the ground.

Now at the same time that -- that this needs to happen we're also talking about needing to have -- the idea of having some kind of national data base to gather information.

So in addition to, if there is new legislation related to criminal laws that there should be some racial impact statement.

There also needs to be -- there also need to be databases that gather information so we can evaluate what's actually going on.

So the idea here is that we need to be mindful of the fact that there is something about race -- that race does matter in the administration of justice. And that people's attitudes about crime, attitudes about race, then in turn impact what does actually happen.

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So we need to look at these different places. And that's the main point.

COMMISSIONER ACHTENBERG: Thank you very much.

And, Mr. Crump, I'm intrigued by the issue of the case that you filed in Georgia questioning the constitutionality of the Georgia stand your ground law. Is that the context?

MR. BENJAMIN CRUMP: Yes, ma'am.

COMMISSIONER ACHTENBERG: Could you articulate more extensively the rationale that you're proffering there and could you make some suggestions if you will for issues that this commission might consider addressing as it relates to the constitutional principles at issue in your Georgia case?

MR. BENJAMIN CRUMP: Absolutely. The biggest inference, I guess, if you want to try to frame it, by creating a right to kill based on an individuals reasonableness, fear without defining circumstances with -- demonstrate reasonable -- the act that potentially deprives individuals of their lives without due process. And once you do that the cost of that infringes on the fundamental

2 due process right of life. It must be reviewed
3 under strict scrutiny. And I think that's where
4 this commission can speak very robustly on that
5 issue because I think stand your ground, it's
6 always been this sort of question whether this is
7 constitutional on so many levels.

8 But this whole thing of just the
9 reasonableness, like, how do you qualify that to
10 make it uniform and not be arbitrary so we have
11 everybody getting equal justice and it's not one
12 thing in this court, and South Florida one way in
13 this court, and North Florida one way, and Georgia
14 one way, and Arizona one way, and Arkansas one
15 way, and South Carolina, because when you start
16 looking at it being applied like those things --
17 being applied like that, but yet you go back to
18 the Constitution of the United States -- and
19 saying -- where is a Constitutional privilege to
20 Americans being deprived here. Being, I think,
21 you can bring it to uniformity of everybody in the
22 state saying we're not saying you can't have a
23 stand your ground law, but your stand your ground
24 law gotta be un-vague, it has to be clear, it has
25 to tell people what and when they can take

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somebody's life and it be uniform.

You can't say just because it's a black person I think, "Oh, those -- those black men are more dangerous than white men so we can give you a little extra discretion to shoot a black man."

And that's troubling on so many levels. And as we look at this lawsuit we -- we -- it's about a 40 page complaint so I can't give you all of the details, but I'm glad that you all provided me with a lot of experts to choose from when we go before the Georgia Supreme Court.

But it is one of the things -- I'll say in conclusion and -- where is it is here -- in conclusion, when we talked about the Castle Doctrine it was objective as my classmate Miss (Inaudible) -- you know, we got taught in law school, the Castle Doctrine it was objective because you were in the house. And so if the person had a mortgage or they had a lease and stuff, it was real objective. Didn't have to guess about whether the person -- whether it was their house and there was an issue of self-defense. It was their house and why are you in their house threatening them.

2 It gets a lot more subjective when you
3 say, "I'm walking down the street in Sanford,
4 Florida, in a gated community and I think
5 somebody's not supposed to be there, and I go
6 confront them, and I make sure that when I shoot
7 -- because that's the message that we're sending,
8 that the person is dead because if they live --
9 Marissa Alexander -- it's a lot harder to win your
10 stand your ground argument when somebody can argue
11 that "I wasn't a threat to your life."

12 So when you look at that it becomes very
13 subjective. And when it becomes that subjective
14 it becomes too vague and it doesn't pass the
15 constitutional muster. And that's what we're
16 raising to the stand your ground law has been
17 unconstitutional.

18 We haven't got a writ of certiorari yet,
19 but we're hoping that the court is going to let us
20 argue it, we're waiting. The commission can speak
21 to that issue and help so much this group of
22 lawyers and parents who are crying out to say "We
23 can't bring our children back but let's try to do
24 something for their legacy so it won't happen to
25 your children."

