EXAMINING THE RACE EFFECTS
OF STAND YOUR GROUND LAWS AND RELATED ISSUES
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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.1


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David Klainey
Karen Narasaki**
Michael Yaki

Mauro Morales, Staff Director

U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Washington, DC 20425
(202) 376-8128 voice
TTY Relay: 711

www.usccr.gov

* Term ended 12/05/2019.
Examining the Race Effects of Stand Your Ground Laws

Briefing before
The United States Commission on Civil Rights
Held in Orlando, FL

Briefing Report
Letter of Transmittal

February, 2020

President Donald J. Trump
Vice President Mike Pence
Speaker of the House Nancy Pelosi

On behalf of the United States Commission on Civil Rights ("the Commission"), I am pleased to transmit our materials from our briefing on Stand Your Ground laws. These materials are also available in full on the Commission’s website at www.usccr.gov.

The purpose of the Commission’s briefing was 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. In the transcript of our briefing, you will find expert testimony from state legislators, academic researchers, and advocates, as well as testimony on the personal impact of these laws.

We at the Commission are pleased to share these materials to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,

Catherine E. Lhamon
Chair
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COMMISSIONERS’ STATEMENTS

Statement of Commissioner Michael Yaki

INTRODUCTION

The shooting death of Trayvon Martin on February 26, 2012, and later that year, on November 12th, the shooting and killing of Jordan Davis triggered a national controversy over the legislated criminal defense called “stand your ground.” These laws expanded the self-defense principles of the castle doctrine to situations and areas outside the curtilage of a home. It also expanded the principle of self-defense to a lesser justification standard than that of justifiable homicide.

The United States Commission on Civil Rights opened its own inquiry on the subject in May 2013, and in October 2014, held a hearing in, Florida. The transcript of that hearing forms the main body of that report. Unlike other hearings or briefings, the work of the Commission was conceived as an investigation, on a bipartisan vote made possible by the vote of then-Vice-Chair Abigail Thernstrom.

We are here presented with only the testimony heard in Florida five years ago, as well as research and public information subsequent, but that does not prevent members of this Commission to state their observations on an issue that continues to trouble our nation to this day. And so my statement begins.

The question we asked then, and we ask now, continues to be: do Stand Your Ground laws have an unacceptable racial bias in their application in the criminal justice system. What we do know, and what we cannot ignore, is that the same racial biases that have permeated our criminal justice system cannot be separated from this issue. When you consider the racial disparities in selective prosecution and sentencing that have been amply documented in the literature is it any wonder

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1 Through no fault of the Commission and its staff, the lack of resources – both fiscal and personnel – hampered the ability of the Commission to engage in the type of fact-finding this matter deserved. Because of the way that data is recorded in Stand Your Ground shootings – or, more accurately, was not recorded, as will be discussed later – the intensive investigative resources that would have been required to be dedicated proved to be beyond the reach of the Commission. However, I want to acknowledge the immense contributions of Commission staff in providing the research enabling this Statement. In particular, I want to acknowledge their major contributions in Sections I, IV, and V.

2 Throughout the text of this Statement, Stand Your Ground and its abbreviation, SYG will be used interchangeably.

that a law like Stand Your Ground, which in effect grants both powers to an individual under the guise of self-defense would suffer similar maladies?

First, though, it is important to understand the background of Stand Your Ground laws.

I. THE RISE AND EVOLUTION OF STAND YOUR GROUND LAWS

A. The inception of Stand Your Ground

Florida passed the first “Stand Your Ground” law in 2005. The law extended the common-law “castle doctrine,” embedded in most state laws, to go beyond the confines of one’s home and into any area where a person “has a right to be” in defense of their person or property.4

Under the common law, the use of deadly force in the exercise of self-defense was justified in the case of a person defending their home.5 Until then, the “rule of retreat” dictated that a person had a duty to remove themselves from perceived harm. This was modified under early American jurisprudence to include any situation in which the defendant was in reasonable fear of imminent death or severe bodily harm.6

4 Fl. Statutes 771.012: (1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

(2) A person is justified in using or threatening to use deadly force only if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.


6 Id.
Florida’s law removed the duty to retreat and extended the right of deadly force to protect other persons, as well as reduced the threshold in both statutes from “reasonable fear of imminent death or severe bodily injury” to the broader “imminent commission of a forcible felony.” In essence, the Florida law created innumerable and moving “castles” that allowed the use of deadly force wherever a person had “a right to be,” effectively abrogating the duty to retreat in any place or circumstance.

The National Rifle Association, in crafting the Florida legislation, wanted the legal equivalent of carte blanche for the exerciser of a Stand Your Ground right. First, under the original version of the statute the person making the claim that they acted in accordance with the Stand Your Ground law was immune to criminal and civil prosecution if they are deemed justified in their use of deadly force. In addition, and most confusing to law enforcement, the police “may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.” In 2017, the statute was amended to shift the burden to the prosecution to overcome a Stand Your Ground claim by clear and convincing evidence, which has further confused prosecutors.

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7 FL. Statutes 776.012(1).
8 FL. Statutes 776.031(1).
9 “Forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” FL. Statutes 776.08
10 See Catalfamo, supra note 5, at 526.
12 The statute has since been changed to make it even more difficult to charge someone using a Stand Your Ground defense, as will be discussed, infra. However, this section remains in the law.
13 FL. Statutes 776.032(1).
15 FL. Statutes 776.032(2).
16 The Florida Supreme Court in 2015, after years of watching courts wrestle with interpreting the statute, created a court rule that required a defendant to establish at a pre-trial hearing their claim under the SYG statute by a preponderance of the evidence. See https://www.miamiherald.com/news/politics-government/state-politics/article142992234.html The National Rifle Association then worked to pass the change in the legislature, finally succeeding in 2017. See Spies, supra.
17 FL. Statutes 776.032(4).
The Florida “Stand Your Ground” law has been emulated, in one form or another, in over two dozen states, the most recent in 2018. As Table 1 illustrates, 2006 was a watershed year for SYG expansion as 14 states followed Florida by enacting similar legislation—AL, AK, AZ, GA, ID, IN, KS, KY, LA, MI, MS, OK, SC, and SD (see Table 1).

**FIGURE 1.** Number of SYG cases in Florida by SYG expansion nationwide, 2005–2011.

Source: USCCR analyses of SYG statutes for each state and SYG cases in Florida between 2005 and 2011.

The number of states reported as SYG states ranges between 22 and 33, depending on the criteria considered by a particular organization. For instance, considering only states that “allow a person to use deadly force where the shooter has a right to be, even when there is a clear and safe opportunity to avoid a dangerous situation,” the Mayors Against Illegal Guns reported 22 SYG states in their study. The Association of Prosecuting Attorneys (APA) reported 31 states in their report based on the following criteria: (1) whether states expanded the Castle doctrine

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19 The states that adopted a Florida-style law that removes the duty to retreat include Alabama, Alaska, Arizona, Georgia, Idaho, Iowa, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.


areas outside the home; (2) diminished or eliminated the “duty to retreat;” (3) changed the 
burden of proving reasonableness to a presumption; and (4) providing blanket civil and criminal 
immunity. The American Bar Association (ABA) counted 33 states based on their analysis of 
statutory law and case law (including California and Illinois).

One state is one state too many. But Florida, the so-called Sunshine state, is the incubator for 
National Rifle Association laws that have brought darkness into the homes of Trayvon Martin, 
Jordan Davis, and countless others. Yet proponents continue to claim that SYG is doing what it is intended to do. That, too, is called into question.

B. Stand Your Ground Laws Impact on Crime Reduction/Deterrence

Since the passage of the Florida statute and its progeny, there has been controversy over its efficacy 
and collateral consequences. The NRA has consistently trumpeted Stand Your Ground laws as 
expanding the “constitutional right to self protection.” In contrast, the Brady Center to Prevent 
Gun Violence, dubbed it the “Shoot First” law, and noted that the “sensible requirements” of self-
defense law to “minimize conflict and protect life” were undermined by Stand Your Ground 
laws. However, it seems that the legislative history of the Florida law is rooted more in curbing 
“overzealous states attorneys” rather than any genuine concern rooted in safety. Even then, 
however, there was scant evidence supporting that claim. Nevertheless, for the purposes of this 
discussion, we will focus on the perceived benefits – deterrence and crime reduction.

1. National Studies – Increase in Homicides in States with Stand Your Ground Laws

A study by Cheng & Hoekstra examined state-level crime data from 2000 to 2010 from the FBI 
Uniform Crime Reports to analyze the effects of Stand Your Ground laws nationally on two types

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24 “Florida is often the first place the N.R.A. pursues specific gun rights protections . . . to set a precedent that can then be exported to other states,” quoting David Cole in Spies, supra. See also Adam Weinstein, How the NRA and Its Allies Helped Spread a Radical Gun Law Nationwide, Mother Jones, June 12, 2012 https://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground/.
27 Spies, supra, characterizing the NRA as stating that innocent people were “being arrested, prosecuted, and punished for exercising self-defense that was lawful under the Constitution and Florida law.”
28 Id.
of outcomes – crime deterrence and homicide reduction.  

Contrary to proponent’s predictions, the study instead found “no evidence of deterrence effects on burglary, robbery, or aggravated assault” but did find significant evidence that the laws lead to more homicides” and estimated that “the laws increase homicides by a statistically significant 8 percent” or “an additional 600 homicides per year” in states that adopted “Stand Your Ground” laws. Indeed, the study found that the Stand Your Ground law enactments across the country resulted in the largest divergence between SYG and non-SYG states in 40 years in terms of the rate of homicide increase in SYG states. The study concluded that it found “compelling evidence that by lowering the expected costs associated with using lethal force, [SYG] laws induce more of it.”

Another study by McClellan and Tekin used the U.S. Vital Statistics database to conduct a similar examination of the impact of Stand Your Ground laws. The researchers raised “serious doubts about the claim that SYG laws make America safer.” Indeed, this study also tracked the Cheng & Hoekstra study by showing that having a SYG law is associated with a 6.8 percent increase in the firearms-related homicide rate. In contrast, states with self-defense provisions but retaining the duty to retreat (as contrasted with SYG’s removal of the duty as long as someone has a “right to be” in the location) showed no statistical increase. Thus, the study concluded that the removal of the duty to retreat caused the increase in homicides. They stated that their findings seemed to undermine argument that the stand your ground laws serve as a deterrent for crime.

Under both the increased deterrence and decrease in homicide policy rationales, Stand Your Ground in practice appears to fail miserably on the national level.

2. Florida Study – Increase in Homicides Associated with Stand Your Ground

Due to Florida’s status as the leader in Stand Your Ground legislation, a group of doctors published a paper in 2017 in the Journal of the American Medical Association – Internal Medicine analyzing


30 Id.

31 Id. at p.4.

32 Id.


34 Id.

35 Id. at p. 20.

36 Id. at p. 22. The study also showed a correlation between states that adopted Stand Your Ground and higher emergency room visits and hospitalizations due to firearms-related injuries.

37 Id. at 32.
the impact of Florida’s SYG law by studying homicide rates between 1999 and 2014. It found that
the implementation of Florida’s SYG law was associated with “an abrupt and sustained increases
in homicides, showing a 24.4% increase in homicide and a 31.6% increase in firearm-related
homicide.” The study also found further evidence that Florida’s stand your ground law has been
associated with increases in both unlawful and justifiable homicides, including a 75% increase in
determined justifiable homicides since the law passed.

A different 2014 study by Albert McCormick buttressed many of these findings. In examining
over 300 SYG cases in Florida, despite the claims by the NRA that Stand Your Ground was to
protect law-abiding citizens, the study found that over 50% of the claimants (those asserting the
defense) had criminal records, and almost one-third had criminal backgrounds involving at least
one violent offense.

Indeed, the McCormick study showed that the “triggering event” precipitating the incident for
which SYG was claimed was not, as proponents argued, a fear of violence. Instead, in 69% of
the cases, the most likely incident trigger was an argument or dispute that then escalated to threat
or violence. Defense against forcible felonies only comprised 27% of the triggering events. In
other words, SYG laws have been used to protect the use of violence or deadly force for nearly
70% of confrontations that did not begin as a forcible felony or threatening act. Rather, they help
escalate a dispute into an incident with deadly consequences.

C. Other Stand Your Ground Concerns


42 Among the precipitating events were arguments or disputes over money or property, relationships (e.g., jealousy or love triangles), domestic disputes, complaints (e.g., speeding through a neighborhood, barking dog), situations where the claimant intervened between two other disputing parties, road rage incidents, and revenge-motivated incidents. See McCormick, supra, at p. 12.

43 Id.

44 SYG Briefing, Testimony of Senator Chris Smith, supra, at p. 11
There are also concerns expressed by critics over the broad application of SYG laws on law enforcement, the courts, and, most disturbingly of all, who should “benefit” from the law. In 2013, the American Bar Association convened a Task Force to examine and report on the potential effects Stand Your Ground laws “may have on public safety, individual liberties, and the criminal justice system.” Of particular concern are provisions in many of the SYG laws that do not allow law enforcement to arrest an individual asserting SYG unless “probable cause” exists to overcome that assertion. As stated in the report:

Police officers report varying degrees of confusion regarding how to properly apply Stand Your Ground laws. Most Florida police officers now defer decisions to arrest on Stand Your Ground cases to the prosecutor’s office to make. This may be an unintended consequence of the law, as some Stand Your Ground statutes explicitly state in their language that the police should not vary from normal investigation procedures in Stand Your Ground cases. However, in jurisdictions with immunity from prosecution statutes, “criminal prosecution” is defined to include “detention, arrest, and charging.” This broad definition leaves police officers unsure about when they can and should arrest suspects.

The confusion was also documented by the Tampa Bay Times in a study of nearly 200 cases in Florida where Stand Your Ground defenses were documented. The paper noted that the “law has allowed drug dealers to avoid murder charges and gang members to walk free. It has stymied prosecutors and confused judges.”

“In Daytona Beach, for example, police Chief Mike Chitwood used the ‘stand your ground’ law as the rationale for not filing charges in two drug deals that ended in deaths. He said he was prevented from going forward because the accused shooters had permits to carry concealed weapons and they claimed they were defending themselves at the time. ‘We’re seeing a good law that’s being abused,’ Chitwood told a local paper.”

The inanity of the legislation is legend. In 2006, a Miami man avoided prosecution after spraying a car filled with gang members with 14 bullets. In 2008, a 15-year-old Tallahassee boy was killed in a shoot-out between rival gangs; two of the gang members successfully used Stand Your Ground to protect themselves from prosecution. As one law enforcement official stated, “Stand your ground” laws provide safe harbors for criminals and prevent prosecutors from bringing cases

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45 American Bar Association, p. iii.
46 Id. at p. 27.
47 See Tampa Bay Times, supra.
48 Id.
49 See Weinstein, supra.
against those who claim self-defense after unnecessarily killing others.\textsuperscript{50} The Tampa Bay Times analysis is replete with further examples of this “safe harbor” consequence:

One man killed two unarmed people and walked out of jail. Another shot a man as he lay on the ground. Others went free after shooting their victims in the back. In nearly a third of the cases the \textit{Times} analyzed, defendants initiated the fight, shot an unarmed person or pursued their victim — and still went free. ... During an argument at a 2009 party in Fort Myers, Omar Bonilla fired his gun into the ground and beat Demarro Battle, then went inside and gave the gun to a friend. If Battle feared for his life, he had time to flee. Instead, he got a gun from his car and returned to shoot Bonilla three times, including once in the back. Battle was not charged in the slaying.\textsuperscript{51}

The 2017 amendments to the Florida law, opposed by prosecutors, have not resulted in any clarity.\textsuperscript{52} The Tampa Bay Times has noted that “confusion” has resulted in two different appeals courts rendering two different opinions on the application of the law to cases pending at the time the law was enacted.\textsuperscript{53} One of these cases involved a 75-year old retired police captain shooting a man in a movie theater after popcorn was thrown at him.\textsuperscript{54}

In addition, the Tampa Bay Times article noted:

Critics contend the shift in the law will have its biggest impact before stand your ground hearings even occur. They say the amendment could have a "chilling effect" on authorities, who will think twice before bringing cases that should reasonably go before a judge. The immunity offered by stand your ground is broad, said University of Miami law professor Mary Anne Franks, and "the statute suggests the person ... would actually be able to sue everybody" if a judge dismisses the charge. Stand your ground does not mention the specific process for filing a civil suit. But it does state that defendants are immune from an arrest, language that could later bolster a claim of wrongful arrest or imprisonment. "You have basically cowed law


\textsuperscript{51} \textit{Id.}

\textsuperscript{52} “In the summer of 2015, the Florida Supreme Court addressed one of Stand Your Ground’s core provisions, which provides a path to immunity from the legal proceedings that typically follow a charge of murder or assault. Under the law, a defendant is entitled to a special pretrial hearing, during which a judge can dismiss the case. The court ruled that in these hearings the burden of proof was on the person claiming the statute’s protections. To shift the onus in the other direction, the court said, would essentially require prosecutors to prove a case twice.” \textit{See} Spies, \textit{supra}.