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COMMISSIONER ACHTENBERG: So the subjectivity is in the place where this defense can now be proffered as well as the fact that it used to be an objective standard and now it's a subjective standard. We heard in the prior panel the State Representative from South Carolina acknowledged that if I -- if somebody punches me in the face, and I'm in public I can take my gun out and shoot them. And he went on to say that if I think the person is going to punch me in the face and my -- you know, there's no -- there's no reasonable standard that's applied to that. If I think the person is going to punch me in the face and I pull my gun out and shoot him that's justifiable under their stand your ground law.

Is that your understanding of the way the law operates?

MR. BENJAMIN CRUMP: Absolutely. Miss Achtenberg you brought up a very important point and that's the third prong. In self-defense you have a duty to retreat if it was reasonable and safe that you do so. And who could argue with that being a bad law, that you don't kill somebody, if you can get away you have a duty to

2 do so if it's reasonable and it's safe. Now if
3 it's not reasonable and safe you can defend
4 yourself. But if it's reasonably safe you can do
5 it.

6 In the Castle Doctrine said you don't
7 have to retreat if you're in your house, but
8 self-defense says you can. So now stand your
9 ground, just as you said -- say -- even if I think
10 you're going to be a threat to me, if you say a
11 word to me and I think that you can follow through
12 with the threat I can just kill you. I don't have
13 to say, "Let me get in my car and drive away."

14 You know, we have -- there have been
15 cases where people in the car could easily drive
16 away, but they shot the person. "I felt
17 threatened, and why did I have to run." -- think
18 about the matter in Texas with the young man
19 breaking in the neighbors house. The police tell
20 him, "Don't go over there." He goes over there
21 anyway, says, "I know my rights, I can stand my
22 ground."

23 Where does it end? The theater with the
24 popcorn. You know, I thought that he was a threat
25 to my life. And so it's so subjective, so now

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there are three prongs that tag it constitutionally. One is on the reasonableness of the fear. The second is on this subjective criteria, now that it is no longer with the Castle Doctrine -- self-defense. And the third is certainly that no duty to retreat at all, whatsoever, just take a gun out and shoot the person.

COMMISSIONER ACHTENBERG: Thank you.

COMMISSIONER CASTRO: Mr. Crump, if you don't already know him Jerry Gonzalez of our State Advisory Committee in Georgia is sitting in the third row back there, you might also want to talk to him.

Next we have Dr. Goliday, Commissioner Timmons-Goodson, Commissioner Kirsanow, Commissioner Yaki, and then we'll be close to finishing up on this panel.

DR. SEAN GOLIDAY: Thank you. Many of my questions have been addressed but I do have --

COMMISSIONER CASTRO: Could you speak up a little louder in --

DR. SEAN GOLIDAY: -- many of my questions have been addressed but I do have just a

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couple of questions for Mr. Krouse and Mr. Roman.

Given the methodological issues you (inaudible) with the existing data sources, what would be a likely data source to kind of help us address some of the unanswered questions regarding conclusions currently being made about justifiable homicides?

And the second part of the question is, how can we work to bring that to scale or at least if not to scale, in theoretically important states -- that just kind of start looking at this issue beyond the federally sponsored data collection efforts.

MR. JOHN ROMAN: Those are hard questions. So with respect to the first question, you know, you could potentially reverse engineer some of this stuff, right? And we're talking about in most places where there just aren't that many homicides a year. You could potentially, you know, fund a study that could go and look at the Conda (phonetic) newspaper report legal filings about the nature of some random sample of these reports, learn something about the context about them, and try an answer this really critical

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question, right? Which is, are homicides of whites-on-blacks different than homicides of blacks-on-whites. Right? If one is more likely to be in context of self-defense than the other then the racial disparity is appropriate.

The racial disparity is so, you know, gargantuan that it's hard to believe that would be true. But you could potentially do that. There are some confidentiality issues there that I would be a little concerned about. Beyond that I don't know what else you could do.

The bigger issue here and we face this throughout the criminal/juvenile justice system is that states know what they spend and they have no idea what they buy. And they don't know what they're buying in terms of law enforcement. They don't know what they're buying in terms of community placements for juveniles, or sentencing, or corrections, they don't think about outcomes, they don't share data, they don't share knowledge.

And a lot of what's going in the world that I inhabit these days is trying to get to force states, counties and local governments to articulate what it is they're trying to accomplish

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and that means making them share data.