\textsuperscript{53} Kathryn Varn and Zachary T. Sampson, \textit{Think you know stand your ground? The recent Clearwater case tells us you’re probably wrong,} Tampa Bay Times, August 17, 2018.

enforcement in saying you need to be very careful proceeding in these cases," Franks said. "They’re being asked to adjudicate something that should be brought out during the trial. It’s cart before horse."\textsuperscript{55}

The “bewildering” rules governing the presumption of justified use of deadly force, especially the roles of the police and prosecutors, resulting in attempts to repeal or weaken the law in Florida – all of which failed.\textsuperscript{56}

D. Has Stand Your Ground Increased Safety

The principle rationale propelling Stand Your Ground is that it makes us safer. Our safety is increased. Is that true?

In a study of the Florida SYG cases collected by the Tampa Bay Times, the answer would be no. If safety is defined as loss of life, SYG encounters have a mortality rate of 60\%. If increases in the homicide rate, as documented above, means decreased safety, the answer would be no. If a fight breaks out between two people, are you – as a bystander – safer if neither are armed, one is armed, or both are armed?

David LaBahn, the President of the Association of Prosecuting Attorneys, expanded on this theme:

> 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 health and undermined prosecutorial and law enforcement efforts to keep communities safe.\textsuperscript{57}

Proponents of Stand Your Ground continue to argue that possibility that someone is armed will increase the fear in a criminal and deter crime. Based on the testimony and examples in the literature, it is difficult to believe anything other than the fear of law-abiding citizens that untrained, unqualified people with concealed handguns are walking the streets will increase.

And for African Americans and other minorities, do they feel safer and experience less fear knowing that a wrong look, an honest dispute, or even an issue that rises to an argument can end with their life being taken? A recent killing in Florida reinforces that rather than protecting the innocent, Stand Your Ground continues to resonate in tragedy.

\textsuperscript{55} Id.


E. The Killing of Markeis McGlockton

On July 19, 2018, a dispute over a parking space at a convenience store in Clearwater, Florida turned deadly. Michael Drejka, after being shoved to the ground, pulled his weapon and fired once into the chest and killed Markeis McGlockton, who had pushed Drejka but started to back off, according to video surveillance. The Sheriff for the jurisdiction – Pinellas County -- refused to prosecute, citing his interpretation of Florida’s SYG law. In statements to the press, the Sheriff reiterated that the “Florida Legislature had created a ‘subjective standard’ for determining whether the person who used force was in fear of bodily harm, but suggested that his hands were tied because his department could be sued if it failed to follow the law’s requirements.”

In later statements, the Sheriff doubled down on his statement, saying "The law has taken away law enforcement discretion to arrest unless there is no 'stand your ground' as a matter of law . . . it must be so clear that as a matter of law 'stand your ground' does not apply in any way to the facts and circumstances that you’re presented with. That is not the situation here. The facts are not so clear that this is absolutely outside the boundaries of ‘stand your ground.’"

Three weeks later, the Pinellas-Pasco State Attorney filed manslaughter charges against Drejka.

Many critics have described the push for “Stand Your Ground” laws as a solution in search of a problem. Others have noted that the law pours accelerant on seemingly minor incidents as above – a shove, a look – and converts them into something much more serious – deadly serious. As noted above, studies do not bear out any deterrent impact of the law, and in fact shows a strong correlation in the rise of the firearms-related deaths. Law enforcement is uncertain how to investigate and prosecute these cases. And, of most interest to the Commission, this last act involved a white shooter – Drejka – and an African American victim – McGlockton.

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63 SYG Briefing, Testimony of Senator Chris Smith, supra.
The recent shooting of Markeis McGlockton brings us full circle to the crux of the hearing, and of this Statement – the role that racial bias plays in the deadly manner in which Stand Your Ground laws play out. And it begins with two young African Americans – Trayvon Martin and Jordan Davis. And, as you will see, the confluence of all the issues raised heretofore are represented, in full, in the deaths of these two young men.

II. TRAYVON MARTIN AND JORDAN DAVIS

A. Trayvon Martin

Trayvon Martin was born in February 1995. He lived with his mother, Sybrina Fulton, in Miami Gardens, but was visiting his father, Tracy Martin, in nearby Sanford on February 27, 2012. During a break in a televised basketball game, he left his father’s home to buy some Skittles and iced tea at a nearby convenience store. On his way back, he was followed by George Zimmerman, who belonged to a neighborhood watch program, ironically, for the neighborhood where Trayvon’s father lived.

Zimmerman was a part-time student, and carried a concealed semi-automatic for which he had a permit. From the previous August to February, he had called the police several times to report on “suspicious” persons, all of whom were black.

Zimmerman called the police while following Trayvon in his car, reporting that there was a suspicious person in his neighborhood. The dispatcher at the time instructed Zimmerman to remain in his car and await the arrival of the police. Zimmerman disregarded this, and continued his pursuit of Trayvon.64

At some point, Trayvon called his girlfriend and told her he was being followed, and he began to run.

What happened next has been the crux of examination and a trial. Witnesses heard shouts of help. Shots were fired. When police arrived on the scene minutes later, they found Trayvon face down, shot in the chest, dead. Zimmerman was at the scene, bleeding from the head.

Police took Zimmerman into custody, but released him from the station without any charges. Among the reasons later given by the Police Chief was language taken from the Stand Your

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Ground statute stating that he was prohibited from arresting Zimmerman and that it could have held the city liable.

It was only after Trayvon’s parents began questioning his release and contacted attorney Benjamin Crump, that the Florida criminal justice began to pay attention.

On March 12 – 2 weeks after Trayvon’s death – the local Police Chief who had refused to charge Zimmerman turned over the investigation to the State’s Attorney office. Zimmerman was charged with second-degree murder on April 11, 2012. The trial began on June 24, 2013, after the selection of an all-female jury. The following month, on July 13, 2013, the six-member jury acquitted Zimmerman of murder.

Throughout the murder trial, some commentators sought to distance the trial from the Stand Your Ground law. That flies in the face of the jury instructions and the plain law. Stand Your Ground is not a separate section of the law. It was part of the self-defense instructions sought by the Zimmerman team and read by the judge.

Perhaps the best summation of the application of Stand Your Ground in the Zimmerman trial was made by Arkadi Gerney and Chelsea Parsons:

> The Stand Your Ground provision of Florida’s self-defense law cannot be severed from the other elements of that body of law; it has become part of the overall conception of what constitutes justifiable use of force in that state. Stand Your Ground expands upon the traditional concept of self-defense by allowing the use of deadly force in self-defense, even when lesser means of force would suffice or safe escape is possible. All the elements of Florida’s expansive body of self-defense law come into play when a person claims their use of deadly force was justified, even if the

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65 The relevant sections of FL. Statutes 776.031: (2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful. (3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1). (emphasis added).


defendant does not seek to use Stand Your Ground to avoid arrest or prosecution or directly invoke it as part of their formal defense.

The Zimmerman trial provides an example of this. Although Zimmerman did not seek a Stand Your Ground hearing and his attorneys did not directly invoke this law as part of the formal defense, the expanded notion of one’s right to use lethal force in self-defense was part of the judge’s instructions to the jury. The judge instructed the Zimmerman jury on all aspects of the state’s expansive self-defense laws, which include a person’s right to use deadly force even when safe retreat is an option. It is in the context of this entire body of law that the jury was asked to evaluate Zimmerman’s conduct and ultimately found his conduct to be justified. In fact, both of the jurors who have spoken out since the trial indicated that the Stand Your Ground law played a role in their deliberations.69

Interestingly, it was brought out at trial that Zimmerman knew exactly how Stand Your Ground worked.70

Sybrina Fulton and Tracy Martin established the Trayvon Martin Foundation after Trayvon’s death. In 2018, Rest in Power: The Trayvon Martin Story, aired on BET and the Paramount Network. It traced the life of Trayvon Martin and the legacy from his death, which included giving rise to the Black Lives Matter movement.71

B. Jordan Davis

Jordan Davis was also a 17-year old high school student on November 23, 2012. He liked roller skating and playing video games. His mom, Lucy McBath, lived in Atlanta, and his dad, Ron Davis lived in Jacksonville, Florida. Just 18 months previously he had moved to Jacksonville to live with his dad.72

The day after Thanksgiving, he and three friends pulled up to a convenience store, and one of his friends went into the store. Michael Dunn and his girlfriend parked in the adjacent space, and

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69 Arkadi Gerney and Chelsea Parsons (September 2013) “License to Kill: How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results”, Center for American Progress, p. 5.


Dunn began complaining about the loud rap music coming from Davis’ car while his girlfriend went into the store.

At some point, an argument erupted between the Dunn and the occupants of the other car, and then Dunn, who had a concealed weapons permit, took out a gun from his glove compartment and began shooting into the other car, and continued shooting as the car backed out and pulled away. Jordan Davis, hit several times, was dead. Dunn, after the shooting, drove to a hotel and ordered pizza. He never contacted the police until he was arrested.

Dunn was tried and convicted of first-degree murder in 2014, and is serving a life sentence. During the trial proceedings, his lawyers argued that he was acting in self-defense, both in jury arguments, instructions, and in their appeal arguing that the prosecution had not overcome the presumption that he had acted in self-defense. Throughout, they referenced the Stand Your Ground statute.

Jordan’s mother, Lucy McBath, became an anti-gun advocate, as well as an advocate against Stand Your Ground laws. In November 2018, she was elected to the United States Congress. Unlike the Trayvon Martin killing, there were plenty of witnesses, including Davis’ friends and Dunn’s girlfriend. There was no dispute that both parties were in their cars at the time the shooting started, that Davis and his friends had no weapons, and that Dunn had left his car to continue shooting even after the teenagers’ fled the scene.

Both Trayvon Martin and Jordan Davis deserved to be living full lives at the time of our hearing and of this statement. Trayvon had dreams of being a pilot. Jordan was just a lively, “mouthy” kid hanging out with his new friends. Neither had a chance to see where their lives would take them.

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77 https://mcbach.house.gov/.
III. DISPROPORTIONALITY IN APPLICATION OF STAND YOUR GROUND LAWS

The studies that found that SYG laws were associated with higher homicide rates and, to the ability that they were able, to identify the broad ethnicities of the people involved in SYG incidents. First, the McClellan and Terkin’s national studies that the greatest increase in homicide rates was for or white males (17.1%). For firearms-related homicides, the increase in white males was 11.6%. They found no statistically significant increase for black males or the African-American population.\(^{78}\)

The Humphries et al. study found similar in homicide rates when just studying Florida. When differentiating for firearms-related homicides, their findings “suggested a statistically significant increase in homicide by firearm” for whites (45.1%) ; African Americans (22.9%); those 20 to 34 years (35.8%); those 35 years and older (21.5%); and males (31.8%).\(^{79}\)

These studies, therefore, do not show a disproportionate increase in the deaths of protected classes as a result of SYG laws. The vast majority of concealed weapon permit holders are white,\(^{80}\) the largest increases in firearms-related homicides are white. As a matter of impact on death rates, there does not appear to be any statistically significant disparity that would imply that Stand Your Ground results in more deaths of African Americans.

However, that does not begin to end the analysis. It is here that all the issues relating to the fairness of the American justice system on black Americans come to the fore, for in studying the parties to an SYG confrontation, this pattern emerged:

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.\(^{81}\)

In fact, despite the fact that a racial disparity already existed in justified shootings, i.e., if the shooter was white and victim black it was ruled to be justified 9.5% of the time, and the inverse was 1.1%., the \textit{disparity grows when Stand Your Ground is enacted}. \(^{82}\)

\(^{78}\) McClellan and Terkin, supra, pp. 21-23.

\(^{79}\) Humphries et al, \textit{supra}.


\(^{81}\) SYG briefing, Testimony of John Roman, Vol. 1, p. 25.

\(^{82}\) \textit{Id.} (emphasis added).
In other words, if you are a black American, the chances of your death being ruled “justified” and, therefore, immune to prosecution increases if you die in a Stand Your Ground state. The chance of your family being able to seek justice goes down if you are killed in a Stand Your Ground state. That chance that your killer gets off scot-free increases if you are black and your killer is white in a Stand Your Ground state.

In an especially telling summation, Professor John Roman – who testified at our hearing – also wrote an article that describes the statistical probabilities of the outcome of an individual fitting the profiles of the Trayvon Martin proceeding. In relevant part:

Table 3 describes the likelihood a homicide is ruled justified when there is a single victim and single shooter, they are both male, they are strangers, and a firearm is used. In the six years of FBI data, this fact pattern occurred in 2,631 cases.

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Non-Stand Ground states</th>
<th>Stand Your Ground states</th>
</tr>
</thead>
<tbody>
<tr>
<td>White on white</td>
<td>16.28</td>
<td>12.95</td>
<td>23.58**</td>
</tr>
<tr>
<td>White on black</td>
<td>42.31</td>
<td>41.14***</td>
<td>44.71***</td>
</tr>
<tr>
<td>Black on white</td>
<td>8.57</td>
<td>7.69**</td>
<td>11.10</td>
</tr>
<tr>
<td>Black on black</td>
<td>10.14</td>
<td>10.24***</td>
<td>9.94***</td>
</tr>
<tr>
<td>Total</td>
<td>14.90</td>
<td>2.15***</td>
<td>3.67</td>
</tr>
</tbody>
</table>

Source: 2005-10 FBI Supplementary Homicide Reports.

* p < 0.05; **p < 0.01 ***; p <0 .001

Overall, the rate of justifiable homicides is almost six times higher in case with attributes that match the Martin case. Racial disparities are much larger, as white-on-black homicides have justifiable findings 33 percentage points more often than black-on-white homicides. Stand Your Ground laws appear to exacerbate those differences, as cases overall are significantly

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83 The racial disparity in treatment of “justified” killings is not new. The Marshall Project conducted a study of FBI datasets and came to this conclusion: “When a white person kills a black man in America, the killer often faces no legal consequences. In one in six of these killings, there is no criminal sanction, according to a new Marshall Project examination of 400,000 homicides committed by civilians between 1980 and 2014. That rate is far higher than the one for homicides involving other combinations of races. In almost 17 percent of cases when a black man was killed by a non-Hispanic white civilian over the last three decades, the killing was categorized as justifiable, which is the term used when a police officer or a civilian kills someone committing a crime or in self-defense. Overall, the police classify fewer than 2 percent of homicides committed by civilians as justifiable. The disparity persists across different cities, different ages, different weapons and different relationships between killer and victim.” See https://www.themarshallproject.org/2017/08/14/killings-of-black-men-by-whites-are-far-more-likely-to-be-ruled-justifiable.
more likely to be ruled justified in SYG states than in non-SYG states ($p = 0.02$).\footnote{John K. Roman, Ph.D. (2013) Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data, The Urban Institute, July 2013, at p. 9 (emphasis in blue added to Table).}

The data used by Professor Roman in both his oral and written testimony, as well as his research, came from the Federal Bureau of Investigations Supplementary Homicide Report (SHR), the only dataset that includes information about the disposition of a proceeding, including whether a homicide was deemed justified.\footnote{Id. at p.2.}  This information showed that, the, controlling for variables, the odds a white-on-black homicide being found justified is $281$ percent greater than the odds a white-on-white homicide is found justified.\footnote{Id. at p. 9.}  This is an extremely sobering, and powerful, statistic.  Ironically, Professor Roman’s data does not include the state of Florida because Florida does not participate in the FBI’s Supplementary Homicide Report database.\footnote{https://www.ojjdp.gov/ojstatbb/ezashr/asp/off_display.asp.}  However, a team of health scientists studied the Tampa Bay Times data of 237 cases from 2012-2013 and updated all the unresolved case statuses for their analysis in 2015.\footnote{Nicole Ackermann, Melody S. Goodman, Keon Gilbert, Cassandra Arroyo-Johnson, Marcello Pagano, Race, law, and health: Examination of ‘Stand Your Ground’ and defendant convictions in Florida, Social Science & Medicine 142 (2015) 194-201.}  They then applied traditional and accepted social scientist analytical techniques to the data and their conclusion was no less startling than that of Roman: “SYG legislation in Florida has a quantifiable racial bias that reveals a leniency in convictions if the victim is non-White, which provides evidence towards unequal treatment under the law.”\footnote{Id.}

Their examination of the data also confirmed that a suspect was twice as likely to be convicted if the victim were white, versus non-white, where an SYG defense was asserted.  This confirms the shift that Roman saw in the national data.  It means that if you are an African America asserting an SYG defense where a white person was killed, under their analysis you have double the chances of being convicted as opposed if the victim were black.  If the victim were African American, and the alleged killer asserting the SYG defense were white, he also better than double the odds of being let go.

The combination of these two social scientists’ studies – one nationally, one focused on Florida – provide a compelling case that there is racial bias in the application of SYG laws that tilt against justice for African American victims, and bias in the application of justice depending on whether you are an African American or white person accused of shooting another white person.  Stand Your Ground, in other words, is a perfect illustration of the disparity in the administration of justice
if you are an African American – whether a victim, or unable to assert a successful Stand Your Grand challenge.