 If you share data it forces you to see all of your worts. And I think any effort that this commission can make to force local, county, and state jurisdictions to -- to collect, analyze, share and think about data around these kinds of issues will force other reforms that are also really important as well as to help us articulate the answers to the questions that we can't today.

 MR. DAVID HARRIS: If I could interrupt just a second. I apologize to the commission I'm going to have to depart for an airplane. I'm thankful for the opportunity to testify here and I'd be glad to answer any questions in writing. Thank you.

 COMMISSIONER CASTRO: Thank you, Professor.

 Yes, Mr. Crump.

 MR. BENJAMIN CRUMP: I just -- I got a response from Lucia McBath and she again wanted to apologize, but they just sentenced the killer of her son, Michael Dunn, to 105 years on top of a life sentence. She asked me to share this with

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the commission.

COMMISSIONER CASTRO: Thank you.

Any other responses to Dr. Goliday's questions?

MR. WILLIAM KROUSE: Well, I agree with Dr. Roman that we need better data. There's a need to improve our crime statistics. And if I lived in a perfect world and I could dedicate myself to this issue I would go and I would look at each one of those SHR records and contact the reporting agencies and try and find out what the circumstances were.

I mean, you're looking at stranger-on-stranger, white-on-black, firearm related justifiable homicides over that 10 year period there's 250 in the SHR. Then I would try and do a literature search to get some sort of reading on the error rate there as to how many weren't reported. And that would give me some idea of the prevalence, because right now I don't think that we can be too confident about the prevalence of private citizen justifiable homicides in general when that filters down to every other category.

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So that's what I would work on. And that's what I've been doing for the past year on mass shootings and it's -- it's astounding what you find. And in this country where we put such a primacy on self-defense you would want to know where those numbers are falling I would think. And you'd want to have confidence in those numbers.

And the Bureau -- I've had discussions with the Bureau of Justice Statistics, the NIBRS Program is advancing where we can start to do data samples on different questions and do some statistical sampling, but that's on a nation-wide basis that's not state by state.

And so I would hope that, you know, we'd start to look at these things a little more carefully in the future and at some point I will given the time and resources.

COMMISSIONER CASTRO: Okay. Professor -- I'm sorry. Commissioner Timmons-Goodson.

COMMISSIONER TIMMONS-GOODSON: Yes. Thank you very much, Mr. Chair. I had this question for Professor Harris, but I'd like for those that are present if you'd like to take a

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stab at it I'd appreciate it.

As I listened to Attorney Crump and others talking about reasonableness, objective standards, subjective standard, in describing fear it just seemed to me that it was extremely relevant that implicit bias is extremely relevant.

It leads me to ask that given that people often don't recognize and can't easily eliminate implicit bias I was wondering whether any of you might see anyway in which we might alter our stand your ground laws to both take into account this very valuable research information that we now have the benefit of, and take advantage of it in a way that will both allow us to protect those that fear, attack, and also to avoid the unnecessary deaths of the alleged attackers. Any takers?

MR. ARKADI GERNEY: Well, I think, you know I would say, and I think Mr. Crump spoke to this earlier to a degree, I think one of the problems with stand your ground laws and the great burden it places on jury's, but also the shooters themselves at the moment they're making their decision and to act reasonably is the great

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increase in the gray area and the uncertainty that it creates. So when it was only the Castle Doctrine and you had this location restriction it made it easier for people who were applying stand your ground laws in the course of shooting someone in their home -- or self-defense laws in the course of shooting someone in their home, but also for a jury that would go look at it later to try to figure out what happened. It was a narrower set of circumstances, the scope of what could be reasonableness, this gray area was much narrower.

And then when you bring in the, you know, the work of Mr. Harris and others and implicit racial bias, when you have an enormous scope of what possibly could be reasonable, the scope of what could be biased is much larger. The rule -- there are not bright lines here.

And the consequences of not having bright lines can -- can -- can hurt people either way. That can mean wrongful convictions because these very vague laws are applied very differently depending on what particular jury you happen to get. What particular defendant you happen to get. And the uncertainty itself is a huge part of the

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problem.

COMMISSIONER CASTRO: Any other responses?