IV. THE IMPACT OF CONCEALED CARRY LAWS

The confluence of Stand Your Ground and concealed-carry laws\(^90\) is, to even the casual observer, an invitation to use deadly force. Seven years after Stand Your Ground passed in Florida, the number of concealed carry permits tripled.\(^91\) In 2019, Florida leads the country by far with nearly 2 million permits issued for a state population of nearly 22 million – nearly 1 in 10 Floridians carry concealed weapons. Florida is, to no one’s surprise a state that is a “shall issue” state with regard to concealed carry weapon permits. Indeed, of the states associated with Stand Your Ground laws, almost all are “shall issue” or permitless states. According to one pro-gun website, there are over 17 million concealed carry permits issued across the country.\(^92\)

Civil immunity and concealed carry laws in the context of SYG were addressed a number of times during the Commission’s briefing. Panelists expressed concern about the “very dangerous” and often lethal circumstances created by the combined effects of concealed carry laws and “shifting” civil immunity.\(^93\) Most SYG states have provisions that protect SYG claimants from civil law suits with varying degrees.\(^94\) Over half of these SYG states provide what is considered “blanket” immunity, which prohibits anyone from bringing law suits against SYG claimants—including injured bystanders and their dependents (AL, AZ, FL, KS, KY, LA, MS, NC, OK, SC, and TX).\(^95\) Other states offer partial immunity that prohibits only the aggressor or related party from bringing a civil suit (AK, GA, MI, MT, NH, PA, TN, and WV).\(^96\)

\(^90\)“Concealed-Carry” laws refers to Of the 35 states that generally require a CCW permit in order to carry concealed weapons in public, eight states and the District of Columbia have “may issue” laws, which grant the issuing authority wide discretion to deny a CCW permit to an applicant if, for example, the authority believes the applicant lacks good character or lacks a good reason for carrying a weapon in public. 14 “shall issue” states provide the issuing authority a limited amount of discretion, and 13 “shall issue” states provide no discretion to the issuing authority. Nearly every state places some restrictions on where concealed firearms may be carried, such as restrictions on carrying in bars, schools, and hospitals, and at public sporting events.

\(^91\)Tampa Bay Times, *supra*.


\(^93\)*See SYG Briefing. Elizabeth Burke, p. 86. She discusses in detail consequences presented by the intersection of conceal carry laws and civil immunity.

\(^94\)Civil immunity, in the context of SYG, shields a person who invokes SYG from liability in a civil law suit. Generally, when a person is tried on a criminal matter, the aggrieved party also seeks to sue the defendant in civil court to recover monetary damages.


\(^96\)*Id. However, in these states, injured bystanders or their family members can bring civil suits.
The deadly cocktail of Stand Your Ground and concealed-carry is a license to kill. As one advocate stated, “[i] encourages vigilante law. . . So one of the critical problems with the Stand Your Ground law is that before, that person would have had the impetus to leave, to go away. . . . But the Stand Your Ground laws allow people to stand, shoot, and murder with no consequences.”

It cannot be understated that concealed-carry makes it possible for Stand Your Ground to be deadly. Over two-third of the cases in the Tampa Bay Times studies involved guns. But of those cases, in 60% of the cases the person claiming the benefit of SYG was armed with a gun, whereas over 60% of the victims were unarmed. And it is not surprising that nearly 60% of the persons who were the “assailant” in an SYG situation died.

It is no coincidence that the intersection between “shall issue” and “no permit required” states and states with Florida-style SYG laws is almost a 1:1 match. And, therefore, it should come to no one’s surprise that states with Florida-style “shall issue” permit laws were significantly associated with increases in their homicide rates, with 6.5% higher total homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates. It was entirely expected that Florida experienced the surge in homicide rates after the adoption of Stand Your Ground, as documented in Section I of this statement.

As the study of Stand Your Ground, weapon availability, and race continues, it would be a critical area of study to understand whether there is any racial bias in the granting or rescinding of concealed carry gun permits. It would be a critical area of study to determine the application of conditions, even in “shall issue” states like Florida, that would enable a state to deny someone with a clear history of disturbing behavior to be denied the right to carry a gun. It has been a source of continual puzzlement that George Zimmerman even had a concealed weapons permit, given his history of assaulting a police officer and history of domestic violence. In 25 other states, this could have resulted in the denial of his application for a carry permit. In Florida, no such bar existed. In fact, years later, and numerous other run-ins with the law, Zimmerman has yet to lose his permit.

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98 Tampa Bay Times, supra.
99 McCormick, supra, at pp. 14-16.
100 Id. at 17.
102 Arkadi Gerney and Chelsea Parsons, supra, at p. 15. According to the authors, Florida would have required to have been convicted of a violent crime within the last 3 years to have been denied a permit. Id.
V. IMPLICIT BIAS AND THE “REASONABLE BELIEF” STANDARD

A thread that continues throughout any analysis of Stand Your Ground is the presence within its legislative language that a person using deadly force must *reasonably believe* that using “such force is necessary to prevent imminent death or great bodily harm . . . or to prevent the imminent commission of a forcible felony.”

What constitutes reasonable belief? We have seen that law enforcement officials in Florida have used an extremely broad, subjective standard. This is due, in no small part, to the deliberate omission of any criteria for what constitutes a reasonable belief, either from the Legislature or the courts. According to one commentator, the statute instead created a “presumption of fear” that moves with the individual, creating an arena of lethal force that is already presumed to be legal, notwithstanding whether the force was really proportional to the apparent threat.

Zimmerman received a one-year probation sentence for stalking, and the person stalked has requested that Florida revoke his license. It is unknown whether any action has been taken or reported.

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104 FL. Statutes 776.012(2).

105 See Texas Penal Code Sec. 9.32.(b) The actor’s belief under Subsection (a)(2)(B) [to prevent the other’s imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery] that the deadly force was immediately necessary as described by that subdivision is *presumed to be reasonable if the actor:*

   (1) knew or had reason to believe that the person against whom the deadly force was used:
   (A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;
   (B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or
   (C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

   (2) *did not provoke* the person against whom the force was used; and

   (3) *was not otherwise engaged in criminal activity,* other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

   (c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.


In the absence of an objective reasonable person standard, the person inserting themselves into a situation where they will eventually claim a Stand Your Ground defense is allowed to import their own biases to color the lens through which they view a situation. It is what they believe. In other words, Stand Your Ground legitimizes a person’s implicit bias. The challenge is that the data is implied – it relies on social science into the type of racism that is not overt, but which taints the entire criminal justice ecosystem.

This Commission and many social science researchers, along with racial crime statistics reported by state and federal agencies, allows an understanding of how negative perceptions of racial minorities’ criminality lead to uneven racial treatment in the criminal justice system, which in turn implicitly drives feelings of racial bias and discrimination.

David Harris, in his testimony to the Commission, talked about this at length. In shorthand, he called it, in essence, a mental rule of thumb. In psychological terms, he credited that rule of thumb as a “heuristic.” Both Harris, in his written testimony, and Katheryn Russell-Brown, in an article we were provided, refer to what to the “suspicion heuristic”—which describes the psychological process through which many people link blackness with criminality. Mr. Harris stated how this suspicion heuristic works:

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

In other words, implicit bias, including a suspicion heuristic about African-Americans, becomes a means of justifying killing them.

Ms. Russell-Brown has written of the importance of examining the historical roots of the association of race with certain criminal laws and criminal justice polices that exist today. She explains:

110 Harris testimony, supra, at pp. 10-11.
We must examine the historical relationship between the law and African Americans and how the law has been utilized to respond to racialized threats. These images drive our perceptions of which groups are to be feared, who is fearful, the appropriate responses to fear, and whether that fear is justified under the law....

She further states:

For decades, scholars have identified laws and legal practices that have created stark racial disproportionality within the justice system, including the war on drugs, racial profiling by law enforcement, mandatory-minimum sentences, felony disenfranchisement, and mass incarceration.  

Similarly, Khalil Gibran Muhammad has developed a discussion of how the perception of criminality in the black community began in early nineteenth century practices of using racial crime statistics to support discriminatory public policies. This manifested in the “negro criminal” discussed in his book, *Condemnation of Blackness*, where he argues:

Beginning in the late nineteenth, statistical rhetoric of the “Negro criminal” became a tool to shield white Americans from the charge of racism when they used black crime statistics to support discriminatory public polices and social welfare.

Harris, Russell-Brown, Goff, Richardson and Muhammad did not develop their positions in a vacuum. Beginning in the 1990s, it became apparent that racial crime statistics reported by some state and federal officials showed an uneven criminal justice response to racial minorities’ criminality. Traffic stop data shows that blacks are stopped considerably more often than whites, yet are less likely to be found with contraband. “Driving while black” became a staple of conversation and debate that continues to this day. The Department of Justice (DOJ) Office of Juvenile Justice and Delinquency (OJJPD) Relative Rate Index (RRI) shows that minorities are disproportionately over-represented at each stage of case processing (e.g., arrests, sentencing, placement in secure facilities, etc.), except for diversion programs.

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111 Russell-Brown, *supra*.

112 Id.


116 Relative Rate Index (RRI), DOJ OJJDP.
Pretextual traffic stops and other manifestations of racial profiling essentially treat race as evidence of crime, targeting certain segments of the population as potential criminal offenders solely by virtue of their race. Thus, through racial profiling, American’s law enforcement officials not only “racialize” crime by assuming most crimes are committed by minorities, they also “criminalize” race. In so doing, they place the primary burden of law enforcement on the backs of innocent minorities who are the victims of racial and ethnic stereotyping. Innocent minorities are harassed more than innocent white Americans, and wrongdoing by minorities is punished more harshly than wrongdoing by whites.\footnote{Ronald H Weich, Carlos T Angulo, Leadership Conference on Civil Rights & the Leadership Conference Education Fund (200) Justice on Trial: Racial Disparities in the American Criminal Justice System (Collingwood Press), p. 7.}

A number of prominent research studies also demonstrate that the negative portrayal of minorities in the criminal justice system creates and perpetuate the “suspicion heuristic” that trigger racial disparities.\footnote{From Ackerman, et. al, supra, at p. 199: “Whites still have limited social cues to tell differences among Black men's professional status (e.g., criminal, janitor, teacher, physician) in the 21st century and often assume the worse. Feagin states, “Many Whites have fearful reactions to a Black man encountered on streets, in public transport, and in elevators” (Feagin, 2010, p.108). There are also many negative perceptions about the character and behaviors of Black men, such as Whites' perceptions that Black men as more violent, unpleasant, promiscuous, unintelligent, and less ambitious and nurturing (McConnaughy and White, 2008).} In perhaps the most extreme and chilling example, a research study analyzed bias on perceived weapon holders by police officers. In the test, black and white subjects were holding harmless objects. The analysis revealed race effects that led to (1) black subjects being incorrectly shot at more than Whites: (2) a perceptual sensitivity effect (when held by black subjects guns were less distinguishable from harmless objects) and (3) a response bias effect (objects held by the black subjects were more likely to be treated as guns).\footnote{Anthony G. Greenwald, Mark A.Oakes, Hunter G.Hoffman (2003) “Targets of discrimination: Effects of Race on Responses to Weapons Holders”, Journal of Experimental Social Psychology Volume 39, Issue 4, July 2003, Pages 399-405.}

The above shows how the passage and institutionalization of SYG law are inevitably influenced by mainstream narratives of race and crime. For these reasons, as David Harris pointed out to the Commission:\footnote{See page 64.}

\begin{quote}
The combined potential impact of implicit bias against blacks and the suspicion heuristic on the use of SYG laws is potentially catastrophic. SYG laws lower the potential cost of engaging in deadly violence; one can use deadly force in any public place, even when avoiding violence is possible, and still use the SYG defense to argue that the jury should not convict. Implicit bias against blacks, especially seeing blacks as likely to be violent or dangerous, increases the likelihood that people with weapons will shoot them; armed people are more likely to feel fear, and therefore to shoot. And when the victim is black, members of juries—also infected with the same implicit bias—are more likely to sympathize with the shooter.
\end{quote}
Or as Ronald Sullivan said before the United States Senate:

Mr. Zimmerman’s acquittal was made possible because Florida’s “stand your ground” laws and its concealed weapons laws conspired to create the perfect background conditions for his exoneration. These laws permitted Mr. Zimmerman to carry a loaded firearm, to disregard the clear directive of a 911 dispatcher, to follow and pursue Trayvon, and then stand his ground when young Trayvon reasonably sought to defend himself—and all because, I strongly suspect, that Mr. Zimmerman could not apprehend any lawful reason for a young black male to be walking through his middle-class neighborhood. To Mr. Zimmerman, Martin’s blackness likely served as a crude proxy for criminality.121

Thus, while it may be difficult to impute overt racist intent in Stand Your Ground laws, or deliberate racism in its application and implementation, there is a voluminous amount of research documenting implicit bias and its impact on criminal justice. Stand Your Ground is not free of such bias; indeed, it is the proverbial Wednesday’s child, full of woe, a sad example of how bias is embedded and enshrined in law to the detriment of our African American community.

VI. DATA COLLECTION CHALLENGES

A. The SHR lacks adequate data to track critical SYG impact on protected classes

1. The SHR itself is not complete

As noted before, Florida does not even participate in the report. Nor do all states or their municipalities participate fully, or only intermittently.122 Moreover, the data is reliant on self-verification – so researchers have to rely on the data, even if the locality providing it did not check, confirm, or verify whether it was correct.123 Even more chilling, it is likely that many justifiable homicides are severely underreported.124

In addition, the methodology does not allow for separation of white and Hispanic in reporting.125
Also noted before, the SHR data is based on information from the criminal justice system. If a person does not even enter the system – is not charged – that is not available. One of the challenges this investigation faced was the task of examining “charging sheets” where decisions are recorded as to the disposition of an arrested person. Perhaps now, with the advent of social media and the camera phone, it is more difficult today than at any other time in history for a shooting not to receive the type of scrutiny that would allow someone to escape any examination of their alleged actions in a SYG situation. But that doesn’t take the place of requiring data as part of submissions to the FBI, much less requiring submission to the FBI, which Florida resolutely does not do.

One of the most important aspects of Florida-style SYG laws is that there is discretion at the charging official, i.e., the police, to simply let someone go – even if they committed homicide – because they assert a prima facie case of Stand Your Ground. Both George Zimmerman and Michael Drejka were summarily released because the police determined that they had both asserted adequate SYG defenses to their actions. Only after considerable social and media attention were both men eventually arrested for their actions. Under any reporting regime, there is no obligation to report non-charging decisions, regardless of the underlying action. In the absence of any social media or press media attention, how many other decisions to release, rather than charge, go unnoticed, unreported, unknown. How many other young men not named Trayvon Martin, Jordan Davis, or Markeis McGlocktons never have the chance to have their killers go to trial?

VII. PROPOSED RECOMMENDATIONS

It is thus, after this examination that we come to the end and ask: what next?

There are certain steps, recognizing the reality that gerrymandering, lobbying, and campaign contributions have on putting a thumb on the scales of justice, that Congress or state legislatures can do to ameliorate some of the obvious negative impacts that Stand Your Grounds laws have wrought upon our communities.

First, remove the immunity clauses from Stand Your Ground laws. Immunity clauses remove incentives to mitigate or reduce the use of deadly force by protecting the claimant regardless of the collateral consequences. It means that innocent bystanders, families, children, have no recourse to someone spraying an area with bullets. It also removes the confusion and concerns about liability from local law enforcement in investigating all the circumstances of any so-called self-defense claim rooted in Stand Your Ground, so we don’t have situations – like we have seen in Sanford and Pinellas – where law enforcement simply throws up its hands and says, in effect, “I can’t do it” out of concerns of the civil liability a municipality may incur.

Second, all states should modify their concealed-carry statutes to include proper education and training in how self-defense laws actually work, including conflict avoidance. Stand Your Ground,
at its most positive interpretation, is meant to protect your life and loved ones from imminent death or severe injury. It is not an excuse to pick a bar fight and know, in the end, you can shoot your opponent if you are coming out on the losing end.

Indeed, as a corollary issue to this, I find very puzzling that most self-defense statutes – including Florida’s Stand Your Ground law – do NOT allow deadly force or the threat of deadly force when only faced with “unlawful force.” What is unlawful force, and how does one distinguish that from a “forcible felony”? Proper gun education and some legislative and judicial guidance would be helpful in reducing the possibility of the unfortunate circumstances that have claimed so many lives.

Third, Congress should require that all states comply with the Supplementary Homicide Reporting Database, and include additional categories on race and ethnicity on the statistics on justified homicides. Further justified homicide reporting should also include demographic information on the disposition of cases that did not “enter” the criminal justice system, but where charges were never brought or dismissed early on. Ensuring that weapon factors, like use of a gun, will also help shed light and enable researchers to quantify and qualitatively measure the impact of justified homicides on protected classes such as the African American community.

Fourth, if any state is considering implementing a Stand Your Ground-type law (and the NRA continues to push for these, regardless of the negative attention and regardless of the terrible cases that continue to make headlines), I am in favor of the suggestion of Katheryn Russell-Brown of requiring a racial impact statement to be prepared. Focusing on the themes discussed in this Statement – impact on overall homicide rates, law enforcement decision-making, and most importantly of all, racial disparities in its application and the problems of implicit bias, would be essential.

Fifth, if any state is considering implementing a Stand Your Ground-type law, the legislation should be clear that an objective “reasonable person” rather than a subjective “reasonably believes”

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126 FL. Statutes 776.012(1).