MR. BENJAMIN CRUMP: The only thing that I might add to that is when you think about the Castle Doctrine as opposed to what we have now with the stand -- oh, I'm sorry, self-defense as to what we have now with stand your ground, and in many of these cases the objectiveness was, can the jury say "Did you have a duty to retreat? Was it safe?" But that's just thrown out now. And so it makes it that more subjective. I just fear them. So the only issue is, how can you prove fear in somebody and if it's a genuine fear or if it's a fear that -- I go back to Trayvon. I just thought that black people walking in my gated community weren't supposed to happen based on there was a robbery by a black person months before. If you remember the trial, which definitely couldn't understand why that was allowed to come into court. But because of that it somehow justified him stopping to detain any young black person walking in his gated community.

And so you go from that very objective

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fact -- that self-defense saying, "hold on," but if you had no duty to engage him and you could have got away then the jury can say you're guilty because this wasn't self-defense. But now with stand your ground is just such much gray -- there's no bright line as Mr. Gerney said for the jury -- to help the jury understand it.

MS. KATHERYN RUSSEL-BROWN: To answer your question or my comment -- or to answer your question is to retain the reasonable fear aspect, that it should be an objective standards, that it just shouldn't be that a person indicates that they, themselves, were fearful. I mean, the law should work in an objective way.

I think Pennsylvania, which has a stand your ground law as well, has included that in it there must be some showing of a weapon. There must be something objective about this fear.

MR. BENJAMIN CRUMP: And, Mr. Chair -- if I could -- also remember that the initial aggressor aspect of it. Most states say that you can't be the initial aggressor and still claim self-defense. But I submit to you if the person is dead on the ground how can you prove who was

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the initial aggressor?

MR. ARKADI GERNEY: Or if you're in -- there are some states that allow invocations of stand your ground if you're in the commission of a crime. So, for example, if you're in the process of dealing drugs and that confrontation arises and you fear for your life you can legitimately claim a stand your ground defense in some states, not in others.

So I think all of those would be things that would narrow the circumstances.

COMMISSIONER CASTRO: Okay. So Commissioner Kirsanow, and then Commissioner Yaki.

COMMISSIONER KIRSANOW: Thank you, Mr. Chair. I'm very interested in this notion of implicit bias, but unfortunately Professor Harris I understand has left. It seems to me that the implicit bias is a possible contributing factor for racial disparities in stand your ground confrontations where the attacker is black. Interested in kind of disaggregating the contributing factors, it seems to me that it could be likely another contributing factor to disparities in stand your ground confrontations,

2 could be that someone reasonably may believe that
3 they had to defend themselves where an attacker is
4 armed with a gun as opposed to being unarmed or
5 where someone is being confronted in their home or
6 there's a home invasion as opposed to being on the
7 street. So I kind of wonder if, maybe, this is
8 best put to Mr. Roman. In that context, isn't it
9 true that the Tampa Bay Tribune data show that the
10 blacks killed in stand your ground confrontations
11 are 26 points more likely to have been armed with
12 a gun as opposed to whites killed in stand your
13 ground, in nearly 3 to 1 margins are blacks more
14 likely to be killed in home invasions and
15 burglaries as opposed to whites killed in stand
16 your ground confrontations?

17 MR. JOHN ROMAN: Sure, I'm happy to take
18 a crack at that. So -- so two thoughts on that.
19 One is to say supposing that those data that you
20 just quoted are exactly right and reflect the
21 reality that we live in. The -- the -- and that
22 blacks who are killed are 3 times more likely to
23 be, you know, involved in a felony.

24 The fact is that, is a white shooter of
25 a black victim is 10 times more likely to have

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that be ruled justified than if it's a black shooter of a white victim. So even if you believe the 3 to 1 is correct, there's still -- or what remains is an enormous racial disparity that's a little hard to understand.

I'd also point out Mr. Crump left, which is unfortunate, so I can't say this -- but we were interested in trying to get to the other data that you just asked about -- (inaudible) -- and think about what are the other attributes of these incidents that we can observe in the data that tell us something about the likelihood that a shooting is ruled to be justified. And in addition to the cross race stuff, if the shooter is older than the victim the likelihood that it's ruled justified goes way up. If they're strangers it goes way up. If it's a firearm it goes way up. If it's a member of law enforcement it goes way up. To the point where if you were to create -- and it's a very small number of cases across these six years. But if you were to create a fact pattern that mirrored the Trayvon Martin/George Zimmerman incident where you had two strangers, a firearm was used in a homicide, the shooter is

2 white, and as we discussed Mr. Zimmerman would be
3 classified in the state as being white. The
4 victim is black, the shooter is older than the
5 victim, you would find that in those cases it's
6 ruled to be justified a little more than a third
7 of the time. 34 percent of the time compared to
8 2.5 percent overall of all homicides.