128 Impact statements began being used by legislatures to evaluate potential fiscal and environmental consequences of proposed legislation prior to adoption and implementation. Racial impact statements have been adopted in several states to address racial disparities in sentencing and parole. See Mark Mauer (2009) Racial Impact Statements Changing Policies to Address Disparities, Criminal Justice, Volume 23, Number 4, Winter 2009.
standard should be used. Law enforcement has made it very clear that the subjective standard leads to bizarre and often bewildering results since they are forced to accommodate the particular viewpoint of the claimant of an SYG defense, rather than objectively reviewing the facts to see if the actions taken were reasonable. Such a standard may have made someone like George Zimmerman think twice before continuing his pursuit of Trayvon Martin after law enforcement asked him to withdraw.129

Sixth, and a corollary to the fifth point, is that any Stand Your Ground statute should remove the provision that prohibits law enforcement from arresting anyone asserting a Stand Your Ground defense unless they determine there is probable cause that the act was unlawful.Prosecutorial and law enforcement discretion already exists, and this clause is another source of confusion and, when combined with the civil liability clause, becomes another inhibitor on law enforcement investigating an incident.

Seventh, and last – of this section – it goes without saying, but it shall be said anyway, that all parties to the criminal justice system should undergo training to recognize and remove racial bias. It is simply unacceptable that it still remains a fact that the life – or death -- of young black person appears to be worth less than the life of a white person in the eyes of the law.

These are recommendations that are rooted in the reality of our time. But they are, at best, band-aids on a gaping wound that cuts to the core of who we are as a country.

If we are to be honest, to be true to the better angels of our nature, to truly strive to be the more perfect union, we would repeal all Stand Your Ground laws. We would state that the common law and its development has in American jurisprudence130 has always recognized a right of necessity of self-defense in exigent and emergent circumstances. That the duty to safely retreat has and always been a prudent rule of self-preservation. That no one will question a person’s right to protect their home or, outside the home, their family and loved ones from an imminent threat. That had been the law for over two hundred years, and it is the law now.

Instead, Stand Your Ground has made our lives less safe. It made lives worth less, especially if you are a young black person. It has contributed nothing but pain and misery, including to those who have invoked it to justify the death of another. By removing the duty to safely retreat, it has converted every confrontation to potential shootout—or execution. And for the African American

129 An ironic, and tragic, point often made about the circumstances of the struggle between Trayvon Martin and Zimmerman is that Trayvon had a lawful right to be in the neighborhood and a lawful right to defend himself from the obvious stalking engaged in by Zimmerman. In other words, Trayvon – not Zimmerman – was the real legal claimant of any Stand Your Ground defense. See, e.g., Miller Francis (2013) “What about Martin's right to 'stand his ground'”? CNN, July 12, 2013, at https://www.cnn.com/2013/07/11/opinion/francis-zimmerman-trial/index.html.

community, the disproportionate weight of tragedy and fear would be, however slightly, be lifted from their shoulders.

And if we are to truly honor Trayvon, and Jordan, and countless others of ever color and creed and orientation, we would enact sweeping, comprehensive, and strong gun control. Stand Your Ground and concealed carry are the societal equivalent of matches and gasoline, but the lack of any semblance of reasonable gun control is like constructing that society from dried tinder. Congress makes brave noises about closing gun-show loopholes or bump stocks or noise suppressors. But universal background checks and licensing requirements, elimination of assault-style rifles, large capacity magazines – these and more are what is needed. Ask Gabby Giffords. Ask the parents of Newtown, the young men and women of Parkland, the survivors of Columbine and Aurora and Las Vegas and Orlando and too many cities and towns to mention. The solution to guns is not more guns. This is not Tombstone, or Dodge City, not any more.

Making guns less available turns February 26th into a brawl, makes November 23rd a loud and angry dispute. But everyone walks away.

Making guns less available and more rare, and its impact on crime and safety and, yes, on the civil rights of individuals in our country is a debate I would welcome.
Statement of Commissioner Gail Heriot

This report should not have been published in this form. When the results of an empirical study don’t come out the way Commission members hoped and expected that they would, the right thing to do is usually to publish those results anyway. Why hide useful information?1

Instead, the Commission sat on the report for years. Then it decided to discard the draft written by our staff and publish instead a transcript of the witness testimony received at our briefing that took place on October 17, 2014 in Orlando, Florida (along with Commissioner Statements like this one). In that way, the staff’s empirical findings could be buried forever.

No one would claim that the results of the staff’s empirical study conclusively resolve all the controversy over “Stand Your Ground” laws or even over Florida’s “Stand Your Ground” law in particular. But they are useful for what they don’t show. The most passionate opponents of “Stand Your Ground” laws appear to have believed that the empirical evidence would show clearly that African Americans are harmed by these laws. But it turns out things are not so clear; the evidence of discrimination against African Americans or even real disparate impact is absent. Yes, it is true that a disproportionate number of those killed in Florida in cases in which, correctly or incorrectly, the “Stand Your Ground” law has been invoked were African American. But it is also true that a similarly disproportionate number of those for whom that law has been invoked were African American.2 African Americans are disproportionately on both sides of the issue.

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1 This is not the first time in recent years that the U.S. Commission on Civil Rights has conducted an empirical study, only to downplay its results. In Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12,898 (2016), the Commission apparently hoped to prove that coal ash dumps were more likely to be located near neighborhoods with disproportionate numbers of African Americans. But the data came back showing the opposite. Although the Commission had originally intended this study to be a centerpiece of the report, instead it was barely mentioned. See Dissenting Statement of Commissioner Gail Heriot in U.S. Commission on Civil Rights, Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12,898 (2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2897775.

2 Another example is the Commission’s 2015 civil rights enforcement report, With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities (2015). For that project, a delegation from the Commission toured two immigration detention centers. Yet barely any information about that visit made it into the staff-generated section of the report. As I described at some length in my Statement in that report (pp. 198-210), our visit suggested that these particular centers appeared to be generally well-maintained and that detainees appeared to be treated appropriately at the time. See Statement of Commissioner Gail Heriot in U.S. Commission on Civil Rights, With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities (2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2897732.

2 Statement of John Lott, Draft Report at 76 (stating that 34% of those for whom the law was invoked were African American).
The Commission embarked on this project in May 2013, at a time when public interest and public passions about “Stand Your Ground” laws were running high. The immediate trigger of that interest was the Trayvon Martin case—although, oddly enough, that case was not really a “Stand Your Ground Case.”

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3 See, e.g., Gary Yonge, Open Season on Black Boys After a Verdict Like This: Calls for Calm After George Zimmerman Was Acquitted of Murdering Trayvon Martin are Empty Words for Black Families, The Guardian (July 14, 2013), available at https://www.theguardian.com/commentisfree/2013/jul/14/open-season-black-boys-verdict. One way in which these laws have been impugned is to associate them with the National Rifle Association. See E.J. Dionne, Jr., Why the NRA Pushes “Stand Your Ground,” Washington Post (April 15, 2012) (claiming that such laws exist because state legislators were afraid to oppose the NRA) available at https://www.washingtonpost.com/opinions/why-the-nra-pushes-stand-your-ground/2012/04/15/gIQAL458IT_story.html?utm_term=.c25da969e2df; Carl Hiaasen, Welcome to Florida, Where the NRA Rules, and We Proudly Stand Our Ground, Miami Herald BLOG (February 22, 2014, 7:00 pm) (arguing that Florida’s “Stand Your Ground” law will likely never be repealed, since the NRA “owns too many Republican lawmakers”), available at https://www.miamiherald.com/opinion/opn-columns-blogs/carl-hiaasen/article1960643.html; Andy Kroll, The Money Trail Behind Florida’s Notorious Gun Law, Mother Jones (March 29, 2012) (“the money trail leading to the watershed law in Florida—the first of 24 across the nation—traces primarily to one source: the National Rifle Association”), available at https://www.motherjones.com/politics/2012/03/nra-stand-your-ground-trayvon-martin/. For more examples, see Cynthia Ward, “Stand Your Ground” and Self Defense, 42 Am. J. Crim. L. 89, 96 n.19 (2015).

4 Commissioner Michael Yaki, who proposed the project, said that he wanted to take up the issue in part because of the Trayvon Martin case. U.S. Commission on Civil Rights, Transcript of May 31, 2013 Business Meeting at 6. Commissioner Yaki also discusses the Trayvon Martin case several times in his Commissioner’s statement.

5 See infra at 54-55. See also, e.g., Scott Lemieux, The Zimmerman Acquittal Isn’t About Stand Your Ground, The American Prospect, July 14, 2013, available at http://prospect.org/article/zimmerman-acquittal-isnt-about-stand-your-ground (wherein the progressive-leaning political science professor author notes that “Zimmerman’s defense involved just standard self-defense,” while nonetheless claiming that the case highlights serious racial issues); Jacob Sullum, The New York Times Admits That Its Reporting on the Trayvon Martin Case Has Been Fundamentally Wrong, reason.com June 20, 2013, available at http://reason.com/blog/2013/06/20/the-new-york-times-admits-its-reporting: “Zimmerman’s defense does not hinge on the right to stand your ground when you are attacked in a public place because he claims he shot Trayvon Martin during a violent struggle in which there was no opportunity to retreat.” Commissioner Yaki also discusses at some length the Jordan Davis case as a supposed illustration of the problems with “Stand Your Ground” laws. But this also is a case that ultimately did not turn on the existence of such a law. Instead, it illustrates the point I have tried to make infra at 52-55 that “Stand Your Ground” laws do not authorize an individual to use force simply because “he feels threatened.”

The day after Thanksgiving, Davis and three of his friends pulled up to a convenience store. Michael Dunn and his girlfriend parked in the adjacent space, and Dunn began complaining about the music coming from Davis’s car. An argument erupted between Dunn and Davis and his friends. Dunn, who had a concealed weapons permit, reached for his gun from his glove compartment and began shooting into the other car, and continued shooting into the other car until it drove away. Davis was killed. Dunn drove away with his girlfriend and did not report the matter to the police.

At trial, Dunn claimed that he had acted in self-defense because he thought he saw Davis armed with a gun. But the police found no gun in Davis’s car or near the scene, and Dunn also never told his girlfriend at the time of the incident about the gun. See Kristal Brent Zook, The Lessons of Jordan Davis’s Murder, Revisited, The Nation November 13, 2015, available at https://www.thenation.com/article/the-lessons-of-jordan-daviss-murder-revisited/.

The jury convicted Dunn of first-degree murder. He won’t be out on the streets anytime soon. We cannot know for sure what the jury’s reasons were. But it seems overwhelmingly likely that they thought either (1) he was lying about believing that he saw a gun; or (2) if he believed he saw a gun, he was being unreasonable in doing so. In the unlikely event that it had come to the opposite conclusions on those issues, Florida’s Stand Your Ground law could have come into play in the sense that it would obviate the need for the jury to resolve whether Dunn could have safely withdrawn.
The concept paper proposing the project defined “Stand Your Ground” laws for the purposes of the project as “any state statutory enactment in the past decade that extends the common law right to use deadly force, without a duty to retreat, beyond an individual’s home.” See, e.g., Fla. Stat. § 776.041 (2014) (attached hereto as Exhibit A).

Much of the passion over “Stand Your Ground” laws was misplaced—a product of an imperfect understanding of their content and their impact. And that passion and its accompanying misunderstanding have not entirely subsided. Florida gubernatorial candidate Andrew Gillum commented in 2018, with more dramatic flair than was warranted by the actual facts, that “you can’t have a conversation about Stand Your Ground without understanding what the racial elements are” and “[Florida’s “Stand Your Ground” law] is dangerous, which is why I ask the Governor to declare a state of emergency, because in the State of Florida, as long as that law exists, the state is not safe for all kids, it’s not safe for all people.”

Alas, the Commission has not been immune to that misplaced passion. When the controversy first arose, it made a hasty decision to undertake a study of the racial effects of those laws. At the time

But it is unlikely that even in that event Florida’s “Stand Your Ground” law would have affected the outcome. If the jury had found that Davis was indeed threatening Dunn with a gun, they probably would have also found that Dunn could not have safely backed up his car and left the parking lot (thus leaving his girlfriend, who was in the convenience store when the fight erupted).


The project was proposed by Commissioner Michael Yaki. At the time, he said that he thought that already-existing data on the application of “Stand Your Ground” laws indicated a racially biased effect against African Americans. He stated:

By racial bias, I’m talking about the fact that just on some statistics out there alone there are questions about whether or not if you are a - if you are a black victim, in other words, the person who was shot by someone asserting the SYG, that there seems to be a disproportionate number of those victims are African-American or are a minority versus homicide victims generally for that.

I know there’s some people talking about crime rate, this, that when you’re just looking at the homicide rate alone. But when you cut it out for this type of homicide and this type of defense, the number of people who happen to be of minority background seems to be a little bit higher.

I warned the members of the Commission who favored such a study that “Stand Your Ground” laws effect only a fairly minor change to the law in the states that have adopted them and that enough data to draw firm conclusions will be lacking. There are about 15,000 homicides each

Commissioner Yaki later told MSNBC News that “All of the data shows it [Stand Your Ground] makes people kill people more often, and it makes black people die more often.” Zachary Roth, Is Stand Your Ground Racially Biased?: George Zimmerman vs. Marissa Alexander, MSNBC News (July 23, 2013), available at http://www.msnbc.com/msnbc/stand-your-ground-racially-biased-george. The project won Commissioner Yaki accolades in the national media. See, e.g., Emma Allen, Customer Relations, The New Yorker, November 11, 2013, available at https://www.newyorker.com/magazine/2013/11/11/customer-relations (generally favorable profile of Commissioner Yaki, mainly focused on his job as a consultant for the department store Barneys, that also mentions his work on Stand Your Ground at the Commission); Editorial, When “Self-Defense” Violates Civil Rights, N.Y. Times (June 19, 2012) (“Michael Yaki, a member of the civil rights commission, has properly asked that the cases involving Stand Your Ground laws be analyzed to see if there is racial bias in accepting a claim of justifiable homicide when the victim is a minority”), available at https://www.nytimes.com/2012/06/20/opinion/when-self-defense-violates-civil-rights.html. Like Commissioner Yaki, the media appear to have expected our study to come out a particular way. The New York Times wrote that “There can be no justifying the public mayhem legalized by Stand Your Ground. These laws should be repealed, and the [Commission’s] civil rights inquiry should help make that point.” Id.

When the Commission held a briefing on the topic, even though we hadn’t yet crunched any data, a number of witnesses confidently asserted to the Commission that Stand Your Ground laws had an unfair effect on racial and ethnic minorities. See, e.g., Statement of Ahmad Nabil Abuznaid, Dream Defenders at 1 (“These SYG laws have, in a sense, legalized the devaluing and dehumanizing of minority lives in a very real way… 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.”).

Nor is Commissioner Yaki’s Draft Commissioner Statement’s free of that misplaced passion. In it, he calls “Stand Your Ground” laws “the legal equivalent of carte blanche for the exerciser of a Stand Your Ground right” and quotes the Brady Center to Prevent Gun Violence calling Stand Your Ground a “Shoot First” law. He also writes that “And if we are to truly honor Trayvon, and Jordan, and countless others of every color and creed and orientation, we would enact sweeping, comprehensive, and strong gun control. Stand Your Ground and concealed carry are the societal equivalent of matches and gasoline, but the lack of any semblance or reasonable gun control is like constructing that society from dried tinder.”

Gun control laws are far beyond the scope of this report, so I will refrain from commenting to them except to say that when guns allow an innocent person to protect himself against an individual who is slamming his head against concrete, that would seem to me to be one of the best arguments in favor of guns. The odd thing here is that the Trayvon Martin case is one in which the only gun involved (Zimmerman’s) was used in what the jury clearly found was legitimate (and traditional as opposed to Stand Your Ground) self defense. Strict gun control laws would not have made things better in the case. There is every reason to believe that they would have led to Zimmerman’s death.

My remarks at the meeting at which we officially accepted Commissioner Yaki’s concept paper included the following:

Okay. I believe that what's being proposed here is much, much too complicated for our commission to be able to undertake. This is a big issue, plus there's not much in the way of data.

We're talking about with regard to some of these states, you know, with South Carolina we've got almost 700 homicides, but only a very small number of those will have had any kind of a self-defense issue.
year in the United States. That may be a tragically high number by the standards of the developed world, but it is not a lot by the standards needed to draw statistical conclusions from the data. According to the FBI statistics, less than 3% (i.e. less than 450) are deemed to have been justifiable self-defense. Of those, a similarly tiny, but undetermined proportion turn on whether a state has a “Stand Your Ground” law or not. Add to that the problems that every murder has unique facts, accessing those unique facts from FBI statistics or even police reports is difficult, state “Stand Your Ground” laws differ from one another, and the states that have adopted “Stand Your Ground” laws differ culturally and demographically from those that have not. One must also add that it is impossible to estimate the number of occasions when “Stand Your Ground” laws have allowed an

And the number that would have a self-defense issue that turns on the difference between Stand Your Ground and ordinary common law on self-defense, that’s going to get down to like Bob and Suzy … a couple of homicides in each state.


Even if that is a serious undercount, it is never going to be the case that a substantial proportion of the 15,000 or so homicides each year are cases of legally justifiable self-defense.


According to FBI statistics, in 2017, 90 persons were murdered in the course of a burglary (not including justifiable homicides). Presumably, then, all or nearly all of these were cases of the burglar murdering an innocent person. It is understandable why homeowners are thought to be reasonable for believing themselves to be in danger.


In addition, there are cases that occur outside the home, but for which it is obvious retreat would have been impossible. See Jon Wilcox, Prosecutor: 13 Bullet Holes Showed Self-Defense for Man Cleared of Murder Charge, The Victoria Advocate (October 22, 2018), available at https://www.victoriamadvocate.com/counties/dewitt/prosecutor-bullet-holes-showed-self-defense-for-man-cleared-of/article_def55934-d637-11e8-9546-637075a1ed02.html.
individual to threaten self-defense in a way that prevented further violence. That is simply not a lot to work with, especially if one’s task is to tease out the law’s racial effects.\(^\text{12}\)

As a result, it was always highly unlikely that we could obtain the necessary data to decide whether these laws had a racial effect or not, which is the issue we arguably have jurisdiction over.\(^\text{13}\) It was not that I was against undertaking challenging empirical studies. Like Commissioner Yaki, I believe that the Commission should focus more of its energies on its own empirical studies and less on simply giving its opinion on policy issues. But I feared this particular exercise would not generate enough useful information to be worth the effort.

Our staff undertook the study and did the best that could be done with the data available. I have no reason to doubt either the competence or the integrity of the statistician in our Office of Civil Rights Evaluation (“OCRE”) who undertook the analysis.\(^\text{14}\) On the other hand, OCRE was not able to find data allowing it to make a comparison between jurisdictions with “Stand Your Ground” laws and those without them or between a jurisdiction before it adopted a “Stand Your Ground” law and after it did so. Thus even if a mammoth multi-factored analysis was desirable to determine whether “Stand Your Ground” laws disproportionately increase the number of homicides of African Americans, OCRE was in no position to conduct that analysis.

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\(^\text{12}\) Of course, economists sometimes rush in where angels fear to tread. Two complex empirical studies have now been done on the effects of “Stand Your Ground” laws. Commissioner Yaki relies significantly on them to mount his critique, yet each has significant limitations that I discuss infra at p. 48, n. 50. For example, one of these studies—Chandler McClellan & Erdal Tekin, *Stand Your Ground Laws and Homicides*, 52 J. Human Resources 621 (2017)—suggests that states that have passed “Stand Your Ground” statutes that allow individuals to stand their ground if they are in a place they are legally entitled to be had an increase in total homicides per 100,000 in population in the 17 months following the laws’ passage relative to other states for whites, but not for African Americans. (Indeed, for African Americans, the rate of total homicides was found to decrease slightly, but not significantly). Paradoxically, more limited “Stand Your Ground” statutes—such as those that extend the right to stand one’s ground only to one’s business or car—were associated with a decrease in the rate of total homicides (relative to states with no such changes in the law). Given these odd results, it is very hard to come away with the conclusion that the associations noted by the authors are causal in nature.

The other such study did not deal with racial effects at all. See Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?: Evidence for Castle Doctrine*, 48 J. Human Resources 821 (2013). But given that it finds that laws of this kind increase homicide rates, it does itself rule out the possibility (as McClellan & Tekin purport to) that “Stand Your Ground” laws increase the number of African-American homicides. See infra at n. 50.

\(^\text{13}\) Here is another way to give readers an idea of how small the pool of relevant cases is: In a study for PBS’s Frontline, John Roman of the Urban Institute’s Justice Policy Center looked at SYG racial disparities using FBI homicide data from 2005 to 2009. Out of 45,300 incidents of homicide from all 50 states in the database, there were only 25 white-on-black justifiable homicides during the period of Roman’s study. See Sarah Childress, *Is There Racial Bias in “Stand Your Ground” Laws?* Frontline, July 31, 2012, available at https://www.pbs.org/wgbh/frontline/article/is-there-racial-bias-in-stand-your-ground-laws/.

\(^\text{14}\) That individual head holds a Ph.D. in sociology from Howard University. Before coming to the Commission, he was a Senior Statistician at the Criminal Justice Coordinating Council for the District of Columbia.
Instead, the staff had a database, put together initially by the Tampa Bay Times, consisting of 192 Florida cases. The original list was supplemented by a list of cases compiled by the researcher Albert McCormick for his paper on Florida’s “Stand Your Ground” law.\(^\text{15}\) In the end, there were 305 cases in total. OCRE focused on whether success in invoking “Stand Your Ground” laws varies by the race of the parties.

Alas, these cases are not what they appear. They are not cases for which Florida’s “Stand Your Ground” law made a difference in the outcome. Rather some are cases for which Florida’s law might have made a difference depending upon whether it was ultimately determined that the shooter could have safely avoided the need for self-defense by retreating. (Of course, the point of “Stand Your Ground” laws is that they take that issue out of consideration.)\(^\text{16}\)

Others cases in the database involved situations in which the defendant or the defendant’s lawyer invoked “Stand Your Ground” law, but the facts did not fit “Stand Your Ground” (though in some cases, real issues of self-defense may have fit the facts). In some cases, the term “Stand Your Ground” was simply mentioned by somebody quoted in a news story account of the case. Sometimes that person had no idea what he or she was talking about.

Moreover, the cases were a hodgepodge. No two contained facts that were alike. For example:

\begin{itemize}
  \item[(1)] Seventy-year-old Ralph Wald woke up at midnight to find a younger man having sexual intercourse with his 41-year-old wife in the living room. According to Wald, he believed his wife was being raped. He went to his bedroom, got his gun and shot the man in the head and stomach. It turned out to be one Walter Conley, with whom Wald’s wife had once lived in a house next door to Wald’s. Police believed instead that Wald shot Conley in a fit of rage. Whatever this case is, it does not turn on the application of Florida’s “Stand Your Ground Law.” While the defense cited that law, under the pre-existing Castle Doctrine, Wald had no duty to retreat in his own home anyway. Moreover, this was a case of defending a third party. He could not have successfully defended his wife (assuming she needed defending) by retreating. The case turns on a question of fact: Wald either reasonably believed that he was defending his wife from a rapist or he did not. Wald was charged
\end{itemize}


\(^{16}\) That is an aspect of “Stand Your Ground” laws that must always be kept in mind. Under a “Stand Your Ground” law, it is unnecessary to determine whether the individual claiming the right to self-defense could have retreated in safety. It doesn’t matter if he has the right to stand his ground. By contrast, in a jurisdiction with a duty to retreat, it becomes necessary, when an individual fails to retreat and instead acts in self-defense, to determine whether he should have retreated instead. The upshot of this is that law enforcement investigators may classify a case as falling under a “Stand Your Ground” law when they mean only that the individual did not retreat.
with second-degree murder. Rightly or wrongly, the jury acquitted him. Florida’s “Stand Your Ground Law’ had nothing to do with it.

(2) Andrew Smith and Keith Quakenbush got into an argument while in Smith’s car. Smith requested that Quakenbush get out of his car, but Quakenbush refused. Smith was able to remove him from the car and attempted to drive away, but Quakenbush re-entered it. Smith removed him again. At that point, Quakenbush jumped onto the car and a physical fight began. When Quakenbush cut Smith with a box cutter, Smith took out a knife and stabbed Quakenbush, but did not kill him. The police arrested Smith. There does not appear to have been an opportunity for Smith to retreat once the physical fight began. Indeed, the Tampa Bay Times database specifically notes that retreat was not an option. Florida’s “Stand Your Ground Law” is thus, again, superfluous.17

(3) Gregory Gayle had been staying with his pregnant sister and her fiancé, Jakob Penrod, for three weeks when an argument turned violent. Penrod told Gayle to move out. Fearing Gayle, Penrod and Gayle’s sister locked themselves in the bathroom (with Penrod’s gun). When Gayle forced his way into the bathroom and struck Penrod, Penrod shot him. This was a routine self-defense case and not one that turned on Florida’s “Stand Your Ground” law. Penrod was in his own home and had no opportunity to retreat anyway. According to the Tampa Bay Times website, “Witnesses, including some of Gayle’s relatives, agreed with Penrod’s description of the events and he was not arrested.”18 The only connection to “Stand Your Ground” law that I am aware of was the fact that Gayle’s father told the local television station that the “Stand Your Ground Law” needs a second look.19

These cases were not difficult to find. There are certainly many more in the database that did not turn on the existence of the “Stand Your Ground” law. Indeed, while I did not look at them all, I did not run across a single case that really turned on the existence of a “Stand Your Ground” law, although I assume that some do.

Both the fact that every case has different facts and the fact that large numbers of cases in the database are not true “Stand Your Ground” cases make drawing conclusions very difficult. Add to that the database does not include cases where an individual who stood her ground was

17 Florida Stand Your Ground Cases (Tampa Bay Times) http://stand-your-ground-law.s3-website-us-east-1.amazonaws.com/cases/case_262.
18 Florida Stand Your Ground Cases (Tampa Bay Times) http://stand-your-ground-law.s3-website-us-east-1.amazonaws.com/cases/case_269.
successful in scaring off her assailant just by brandishing a weapon (rather than running away) or cases where an individual retreated anyway, despite a legal right to stand his ground.\textsuperscript{20}

The first draft of the report found that none of the attributes of those who claim the Stand Your Ground defense, including race/ethnicity, was significantly associated with the probability of a successful claim.\textsuperscript{21} I would quote the draft and give the specific figures, but some of my fellow Commissioners have taken the position that for the Commission to publish this Statement quoting those figures might be interpreted to waive the Commission’s deliberative process privilege. To address their concerns I have edited this statement. Suffice it to say that insofar as there was evidence, it suggested that African Americans and Hispanics were more likely to successfully assert the defense than whites, but the difference was not statistically significant.\textsuperscript{22} The report also found that the probability of a successful Stand Your Ground claim was greater if the initial attacker was Hispanic than if he or she was black or white. But the differences were insignificant at the conventional 0.5 level.\textsuperscript{23} The draft ultimately concluded that there was no significant difference in the probability that a Stand Your Ground claim would be successful based on the race or ethnicity of the claimant or the race of the initial attacker.

But Commissioner Michael Yaki, who spearheaded the project, was unhappy with the results and protested them. To the credit of our statistician in the Office of Civil Rights Evaluation, while he listened to and considered Commissioner Yaki’s complaints, he \textit{stood his ground} and declined to alter his results to follow a particular narrative.

\textsuperscript{20} In the absence of a “Stand Your Ground” law, brandishing a weapon in a case in which one has a duty to retreat would presumably be at least technically an assault. And yet, cases in which an otherwise innocent individual scares off an assailant by showing his weapon seems like a benefit of “Stand Your Ground” laws to me. Of course, the individual who shows his assailant his weapon in this way may put himself in a position where he must use it, since he has likely used up precious time that could have been used to retreat.

\textsuperscript{21} Draft Report at v. Given the existence of ordinary self-defense and Castle Doctrine cases in the database, even if the data had shown bias, it would be unclear whether the bias came from the application of “Stand Your Ground” laws or the application of other self-defense doctrines. It is one thing to argue for the repeal of “Stand Your Ground” laws. Reasonable policymakers have taken both sides of that issue. It is quite another to argue for the repeal of the right of self-defense generally and hence for a “Duty to Die” rule for those who find themselves under attack. Alas, while it appears that racial bias may not be an issue in this particular context, racial bias has certainly been known to rear its ugly head in employment, real estate sales and credit. Yet no one argues that this is a sufficient reason to abolish employment, home ownership and credit. Nor would it be a good reason to eliminate the basic right to self-defense.

\textsuperscript{22} Draft Report at 28.

\textsuperscript{23} The difference between blacks and Hispanics were significant at all levels. The difference between whites and Hispanics was statistically significant at the .10 level.
For a while, there was talk within the Commission about trying to re-do the project. Eventually, though, the staff who had originally been the most immersed in this project (our statistician from OCRE, as well as Commissioner Yaki’s special assistant and counsel) left the Commission, and the discussions stopped. A majority of the Commission’s members were apparently happy not to issue a report. But lately, they seem to be taking the position that the quantity of reports that the Commission issues is important. More than two years after we received the initial draft, the Commission voted to scrap that draft altogether and instead publish the report in the form you see today.

I believe that the findings that were contained in the draft are worth publishing, despite the fact that they do not resolve every issue we might like them to have. They are at least a bit of a counterweight to some of the more fevered commentary about the intent and effects of “Stand Your Ground” laws. Take, for example, the following comments, all of which were aimed at “Stand Your Ground” laws:

“There is a word for the unfounded, pre-emptive, due-process-free (but tacitly sanctioned) form of killing perpetrated against black people in this country in an effort to safeguard white property: lynching.” —Sabrina Strings, Assistant Professor of Sociology, University of California at Irvine.

“… SYG laws make it easier for straight, cisgender people to kill queer people, for white people to kill people of color, and for men to kill women, while preventing targeted minorities from defending themselves.” Caroline E. Light, Director of  

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24 In February 2016, there was supposed to be a meeting of the eight special assistants and the then-head of OCRE to address some of the concerns about the first draft and discuss a plan for moving forward with the report. The meeting was cancelled after the OCRE head was assigned to a different role within the Commission. It was never rescheduled.

In his Commissioner’s statement, Commissioner Yaki writes that “Through no fault of the Commission and its staff, the lack of resources—both fiscal and personnel—hampered the ability of the Commission to engage in the type of fact-finding this matter deserved. Because of the way that data is recorded in Stand Your Ground shootings—or, more accurately, was not recorded, as will be discussed later—the intensive investigative resources that would have been required to be dedicated proved to be beyond the reach of the Commission.” As discussed above, I do not fault the Commission’s career staff for the staff-generated section of this report’s failure to come to fruition. But I do not think it is entirely accurate to suggest that the failure was mostly about a lack of resources. It was not. The Commission could have had three times its level of resources, and it still would have been without the data it needed to draw conclusions.

Undergraduate Studies in the Program in Women, Gender, and Sexuality Studies, Harvard University.26

“This [is] structural racism at its finest: a modern-day lynch law. … The arming and acquitting of racists is nothing new in our country, but [proposed Stand Your Ground laws] are open invitations for racist violence.”—Mari Christmas, Visiting Fellow in Creative Writing, Idaho State University.27

The Commission’s study certainly fails to substantiate these statements. Common sense is all that’s needed to understand that they are unhelpful and overblown.

Of course, misunderstanding about the racial aspects of “Stand Your Ground” laws is only one of several misunderstandings concerning these laws. There are others:

THE APPARENTLY WIDESPREAD NOTION THAT “STAND YOUR GROUND” LAWS ARE A RECENT INNOVATION IS FALSE.

Many people are under the incorrect impression that “Stand Your Ground” laws are a recent innovation and that they greatly expand the circumstances under which the right to self-defense can be invoked. The truth, however, is that “Duty to Retreat” rules and “Stand Your Ground” rules have existed side by side, at least as far back as 17th century England.28 It hasn’t always been easy to tell which rule applies to which situations, but Anglo-American law has muddled through nonetheless. It is true that American law may be leaning somewhat more than English common law toward “Stand Your Ground” rules. But the differences are smaller than many seem to think.

Former Attorney General Eric Holder is among those who seems to be under this misimpression that “Stand Your Ground” laws are novel (beyond the fact that they are now statutory, whereas before they were common law). In addressing the NAACP in 2013, he stated: “These laws try to fix something that was never broken. … [I]t’s time to question laws that senselessly expand the concept of self-defense and sow dangerous conflict in our neighborhoods …. [W]e must examine laws … eliminate[e] the common-sense and age-old requirement that people who feel threatened have a duty to retreat, outside their home, if they can do so safely. By allowing and perhaps


encouraging violent situations to escalate in public, such laws undermine public safety…. [W]e must … take a hard look at laws that contribute to more violence than they prevent.”

Those who believe that recent “Stand Your Ground” statutes overrule a long history of precedent imposing a duty to retreat (outside the home) before a right of self-defense can be invoked sometimes rely upon William Blackstone’s *Commentaries on the Laws of England* as their authority. That treatise states, “[T]he law requires, that the person, who kills another in his own defence, should have retreated as far as he conveniently or safely can, to avoid the violence of the assault ….”

I’m guessing that most of those who cite to Blackstone for this purpose do not own their own copies of Blackstone. I do. Browsing his section on homicide, one finds that he is speaking of a particular kind of homicide—that arising in the course of a “sudden brawl or quarrel.”

This is an important qualifier. Going back to Lord Edward Coke’s Institutes of the Lawes of England, we learn that initial aggressors and mutual combatants had a duty to retreat before invoking the right to use lethal force in self defense, but that no duty to retreat existed where the an individual was simply defending his or her life or property. (Yes, I own my own copies of


31 Edward Coke, The Third Part of the Institutes of the Lawes of England 55-56 (1669). In it, he makes the distinction between mutual combatants and victims of an attempted serious crime. Here we learn that retreat, if it can be accomplished in reasonable safety is required for mutual combatants:

Some [homicides] be voluntary, and yet being done upon an inevitable cause are no felony. As if A, be assaulted by B, and they fight together, and before any mortall blow given A, [retreats], until he cometh unto a hedge, wall, or other strait, beyond which he cannot passé, and then in his own defence, and for safeguard of his own life killett the other: this is voluntary, and yet no felony, and the jury that finde, it was done se defendendo, ought to finde the speciall matter. …. If A assault B so fiercely and violently, and in such place, and in such manner, as if B should [retreat], he should be in danger of his life, he may in this case defend himself; and if in that defence he killet A, it is se defendendo ….