9 So in the fact pattern in the Trayvon
10 Martin/George Zimmerman case, you know, that is
11 actually the fact pattern that we can observe in
12 the data that is most likely to yield a
13 justifiable homicide.

14 And even if you believe this sort of 3
15 to 1 ratio, which may very well be true, you know
16 like I said they had a convenience sample --
17 cases. It's hard to generalize from that, but if
18 it's true, boy, you know, 34 percent compared to 3
19 percent when the facts are reversed is still an
20 enormous disparity.

21 COMMISSIONER CASTRO: Commissioner Yaki,
22 you have the last question. Your mic's not
23 working. There you go.

24 COMMISSIONER YAKI: This is for
25 Mr. Gerney. Doesn't the presence, availability,

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access to a gun make the problems of implicit bias in stand your ground cases even more problematic?

I mean, it's one thing to say, "I may have an unconscious reflexive action against someone because of their race." It's another thing when you have that unconscious reflexive action when you have a Smith and Wesson strapped to your hip.

MR. ARKADI GERNEY: Yes. And it's another thing when, in an increasing number of states, concealed carry permit holders can bring those guns into bars.

So, I think, yes, I think that's exactly right. And when you look at, you know, generally at crime data in the United States you find that the United States is in the middle range in terms of highly industrialized countries in terms of crime. And in terms of violent crime there is one place where it's way out of the normal range which is murder and where it's 45 times higher. Firearm murders, you know, 10 times higher.

And so, yes, a gun changes the equation. And if we're, you know, if we're going to have a -- if we're going to have a society where guns in

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bars are the norm and we have stand your ground laws, and we have extremely lax standards for who can get a permit to carry a gun you're going to have confrontations. I think there was a reference to the alcohol-fueled confrontations that happen all of the time in bars and other venues that will have lethal consequences and obviously that's bad for everybody involved, whether it's determined to be a justified shooting or an unjustified shooting, you've basically got two lives ruined at the end of that equation.

COMMISSIONER CASTRO: Well, thank you. We want to appreciate all of the information that you all provided us this morning. And thank you for appearing, we're now going to take a brief break for lunch. We will reconvene at 1:50, that is 10 minutes to 2:00 back here in this room.

Thank you, everybody.

(End of Panel Number 2, Volume II. Lunch recess, Proceedings will continue in 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

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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

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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.

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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

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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.

In all seriousness --

COMMISSIONER YAKI: -- you just insulted

our host air conditioning -- so --

(Laughter)

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.

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.

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.

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 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

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

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

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

18 And I'd like to get back quickly if I
19 could to the dramatic testimony about someone
20 punching you and you being able to then shoot
21 them. If we think about that in a land with
22 concealed carry, someone -- you know, a drunken
23 stranger punches you and you shoot them and you've
24 now taken a life, and I contend that's no small
25 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

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

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

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

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

On average you end up having some place 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

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

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

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

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

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justified in terms of the homicides than blacks.

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

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

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

So his results actually showed the opposite of what he was claiming. Rather than the stand your ground laws exacerbating it, it 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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you don't have to sit there and be killed, but it doesn't -- it's not a situation that -- that imposes the same kind of immunity from liability. They're all different -- they're all different -- this is where -- this is where in some ways we're conflating the idea of self-defense with stand your ground. It is not a stand your ground state.

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

COMMISSIONER CASTRO: Commissioner --

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

COMMISSIONER CASTRO: No, go ahead.

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

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

COMMISSIONER ACHTENBERG: No, that's 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."

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

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

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

24 It used to be if you needed a concealed
25 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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one of our national conferences we've trained on that. On behalf of APA we've been involved in two now, racial justice summits of -- especially within our role of prosecutors within the system, how can we make sure that we're doing no harm.

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

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

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

(Applause.)

COMMISSIONER CASTRO: This could not have happened without all of you and we really do 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@uscrr.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