On the other hand, the victim of an attempted serious crime has no duty to retreat:

Some without any [retreat] to a wall, &c. or other inevitable cause. As if a thiefe offer to rob or murder B, either abroad, or is his house, and thereupon assault him, and B defend himself without any [retreat], and in is defence killet the theif, this is no felony; for a man shall never give way to a thief, &c., neither shall he forfeit anything.

See also 1 Edward Hyde East, A Treatise on the Pleas of the Crown 220-21 (1803)(stating that there is no duty to retreat from someone who comes with the intent to commit a forcible felony against one’s person or property); Michael Foster, A Report of Some Proceedings 273 (Oxford, Clarendon Press 1762) (“[A]n injured party may repel force with force in defense of his person, habitation, or property, against one who manifestly intends and endeavors with violence or surprise to commit a known felony upon either. In these case he is not obligated to retreat …. “);
Coke’s Institutes too. I am a law nerd.) This is consistent with a different section of Blackstone’s Commentaries in which he discusses “such homicide, as is committed for the prevention of any forcible and atrocious crime” and makes no mention of a duty to retreat.\(^{32}\) In the modern world, where dueling and just plain brawling is less common, this part of Blackstone’s and Coke’s commentaries is more significant. Never lose sight of the fact that we live in gentler times than most of our 17\(^{th}\) and 18\(^{th}\) century ancestors, no matter what part of the globe those ancestors came from.

Professor Cynthia Ward attempts to summarize the dominant theme among these distinguished legal commentators this way:

“Early English commentators distinguished between two fundamental scenarios: (1) cases in which the defendant’s use of deadly force was justified—for example, where a blameless and law-abiding defendant used deadly force to repel an attack from a thief or a burglar who intended to kill or gravely injure him, and (2) cases in which the use of deadly force was merely excused—for example where the defendant either bore some responsibility for the deadly encounter, or had reasonably but incorrectly believed that he or she was faced with imminent threat of death or serious injury and responded with deadly force. In the former type of case, a defendant could claim self-defense although he or she had stood his or her ground and did not retreat; in the latter case, only defendants who could prove that they attempted to retreat before using deadly force could successfully claim self-defense. Even then, defendants of the second type did not merit a full acquittal but only an escape from execution, which was the usual penalty for intentional killings by private citizens. Thus under the English rule, as articulated by Edward Coke, a person was justified in using deadly force against another, even to the point of killing the other, if threatened with imminent death or grave injury for which the defendant bore no responsibility or blame. In other cases where the defendant and the deceased mutually came to blows and the embroglio reached the point where the defendant found it necessary to kill the other rather than die, the defendant could only claim self-defense in the defendant had first attempted to retreat.”\(^{33}\)

American law has developed beyond the English law over the course of 19\(^{th}\) and 20\(^{th}\) centuries. And, for the most part, it has done so toward somewhat more liberal use of the “Stand Your

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Matthew Hale, The History of the Pleas of the Crown 481 (1736)(stating that a “true man” has no duty to retreat and that if he kills his assailant, it is not a felony). See Cynthia Ward, “Stand Your Ground” and Self Defense, 42 Am. J. Crim. L. 89 (2015)(citing all three of the above).

\(^{32}\) Blackstone at vol. III at 180.

\(^{33}\) Ward at 98-99.
Ground” approach. Erwin v. State (1876) was a significant early case. It concerned an altercation between a farmer and his son-in-law, who is described as a “cropper” on the farmer’s land. The two argued over who had the rights to a certain shed. In the course of the argument, the son-in-law was said to have approached his father-in-law with an ax in a threatening manner, despite the latter’s warning to stop. When the son-in-law got within striking distance, the father-in-law shot him.

After discussing the evolution of the doctrine in this area, the Ohio Supreme Court asked: “Does the law hold a man who is violently and feloniously assaulted responsible for having brought [the necessity for self defense] upon himself, on the sole ground that he failed to fly from his assailant when he might have safely done so?” The Court’s answer was no. It held that while the right to use deadly force in self-defense is not available for minor trespasses or to a man who provoked the assault, “a true man, who is without fault, is not obliged to fly from an assailant, who, by violence or surprise, maliciously seeks to take his life or do him enormous bodily harm.”

Some later authorities have assumed that the Erwin court was using the term “true man” as a way of invoking a particularly “virile man” or “macho man.” In fact, the court was simply using the term used by Matthew Hale in the 17th century. Both the Erwin court and Hale appear to have

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34 See Ward at 99-100 (“In the mid-to-late nineteenth century … the American approach changed as homegrown commentators, influential state supreme courts, and United States Supreme Court opinions developed a more robust Stand Your Ground doctrine, which become a widely adopted basis for self-defense in this country”). See Richard Maxwell Brown, No Duty to Retreat: Violence and Values in American History and Society 5-7 (1994).

35 29 Ohio St. 186 (1876).

36 See, e.g., State v. Abbott, 174 A.2d 881, 884 (N.J. 1961) (“advocates of no-retreat say the manly thing to do is to hold one’s ground, and hence society should not demand what smacks of cowardice”); Richard Maxwell Brown, No Duty to Retreat: Violence and Values in American History and Society 17 (1994)(The language of the [Erwin Court] with its emphasis on the action of a ‘true man’ … illustrates … concern for the values of masculine bravery in a frontier nation”). See also Caroline E. Light, Stand Your Ground: A History of American’s Love Affair with Lethal Self-Defense (2017). Light acknowledges that Hale used the term “true man,” but seems unaware that of how that term was used in the 18th century. Instead, she writes that “[l]ethal self-defense was a right of “true manhood.” For reasons that make no sense to me, Light specifically associates “Stand Your Ground” laws with white men in particular:

Standing one’s ground against a perceived threat has long been a white, masculine prerogative in the United States. When European settlers arrived on American soil, they justified violence as necessary to their basic survival, seizing land that was already inhabited while imprisoning or exterminating its occupants. Settler colonialism and, later, the idea of Manifest Destiny—spreading Christianity across the continent—together demanded the subjugation of nonwhites. And the rights, privileges, and protections of citizenship were inaccessible to all but white, property-owning men. The legacies of this under-recognized history of repression and exclusion in the name of national survival still haunt us today.

Id. at 1.
meant “true” in the sense of trustworthy and honest. A “trueman” as used in the 18th century was a law-abiding man.\(^{37}\)

Note that the defendant in *Erwin* had been arguing with the deceased. Just in case Blackstone and Coke viewed mutual combatants as including two individuals engaged in an spirited argument, the court made it clear that, under Ohio law, given that the father-in-law had not assaulted the son-in-law, he was not blameworthy and hence retained the right to stand his ground. It is not and should not be regarded as blameworthy to engage in an argument—not in America.

A year later, the Indiana Supreme Court decided *Runyan v. State* (1877).\(^{38}\) *Runyan* was an Election Day altercation. Both the defendant and the deceased were in town to vote and to hear the election results for the 1876 Presidential contest between Rutherford B. Hayes (favored by the deceased) and Samuel Tilden (favored by the defendant). The deceased, who was described by the court as “a large and vigorous man,” had several encounters with the defendant during the day at which he used strong and threatening language. Out of fear of the deceased, the defendant, who had lost much of the use of his right arm fighting for the Union during the Civil War, borrowed a gun. Later that day, the deceased rushed him, striking him several times. The defendant drew his gun and shot him dead. The jury was instructed that he had a duty to retreat and hence convicted him.

The Indiana Supreme Court reversed. Stating that “the tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed,” the Court stated: “[W]hen a person, being without fault and in a place where he as a right to be, is violently assailed, he may, without retreating, repel force by force, and if, in reasonable exercise of his right of self-defense, his assailant is killed, he is justifiable.”\(^{39}\)

\(^{37}\) See The Compact Oxford English Dictionary (2d ed. 1991) (“trueman ... A faithful or trusty man; an honest man (as distinguished from a thief or other criminal”). The OED considers this definition to be obsolete. See Garrett Epps, The History of Florida’s “Stand Your Ground Law, American Prospect (March 12, 2012) (“a ‘true man’ in the legal sense—means not a manly man but, in the words of the Oxford English Dictionary, ‘an honest man (as distinguished from a thief or other criminal’”), available at http://prospect.org/article/history-floridas-stand-your-ground-law.

\(^{38}\) 57 Ind. 80 (1877).

\(^{39}\) Id. at 84.
Many courts followed *Erwin* and *Runyan*—but not all. In *Judge v. State* (1877), the Supreme Court of Alabama, in retaining its duty to retreat, had this to say:

> We are pleased to observe that in this case, the old, sound, and much disregarded doctrine, that no man stands excused for taking human life, if, with safety to his own person, he could have avoided or retired from the combat, has been given in charge, and must have been acted on by the jury. It is to be regretted that this salutary rule is not universally observed by juries, without reference to the social standing of the prisoner. Its observance would exert a wholesome restraint on unbridled passions and lawlessness, and would, in the end, preserve to the commonwealth many valuable lives.

Note that the Alabama court wrote that *no* man who could have retreated stands excused for taking a life. This differs not just from *Erwin* and *Runyan*, but also from Coke and Blackstone (although the court does not appear to know this).

Federal courts have been accused of initially appearing to have gone in two directions. In *Beard v. United States* (1895), the U.S. Supreme Court appeared to some to be taking an approach similar to *Erwin* and *Runyan*. Indeed, it quoted with approval broad language from *Erwin*. But just a year later, in *Allen v. United States* (1896), the Court made it clear that it intended to apply a “Stand Your Ground” rule only to cases that occur in the defendant’s home or on his or her property.

Meanwhile, Harvard law professor Joseph H. Beale called the doctrine pronounced in *Erwin* and *Runyan* “brutal.” In his view, “[n]o killing can be justified on any ground, which was not necessary to secure the desired and permitted result; and it is not necessary to kill in self-defense when the assailed can defend himself by the peaceful though often distasteful method of withdrawing to a place of safety.”

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40 See, e.g., *People v. Lewis*, 48 Pac. 1088, 1089-90 (Cal. 1897); *Boykin v. People*, 45 Pac. 419, 422 (Colo. 1896); *State v. Hatch*, 46 Pac. 708, 708 (Kan. 1896); *State v. Bartlett*, 71 S.W. 148 (Mo. 1902). Professor Joseph H. Beale has collected a number of other such cases in Joseph H. Beale, *Homicide in Self-Defense*, 3 Colum. L. Rev. 526, 539, §8 n. 5 (1903).

41 58 Ala. 406 (1877). Professor Joseph H. Beale has collected a number of other cases that appear to impose a duty to retreat in cases involving an otherwise non-blameworthy defendant acting outside his or her home in Joseph H. Beale, *Homicide in Self-Defense*, 3 Colum. L. Rev. 526, 540, §8 n. 1 (1903).

42 Id. at 413-14.

43 158 U.S. 550 (1895).

44 164 U.S. 492(1896).


46 Id. at 580.
While Beale advocated a duty to retreat, he took pains to point out that the availability of firearms changes the calculus for many Americans:

It is of course true that to retreat from an assailant with a revolver in his hand is dangerous, and one whose revolver is in his hip pocket is not to be despised; the hip-pocket ethics of the Southwest are doubtless based on a deep-felt need. But because retreat is less often safe than in the days of knives and small-swords, it by no means follows that retreat when certainly safe should be less requisite.  

Ultimately, the U.S. Supreme Court moved in the direction of Erwin and Runyan. It just took a few years. In Brown v. United States (1921), Justice Holmes argued against any duty of retreat on the part of otherwise non-blameworthy defendants:

The law has grown, and even if historical mistakes have contributed to its growth it has tended in the direction of rules consistent with human nature. Many respectable writers agree that if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and that if he kills him he has not exceeded the bounds of lawful self-defense. That has been the decision of this Court [referring to Beard]. Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore in the Court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than kill him.

I can see at least two arguments for “Stand Your Ground” laws. The first argument is the one the Ohio Supreme Court employed in the Erwin case: A “Stand Your Ground” rule saves lives.

In Erwin, the Attorney General of Ohio, arguing in favor of a duty to retreat, had asserted that the Court should pick the rule that will save the most lives. In rejecting the Attorney General’s argument, the Court stated that, yes, in adopting a “Stand Your Ground” rule, it was doing exactly that:

The suggestion, by the attorney-general, that that rule should be declared the law which is best calculated to protect and preserve human life, is of great weight, and we can safely say, that the rule announced is, at least, the surest to prevent the occurrence of occasions for taking life; and this, by letting the would-be robber, murderer, ravisher, and such like, know that their lives are, in a measure, in the

47 Id.
48 Id. at 343.
hands of their intended victims.\textsuperscript{49}

What did the Ohio Supreme court mean by that? It meant that if thugs, including would-be rapists, murderers and armed robbers, are conscious—even vaguely conscious—of the fact that their intended victims are obliged to flee rather than fight, it will embolden them. Indeed, it will embolden them even if they simply have a vague expectation that they are more likely to flee. Put differently, there will be more such attacks as they perceive, however faintly, that efforts to commit a crime are low risk and efforts to forcibly drive someone from a place they have a right to be will be successful.

Thugs need not have a grasp of the law for the Ohio Supreme Court to be right. Laws both reflect culture and influence culture, and they do it in ways that both subtle and not-so-subtle. Sure, expectations about how a victim is likely to behave may be based on knowledge of what the law requires him to do. But, perhaps more likely, they will be based on vague notions of what the victim ought to do, which in turn are influenced by often-distant memories of what has happened in the past or of what others have said about what should happen based on their own memories of what has happened in the past.

Also the extent to which thugs are emboldened need not be great for the Ohio Supreme Court to be right. They need not believe their victims will certainly flee. All that is necessary is that a “Duty to Retreat” rule alter their expectations slightly relative to their expectations under a “Stand Your Ground” rule.

On the other hand, the view that “Stand Your Ground” rules save lives is contestable. Indeed, the Alabama Supreme Court did just that in Judge v. State, when it wrote that a “Duty to Retreat” rule “would exert a wholesome restraint on unbridled passions and lawlessness, and would, in the end, preserve to the commonwealth many valuable lives.”

Who is right? Does a “Stand Your Ground” rule or a “Duty to Retreat” rule save more lives? I am somewhat inclined to believe that in the long term it is a mistake to send a message to aggressors that their victims are required by law to respond passively. Eventually, they may learn to take advantage of that. I note that some researchers believe they have evidence to the contrary,\textsuperscript{50}

\textsuperscript{49} 29 Ohio St. at 200.

\textsuperscript{50} McClellan & Tekin (whose study is cited favorably by Commissioner Yaki in his Commissioner’s Statement) are among those who believe that they have uncovered evidence to the contrary. States that have passed “Stand Your Ground” laws or are considering passing or repealing such laws should certainly be willing to examine that evidence and any further evidence that may come to light on the issue. But comparing crime rates of two very different sets of states with different histories, cultures and demographics, attempting to control for those differences the best one can, but then attributing the remaining differences to “Stand Your Ground” laws is fraught with risk. States are complicated things. And the evidence that McClellan & Tekin have produced is rather odd. It purports to show that in the seven months following each “Stand Your Ground” state’s adoption of its law, homicides dropped sharply relative to other states, but that beginning in the eighth month through the fourteenth month, the homicide rates in
those states began to climb, while they remained more stable in the other states. The net effect of these changes was to raise the homicide rate in “Stand Your Ground” state relative to the other states. Such a roller coaster relationship is hard to attribute to changes in the law (which, at least with a change as minor as this one, one would expect to take a decade or more to affect the culture anyway). Why would a “Stand Your Ground” law cause a decrease in homicides during the first seven months followed by a six-month increase?

The most obvious explanation is that something else is driving this (especially since the study finds states that enacted more limited “Stand Your Ground” statutes during the same period were found to have experienced a decrease in homicides rather than an increase like that found for the states that enacted the stronger versions of that law). Knock me over with a feather if large numbers of the citizens of these states could tell you the difference between their state’s statute and the statutes of other “Stand Your Ground” states.

There are several possibilities I can think of that are worth exploring. I’m sure others can think of more. First, the states that adopted the strong versions of “Stand Your Ground” are disproportionately located in the South, where incarceration rates have historically been higher than average. During the period of the enactment of these statutes, those incarceration rates had become controversial and difficult to maintain. The trend toward greater incarceration de-accelerated and ultimately reversed itself in the years around 2006-2009. Is it possible that Southern states were disproportionately affected and hence witnessed an uptick in homicides not matched in other parts of the country? I believe this is worth looking into.

An alternative explanation was suggested by the authors themselves--that gun ownership was climbing faster in “Stand Your Ground” states than in others (although the authors suggest that “Stand Your Ground” statutes may have caused that increase). The notion that “Stand Your Ground” laws led to a greater rate of gun ownership rates strikes me as attributing too much to these laws. The more likely explanation for any difference in rates of increase in gun ownership is that Southern states, for cultural reasons, were especially fertile ground for sparking increased interest in firearms at a time that the Supreme Court was deciding Second Amendment rights. Issues of firearm control were very much on the minds of many Americans. See District of Columbia v. Heller, 554 U.S. 570 (2008). Prior to the Trayvon Martin case “Stand Your Ground” laws received far less attention.

A third possibility is that increases in population over the course of the decade were insufficiently taken into account by the authors. Since the “Stand Your Ground” states tend to be high-growth states, this would make it appear that homicides were increasing in “Stand Your Ground” states, while the increase was largely a function of population growth. Texas, Arizona, and Florida, for example, grew 20.6%, 24.6% and 16.6% respectively and were “Stand Your Ground” states, while Illinois, New York, and Ohio grew 3.3%, 2.1% and 1.6% respectively and did not enact “Stand Your Ground” statutes. I cannot tell the extent to which the authors adjusted their figures to account for this constant change in population size.

Note the fact that population growth can itself result in increased feelings of rootlessness and hence in higher crime. Even taking into consideration actual population for each time period looked at will not account for this.

I am not in a position to draw conclusions here, except to state that the peculiarities in the findings of McClellan & Tekin leave me unconvinced that they have discovered a causal connection between “Stand Your Ground” statutes and an increase in homicide rates. See also supra at n. 12.

The same is true of the findings in Cheng & Hoekstra. Their study is similar to that off McClellan & Tekin in that it attempts something that is nearly impossible: It tries to isolate the effects of “Stand Your Ground” laws from the many other differences between states like Texas, Florida, and Arizona (which have adopted “Stand Your Ground” statutes) and states like New York, Illinois and Ohio (which have not).

Cheng & Hoekstra (whose study is also cited favorably by Commissioner Yaki) used a difference within difference approach. They make two findings: (1) If “Stand Your Ground” statutes have any deterrence effect on robbery, aggravated assault and burglary, it is a very small one; and (2) On the other hand, states that passed “Stand Your Ground” statutes (which the authors repeatedly call “Castle Doctrine” laws) experienced a very substantial uptick in homicide following the adoption of those statutes.
just as some believe they have evidence in support. But I am skeptical that overly ambitious and complex regressions can be the basis of any conclusions. And I submit that anybody who is

If I were, for example, a Texas state legislator, I’m not sure I’d be as discouraged as Cheng & Hoekstra at the evidence of the deterrence effect of “Stand Your Ground” laws. They admit that it may well be the case that “Stand Your Ground” laws caused a 2.5% decrease in aggravated assault, a 1.9% decrease in robbery, and a 2.1% decrease in burglary. The authors evidently think that is small potatoes. In fact, however, that would represent 1,822 fewer aggravated assaults, 633 fewer robberies, and 3, 123 burglaries in Texas each year.

That may not be as impressive as the effect one might get from hiring 500 more police officers or cutting the unemployment rate by a percentage point, but it takes far less from the public purse than the former and it is more within the control of the state legislature than the latter. If I were a Texas legislator I would be more than delighted to learn that such a small tweak to state law had such a beneficial effect.

But Texas legislators shouldn’t get excited. Cheng & Hoekstra did not find such an effect; they simply could not eliminate the possibility. Moreover, their finding that “Stand Your Ground” states have experienced an 8% uptick in homicide relative to other states (after controlling for many differences between the groups of states) demonstrates that their analysis did not take into consideration all the differences between the groups of states. It is simply implausible that “Stand Your Ground” statutes would have such a profound effect on homicide rates. It would be easier to believe that “Stand Your Ground” laws cause cancer. Consequently, their findings on deterrence must be viewed with great skepticism as well.

Why is the 8% implausible? “Stand Your Ground” laws affect only a very small number of homicide cases. Very few homicides involve claims of self defense. See text and note at n.10. Of those that do, most involve situations in which it is obvious that the individual invoking self defense had no opportunity to flee. The danger was imminent. Of those where flight would have been possible, many occur in the home, where the right to stand one’s ground is longstanding and universal across American jurisdictions.

51 A Texas study in this regard is interesting. In September of 2007, Texas passed a “Stand Your Ground” law. In November of the same year, in suburban Houston, resident Joe Horn shot and killed two burglars who had been burglarizing his neighbor’s home. He said they were coming at him in the neighbor’s front yard. The incident was recorded on a 911 tape with the 911 operator urging Horn to wait for the police to arrive rather than to insert himself into the situation. See https://en.wikipedia.org/wiki/Joe_Horn_shooting_controversy. Rightly or wrongly under Texas law, the grand jury declined to indict.

Researchers found that through the period leading up to August 31, 2008, burglaries decreased in Houston, but not in Dallas. Ling Ren, Yan Zhang & Jihong Solomon Zhao, The Deterrent Effect of the Castle Doctrine Law on Burglary in Texas: A Tale of Outcomes in Houston and Dallas, 61 Crim & Delinquency 1127 (2012). Did Texas’ “Stand Your Ground” law have any causal role to play here? It is certainly plausible that the intense publicity surrounding the Horn case deterred burglaries. But did Horn’s action have any causal connection to the “Stand Your Ground” law? If he would have acted the same way under previous law, then the answer would be “no.” But it is difficult to say. Maybe he would not have.

52 A good example is a study of Arizona’s 2006 “Stand Your Ground” law. Looking at data from 2002 to 2011, its author found that the number of robberies was not decreased by the passage of that legislation and (more importantly) the number of homicides was not increased. This suggests the change was not very important. Curiously, it nevertheless found that the number of suicides had increased. Since it is not obvious why “Stand Your Ground” legislation would lead to more suicides (but not more homicides), it seems odd to attribute the suicide increase to the “Stand Your Ground” law. But the author seems inclined to do so anyway. Mitchell B. Chamlin, An Assessment of the Intended and Unintended Consequence of Arizona’s Self-Defense, Home Protection Act, 37 J. Crime & Justice 327 (2014). Perhaps the Great Recession, which commenced in 2008 and lasted many years, is a more likely contributor to rising suicide rates over this period. Mayowa Oyesanya, Javier Lopez-Morinigo, and Rina Dutta, Systematic Review of Suicide in Economic Recession, 5 World J. Psych. 243 (2015). See also David K. Humphreys, Antonion Gasparrini & Douglas J. Wiebe, Evaluation the Impact of Florida’s “Stand Your
certain about the answer to this question for all time is making a mistake. It depends on a host of unknowables. And the answer may be different for one culture than it is for another. It is thus a question that needs to be left to the political judgment of legislatures or, in the absence of a judgment by a legislature, by the courts.

The best I can offer may be this: I very much doubt the effect is large, no matter which direction it goes. Stand Your Ground laws apply to only a few cases, and most citizens are unaware of their existence. Some advocates of the “Duty to Retreat” have tried to suggest that the states that have adopted “Stand Your Ground” rules tend to be those that value a gun-slinging image. One would think, however, the longer a state has employed a “Stand Your Ground” rule, the more dangerous they would be to live in (and the longer a state had been known for its “Duty to Retreat” rule, the more tranquil it would be). If so, that would mean Ohio and Indiana should be among the most dangerous, and Alabama among the most tranquil. Yet I doubt many Americans view those states that way.

The second argument in favor of a “Stand Your Ground” rule is a prudential one that arises out of the difficulty of knowing for sure whether a defendant could have safely retreated. One could say that “Stand Your Ground” rules create an irrebuttable presumption that if an otherwise innocent person decides to stand his ground rather than flee, that is was because he could not have safely retreated. Such a presumption will be wrong sometimes, but it may be right more often than a rule that juries must decide in each case whether the defendant could have safely retreated.53

Beale, of course, disputed the wisdom of such a rule. He argued that just because it is often difficult to judge whether retreat would have been safe it “by no means follows that retreat when certainly safe should be less requisite. “

One can conceptualize taking the issue away from the jury by irrebuttably presuming an otherwise innocent defendant could not have safely retreated as adhering to the logic of Justice Holmes: Expecting detached calculation from someone who is in danger of imminent death is to expect far too much. Give them a break.

I don’t need to resolve these issues. Legislatures are in a better position to judge these matters than a law professor. But here’s the bottom line: Whether one supports or opposes “Stand Your Ground” Self-Defense Law on Homicide and Suicide by Firearm, JAMA Intern. Med. 44 (January 2017)(making extraordinary claims out of proportion to the number of self-defense cases).

53 The argument for this approach may be stronger in more recent centuries than it was in 16th century England, when altercations were more likely to involve swords, knives or fists than guns. In 19th, 20th or 21st-century United States, the likelihood that guns will be involved increased very substantially. The proportion of cases in which retreat will be ill-advised thus increased substantially. At some point, it arguably makes sense to presume irrebuttably that retreat would have been unsafe.
Ground” laws, Attorney General Holder’s view that they are somehow novel is incorrect. This is a debate that has been going on a long time.

**THE APPARENTLY WIDESPREAD NOTION THAT “STAND YOUR GROUND” LAWS ALLOW AN INDIVIDUAL TO USE DEADLY FORCE IF HE SIMPLY “FEELS THREATENED” IS FALSE.**

The argument that “Stand Your Ground” laws allow anyone who feels threatened is frequently repeated. Even former President Obama appears to have bought into this misimpression. Shortly after George Zimmerman was acquitted in the Trayvon Martin case, Obama asked what would have happened had the roles been reversed: “[D]o we actually think that [Trayvon Martin] would have been justified in shooting Mr. Zimmerman, who had followed him in car, because he felt threatened?”

But it is an ill-informed question. Florida’s “Stand Your Ground” law as to the use of deadly force is as follows:

776.012 Use or threatened use of force in defense of person.— …

(2) A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

Note that what I am discussing here is not really about “Stand Your Ground” itself. This goes to the contours of basic self-defense law. Florida requires a reasonable belief that one is being threatened.

54 Commissioner Yaki appears to be among those who buy into this misconception. See Yaki Statement at 16-17.

See also Robert Leider, Understanding Stand Your Ground, Wall Street Journal (April 18, 2012)(“Many have asserted that in Florida anyone who believes he is in danger can use deadly force, … These perceptions of the law are wrong. … [Florida’s Stand Your Ground law requires that an individual] “reasonably believe that the aggressor threatened him with death, great bodily injury, or intended to commit a forcible felony ….”

55 Transcript: Obama Addresses Race, Profiling and Florida Law, CNN (July 19, 2013)(italics added), available at https://www.cnn.com/2013/07/19/politics/obama-zimmerman-verdict/index.html. See also Editorial: “Stand Your Ground” Doesn’t Stand Common Sense Test, York Dispatch (October 24, 2018)(“[T]here should be little argument that so-called “stand your ground” laws, which allow armed citizens to shoot and kill assailants if they feel threatened, are unnecessary invitations to vigilante homicide and need to be rescinded”), available at https://www.yorkdispatch.com/story/opinion/editorials/2018/10/24/editorial-stand-your-ground-doesnt-stand-common-sense-test/1737906002/.

56 In tort law, only someone who reasonably believes that his assailant is about to inflict an intentional contact or other bodily harm and that he is thereby put in peril of death, serious bodily harm or ravishment, which can be safety prevented only by the immediate use of force likely to cause death or serious bodily harm. See Restatement (Second) of Torts § 65 (1965). The Model Penal Code, on the other hand, is a little different and is considered...
threatened. And not just any threat of intentional contact or bodily harm will do. The threat has to put the individual in peril of death, great bodily harm or the imminent commission of a forcible felony (e.g. rape). Moreover, the threat must be imminent. If there is time to call the police, then the police must be called. Any suggestion that deadly force can be employed if someone merely feels threatened is thus false. 57

unusual: It doesn’t mention reasonableness (though it does require “the actor [to] believe[] that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.” Model Penal Code § 3.04(1). The Model Penal Code, however, does impose a duty to retreat (in places other than the home). I can see the argument for the Model Penal Code’s failure to require the use of deadly force in self-defense to be reasonable for criminal law purposes (although for tort law purposes there needs to remain, at the very least, a requirement of reasonableness). One could argue that incarcerating or otherwise punishing a person who happens to be unreasonably timid and anxious serves no purpose. But if one is going to take that position it is important that one stick with a duty to retreat. "Stand Your Ground" jurisdictions should (and do) require reasonableness.

57 A variation of this argument involving the concept of “implicit bias” appears in Commissioner Yaki’s Statement. Commissioner Yaki does not define the term “implicit bias,” but I understand him to be referring to the “attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.” http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/. In the racial context, this is often interpreted to mean that many white persons who profess not to be racially biased nonetheless actually are unconsciously biased against racial and ethnic minorities and that this unconscious bias means that whites frequently discriminate against racial and ethnic minorities without being aware of it.

Talk of “implicit bias” is fashionable these days, especially among those involved in the diversity training business – perhaps in large part because a free, readily available online test purports to be able to measure an individual’s “implicit bias” against African Americans. See Project Implicit, available at https://implicit.harvard.edu/implicit/takeatest.html. There is, however, significant reason for skepticism that the test accurately measures an individual’s actual bias.


The important part is this: Even if one is less skeptical of implicit bias than I am, it still makes little sense to use implicit bias as an argument against the “reasonable belief” component of “Stand Your Ground” laws. As discussed above, the plain text of the Florida law requires that the person must believe that the use of force is “necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.” The perception that an individual is threatening merely because of his or her race would not qualify under this standard. Moreover, the “reasonable belief” standard in not just a component of “Stand Your Ground” laws, it is part of traditional self defense. I trust that Commissioner Yaki would not abrogate traditional self defense—i.e. impose upon Americans who are being threatened with imminent death or great bodily harm have a duty to die simply because the implementation of that defense will never be perfect.
THE APPARENTLY WIDESPREAD NOTION THAT INITIAL AGGRESSORS CAN BENEFIT FROM “STAND YOUR GROUND” LAWS IS ALSO FALSE.

Another common misunderstanding is that an initial aggressor can invoke the right to stand his ground. This, too, is mistaken. From the time of Coke and Blackstone, it has been repeatedly articulated that if two individuals are engaging in mutual combat with each other, such that they are both in some way at fault, there is a duty to retreat if it can be done safely before deadly force may be employed. This aspect of the rule is important to the law. Consider, for example, the case of duelists—perhaps the quintessential mutual combatants. Without a duty to retreat on the part of mutual combatants, whoever prevails in the duel would be able to claim that since the other party intended to kill him they are in the clear for acting in self-defense. Imposing a duty to retreat on both of them preserves to the state the ability to come down hard on duelists.

The case for denying the initial aggressor in an attack on an innocent victim is a fortiori an exception to traditional “Stand Your Ground” rules. Blackstone discusses the innocent victim’s right of self-defense without any qualifier. Coke is explicit that the innocent victim has no duty to give way.

This was evident in American cases as well. For example, in *Erwin v. State*, the Indiana Supreme Court placed an important qualifier on its “Stand Your Ground” rule. It stated that a man “who is without fault” “is not obliged to fly from his assailant.” It never suggested that an initial aggressor (i.e. a man who is with fault) is entitled to that same option.

Most important, the Florida “Stand Your Ground” law is not to the contrary. It explicitly states that the justification of self-defense is not available to an individual who:

1. Is attempting to commit, committing or escaping after the commission of, a forcible felony; or
2. Initially provokes the use or threatened use of force against himself or herself, unless:
   a. Such force or threat of force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant; or
   b. In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.

*Fla. Stat. § 776.041 (2014).*
Determining what constitutes the “initial aggression” (or in the words of the Florida statute, what “initial[] provocation”) may sometimes require a little thought. The most obvious cases involve physical attacks. Indeed, physical attacks are by far the most typical initial aggression. If Alice walks up to Bob and punches him in the nose, and Bob, fearful that Alice is about to cause him seriously bodily harm, draws his gun, Alice has a duty to retreat, if she can do so safely, rather than to draw her gun and kill Bob. Why? Because Alice initially provoked Bob (§ 776.041(2)). This is so even though the punch in the nose may itself be only a misdemeanor and not a felony under § 776.041(1).

At the other end of the spectrum, certain things are not considered initial aggression or provocation. An individual has the right to discuss a sensitive subject, to engage in an inappropriate act, to demand an explanation of the other individual’s actions, and even to hurl insulting epithets at the other individual without forfeiting any aspect of his right to defend himself.58

One can easily see how a nation that is careful to protect free expression in so many ways would be careful not to define the exercise of free expression as “aggression” or “provocations.”

Are there things that don’t constitute violence that are classed as initial aggression or provocation? Professor Cynthia Ward in “Stand Your Ground and Self-Defense” cites “being caught sleeping with the deceased wife” as a possible example.59 But, if so, that goes far beyond inappropriate acts, insults, or annoying interrogations.

The Trayvon Martin case was thus not a case of initial aggression by Zimmerman. Some have suggested that George Zimmerman somehow “provoked” Martin by following him and asking him why he was there. But this does not rise to the level of aggression or provocation as those terms have been understood.

Even if it did constitute aggression or provocation within the meaning the Florida statute, Zimmerman would likely qualify under § 776.041 (2)(b) as having “withdraw[n] from physical contact with [Martin] and indicate[d] clearly to [Martin] that he … desire[d] to withdraw and terminate the use or threatened use of force, but [Martin] continue[d] … the use or threatened use of force.

The uncontradicted evidence was not just that he had turned away and was surprised by Martin, who had turned the tables and was now following Zimmerman. The jury found that Martin had knocked Zimmerman to the ground and was beating Zimmerman’s head into the concrete sidewalk when Zimmerman pulled out his gun and shot Martin. At that point, retreat was impossible.


59 Ward at 114 (citing id.).
Might the jury have been wrong about the facts? Anything is possible (though the scrapes on the back of Zimmerman’s head must have gotten there somehow). But the point remains that the problem in that case was not the Florida “Stand Your Ground” law.

CONCLUSION:

The Commission is publishing this transcript more than seven years after Trayvon Martin passed away—without any reference to its independent research on the subject. The controversy over his death and over “Stand Your Ground” laws has largely faded out of the headlines. Some members of this Commission might be inclined to bemoan this report not being as relevant as it might have been had it been ready closer to 2012. I disagree. Cooler heads should have prevailed early on during the debate over Stand Your Ground laws. But they did not. Now that years have passed, the Commission could have made a modest contribution to that debate by publishing the results of its research. It chose to bury those results instead only because they did not go in the direction the Commission’s majority was hoping for.
Statement of Commissioner Peter N. Kirsanow

The Commission held a hearing on Stand Your Ground laws in the wake of the death of Trayvon Martin. In my view, this is not a subject the Commission is well-equipped to address. Reviewing the witness statements and hearing transcripts four years after the hearing, it seems that most of the disagreements center around four primary issues:

1) Whether there is a duty to retreat when exercising self-defense;
2) Self-defense;
3) Possession of firearms; and
4) Race.

The first three items are closely linked. However, all of them were jumbled together during our briefing under the heading “Stand Your Ground,” and also in regard to the tragic Martin-Zimmerman altercation. This did not bring clarity to the discussion.

The Duty to Retreat

The term “Stand Your Ground” is confusing. It sounds novel, when it is merely one long-standing interpretation of the law of self-defense.¹ Nor is this interpretation limited to states regarded as politically conservative.² Therefore, in this section, I will discuss the disagreement over whether there is a duty to retreat when exercising self-defense, as that better describes the issue.

One of the problems with having the Commission investigate an issue such as Stand Your Ground is that there are different and irreconcilable values in play. It is tempting to view Stand Your Ground as a matter of determining whether individuals of a particular race are more likely to invoke Stand Your Ground or not, but the conflict is more fundamental. The issue is really a matter of determining who should bear a heightened risk of injury – the aggressor or his victim. States that have adopted stand your ground laws or have common-law doctrines of self-defense that are similar to stand your ground have decided that the aggressor should bear the heightened risk of

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A person threatened with an attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of [his][her] right of self-defense a person may stand [his][her] ground and defend [himself][herself] by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and a person may pursue [his] [her] assailant until [he][she] has secured [himself][herself] from danger if that course likewise appears reasonably necessary. This law applies even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene. [emphasis added]
injury. States that adhere to a “duty to retreat” say that the victim should bear the heightened risk of injury.

I was struck by this while reading exchanges between various commissioners and South Carolina Representative Todd Rutherford. This exchange is representative:

Vice-Chair 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

Vice-Chair 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?

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 and 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.3

It might seem hyperbolic to say that a duty to retreat shifts extra risk on to the victim of aggression, and undoubtedly that is not what my colleagues have in mind. Nonetheless, that is the practical effect. As Representative Rutherford said, the duty to retreat means that you have to “wait and see what the next step will be once someone hits you in the face.” Professor Katheryn Russell-Brown also discussed these disparate values in her written testimony:

The second approach [to the issue of use of deadly force in self-defense] is “no retreat.” In the face of threatened violence, a person should be allowed to stay put – to stand his ground and fight back against his attacker. In the 1800s, the “no

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3 Transcript at 73-74.
retreat” approach was particularly attractive to frontier states, which viewed retreat as a sign of cowardice. Erwin v. State, an 1876 case decided by the Ohio Supreme Court, represents this perspective. The court declined to use the retreat rule and overturned the defendant’s conviction. It stated, “[A] true man, who is without fault, is not obliged to fly from an assailant who, by violence of surprise, maliciously seeks to take his life or do him enormous bodily harm.” In Brown v. United States (1921), the U.S. Supreme Court addressed the retreat rule. The murder case involved a victim who had a knife and a defendant who had a gun. The Court ruled that retreat is not always required. Instead, it is a factor for the court to consider evaluating a self-defense claim. Many people viewed the rule of retreat as an outdated legal carryover from the common law. Today the majority of states do not require retreat before the use of deadly force.\textsuperscript{4}

This difference of opinion, largely rooted in cultural differences, persists today.\textsuperscript{5} As Ilya Shapiro stated in his written testimony, “[T]he core of the debate over SYG – the real one, not the phony way we’ve been having lately – is really one about the duty to retreat.”\textsuperscript{6}  

**Self-Defense**

The views expressed at the hearing would in many cases cast the idea of self-defense into jeopardy entirely. For example, David Labahn stated:

> 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 in. We laughed at it. We laughed that you’re going to have criminal immunity and civil immunity for taking somebody else’s life. We thought it was almost funny that – you’ve got to be kidding me.\textsuperscript{7}

One problem with Mr. Labahn’s statement is that if you kill someone in self-defense (and Stand Your Ground is merely one way the law approaches the natural right to self-defense) then yes, you are not criminally prosecuted for taking someone’s life. Nor should you be civilly liable for taking someone’s life if you were attacked by that person and had to defend your own life. If you clearly acted in self-defense, you shouldn’t have to go through a trial to prove that. As with so many other aspects of government, the process is itself a punishment. The fact that Mr. Labahn thought this

\textsuperscript{4} Written Statement of Katheryn Russell-Brown, University of Florida, Levin College of Law, at 3-4.

\textsuperscript{5} Written Statement of Ilya Shapiro, Cato Institute, at 3.

\textsuperscript{6} Written Statement of Ilya Shapiro, Cato Institute, at 3.

\textsuperscript{7} Transcript Panel 3 at 61-62.
idea laughable illustrates how opposition to Stand Your Ground is often rooted in skepticism of self-defense.

John Lott made an interesting observation regarding homicide rates in states that introduce Stand Your Ground laws. If the homicide rate in a state does increase, and if that increase is attributable to this law, it could be because more people are availing themselves of the right of self-defense. (There are relatively few homicides, so even a small increase in the number will show up in the statistics.) A person who would have been robbed, assaulted, or raped defends herself, and in doing so takes the aggressor’s life. Some of my colleagues raised the question of why a person wouldn’t use something short of deadly force to defend herself. I agree that is preferable. But many times, a criminal (or an angry ex-boyfriend) will prey on someone who is physically weaker. If a would-be mugger is looking for a victim and an Ohio State football player walks down one side of the street, and an elderly man in a wheelchair rolls down the other side of the street, the mugger will probably think it will be less trouble to attack the elderly man. A wheelchair-bound person is unlikely to be able to defend himself – unless he has a gun. The Ohio State football player might – might be able to punch the mugger and go on his way (and maybe not if the mugger has a knife or gun), but the man in the wheelchair certainly can’t. But if he shoots the mugger, the mugger is more likely to die than if the football player punches him.

Possession of Firearms

Many of the panelists cite George Zimmerman’s history of arrests and question why he was not barred from owning a gun. The fact is, though, that Zimmerman was never convicted of a felony. Usually progressives support programs that divert low-level offenders from jail, like the program that sent Zimmerman to alcohol-education classes rather than convicting him of two felonies. Let us imagine this had played out differently. Let us imagine that George Zimmerman had been convicted of those two felonies and had served his time. Then in October 2014, he is sitting in

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Sometimes, cases are reported [to the FBI] that are wildly inaccurate. The FBI lists an incident in Flint in 2001 where a 17-year-old boy shot a 68-year-old man.

It was the other way around.

The 68-year-old, Clinton Burns, was confronted in his home by Howard Byas, who climbed through the window and threatened to kill Burns unless he surrendered his wallet and other valuables.

Burns pointed a remote control at the teen and ordered him to leave. When the teen snatched the remote, Burns shot him with a .38 caliber pistol hidden under a seat cushion.

The cushion was on his wheelchair. Burns, who passed away in 2008, was a paraplegic.

10 Written Statement of Arkadi Gerny, Center for American Progress, at 1.
front of the Commission testifying about how he committed a youthful indiscretion and had tried to go straight, and yet had been unable to obtain employment that matched his skills because of his criminal record. The Commission would have solemnly nodded and agreed that there is a need for diversion programs so that the lives of foolish young people are not permanently blighted, and issued a report on the need to prohibit the use of criminal background checks in hiring.11

I support the use of criminal background checks in hiring, and I believe the current regime of criminal background checks in gun purchases is defensible. But I think employers should treat arrests and convictions differently when evaluating an individual’s suitability for employment. We should be at least as careful when it comes to curtailing an individual’s constitutional rights. After all, no one has a constitutional right to a particular job – or to any job at all – but the right to carry a gun is protected by the Second Amendment.

Our Constitution was not drafted with “safety” as its overriding concern. It protects certain rights, even at the expense of other interests. It protects freedom of speech, even though that freedom has often been used to hurt people while providing (in the minds of many) no discernable benefit.12 Defendants have the right to confront their accuser, even though that has pained many victims of

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11 Those few readers who follow this Commission closely may be aware that the Commission has in fact done exactly that, except that the man sitting in front of us explaining the difficulty ex-felons have obtaining employment had committed, among other offenses, armed robbery. See U.S. Commission on Civil Rights, Assessing the Impact of Criminal Background Checks and the Equal Employment Opportunity Commission’s Conviction Records Policy, December 2013, at 49 (testimony of Glenn E. Martin), http://www.euscrr.com/EEOC_final_2013.pdf; Glenn E. Martin, JustLeadership USA, https://www.heartsonfire.org/glenn-e-martin-justleadershipusa/.


The “content” of Westboro’s signs plainly relates to broad issues of interest to society at large, rather than matters of “purely private concern.” The placards read “God Hates the USA/Thank God for 9/11,” “America is Doomed,” “Don’t Pray for the USA,” “Thank God for IEDs,” “Fag Troops,” “Semper Fi Fags,” “God Hates Fags,” “Maryland Taliban,” “Not Blessed Just Cursed,” “Thank God for Dead Soldiers,” “Pope in Hell,” “Priests Rape Boys,” “You’re Going to Hell,” and “God Hates You.” While these messages may fall short of refined social or political commentary, the issues they highlight – the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy – are matters of public import.


Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case.

Petitioner Albert Snyder is not a public figure. He is simply a parent whose son, Marine Lance Corporal Matthew Snyder, was killed in Iraq. Mr. Snyder wanted what is surely the right of any parent who experiences such an incalculable loss: to bury his son in peace. But respondents, members of the Westboro Baptist Church, deprived him of that elementary right. They first issued a press release and thus turned Matthew’s funeral into a tumultuous media event. They then appeared at the church, approached as closely as they could without trespassing, and launched a malevolent verbal attack on Matthew and his family at a time of acute emotional vulnerability. As a result, Albert Snyder suffered severe and lasting emotional injury. The Court how holds that the First Amendment protected respondents’ right to brutalize Mr. Snyder. I cannot agree.
crime. And individuals have the right to bear arms, both as a shield against government tyranny and for self-protection, even though people sometimes unlawfully kill others.\textsuperscript{13}

We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding “interest-balancing” approach. The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is \textit{really worth} insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad. We would not apply an “interest-balancing” approach to the prohibition of a peaceful neo-Nazi march through Skokie. See \textit{National Socialist Party of America v. Skokie}, 432 U.S. 43, 97 S.Ct. 2205, 53 L.Ed.2d 96 (1977) (\textit{per curiam}). The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong headed views. The Second Amendment is no different. Like the First, it is the very product of an interest balancing by the people—which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.\textsuperscript{14}

\textbf{Race and Self-Defense}

This hearing was prompted by the tragic death of Trayvon Martin. No one really knows what happened that night. Even George Zimmerman may not recall events with complete clarity, given the darkness and the stress of the situation. And tragically, Trayvon Martin is dead. What we can say is that a Florida jury of six women found George Zimmerman not guilty\textsuperscript{15}, and that the Obama Justice Department found that there was insufficient evidence to charge Zimmerman with violating Martin’s civil rights.\textsuperscript{16} It is worth noting that even states that have a duty to retreat only require a person to retreat if he can safely do so. If Martin was on top of Zimmerman and attacking him, as Zimmerman claimed (and which is supported by forensic evidence), Zimmerman physically could not have retreated. Depending on how the confrontation between Martin and Zimmerman played

\begin{itemize}
\item \textsuperscript{13} District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010).
\item \textsuperscript{14}\textit{Heller} at 634-35.
\item \textsuperscript{15} Trayvon Martin shooting fast facts, CNN, updated May 7, 2018, \url{https://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html}.
\item \textsuperscript{16} Department of Justice, Federal Officials Close Investigation Into Death of Trayvon Martin, February 24, 2015, \url{https://www.justice.gov/opa/pr/federal-officials-close-investigation-death-trayvon-martin}.
\end{itemize}
out before they wound up on the ground, Zimmerman may not have been able to safely retreat even before he was on the ground.\textsuperscript{17}

None of this is to say that I think Zimmerman followed the best course of action leading up to the altercation with Martin. But the most heated claims made about this sad series of events were not supported by the evidence.

The hearing was prompted by the claim that “Perhaps the most divisive and inflammatory of those questions [about the Martin-Zimmerman altercation] is whether racial bias skews our justice system through “Stand Your Ground” (SYG) laws that shield those who claim self defense.”\textsuperscript{18} This question is very difficult to answer at any level of generality. There are few justifiable homicides\textsuperscript{19}, an even smaller number would be classified as “SYG,” and whether or not a homicide is justified is very fact-specific.

Still, there is some statistical evidence that SYG laws do not have a significant racial disparate impact, which I discuss below. When this report was proposed, the idea was that Commission staff, principally Dr. Sean Goliday\textsuperscript{20}, would analyze Stand Your Ground cases to determine if there was a racially disparate impact or racial bias in the application of Stand Your Ground Laws.\textsuperscript{21} The

\textsuperscript{17} Transcript 1 at 37-38.

Senator Smith:

\[O\]ne of my pet peeves when discussing stand your ground is when anyone mentioned “retreat” today, remember Florida law and I’m unsure of other laws, always had a word that everyone neglects, it said, “safely retreat.” . . . The Florida law has always been, you had a duty to safely retreat.


\textsuperscript{19} Transcript 2 at 17-18.

William Krouse:

\[I\]n any given year white-on-black justifiable homicide incidents they range from about 25 to 30 with a slight increase in the latter five year period. . . . [But] 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. . . . 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.

\textsuperscript{20} Unfortunately, Dr. Goliday left the Commission for another position within the federal government. I thank him for his hard work on this report, even though none of his work saw the light of day.

\textsuperscript{21} There’s a lot of – there’s data out there that suggests, and it only suggests, and again that’s why I think that it’s appropriate that we get involved in this, that there may be racial bias in the enforcement and application of these statutes.

By racial bias, I’m talking about the fact that just on some statistics out there alone there are questions about whether or not if you are a – if you are a black victim, in other words, the person who was shot by someone asserting the SYG, that there seems to be a disproportionate number of those victims are African-American or are a minority versus homicide victims generally for that.

projected budget for this study was $100,000.\textsuperscript{22} It is now more than six years since the Commission voted to proceed with this project, and now we are releasing only a transcript – not any of the statistical analysis that staff conducted. I leave it to the reader to draw his own conclusions as to why this is so.

**Statistical Research of William Krouse, John Roman, and John Lott**

William Krouse, John Roman, and John Lott presented statistical research at the Commission’s hearing. When considering their research, it is important to remember that they were using different datasets. Krouse and Roman used justifiable homicide data from the FBI’s Uniform Crime Statistics Supplementary Homicide Reports.\textsuperscript{23} In addition, Krouse was only presenting data on justifiable homicides generally, not on homicides where SYG was invoked.\textsuperscript{24} Lott used the Tampa Bay Times’\textsuperscript{25} database of SYG claims made in Florida since the law was enacted through October 1, 2014.\textsuperscript{26} This means that Krouse and Roman were drawing from a larger but incomplete universe of cases (for example, Florida is not included in the Supplemental Homicide Reports).\textsuperscript{27} Lott was using a data set that included cases from only one state, but was arguably more complete in regard to that state and had more details about individual cases.\textsuperscript{28}

\begin{itemize}
\item \textsuperscript{22} Id. at 5.
\item \textsuperscript{23} See Written Statement of William Krouse; see also Transcript 2 at 19 (Roman: “I’m going to talk about the same data that Bill [Krouse] talked about, we used it in our analysis”).
\item \textsuperscript{24} Transcript 2 at 11.
\item \textsuperscript{25} Throughout the hearing transcript, witnesses refer to this newspaper as the “Tampa Bay Tribune,” but the name is the Tampa Bay Times.
\item \textsuperscript{26} Written Statement of John Lott at 3, 5.
\item Up through October 1\textsuperscript{st} this year, the newspaper had collected 119 cases where people charged with murder relied on Florida’s Stand Your Ground law, starting with cases filed in 2006. . . . Besides information on the victim’s and defendant’s race and gender, the Tampa Bay Tribune collected a lot of other useful information on the cases: whether the victim initiated the confrontation, whether the defendant was on his own property when the shooting occurred, whether there was physical evidence, whether the defendant pursued the victim, and the type of case (a drug deal gone bad, home invasion, etc.). This detailed information about cases is valuable and has not been available in other studies.
\item \textsuperscript{27} Transcript 2 at 13.
\item 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, . . . Other states and localities more importantly do not participate, do not participate fully, and/or only participate intermittently in this Supplementary Homicides Reports Program.
\item Making things more difficult these reports do not always reflect the final disposition of these cases. Like the UCR, federal and tribal law enforcement do not report to the Supplementary Homicide Report Program.
\item \textsuperscript{28} Unfortunately, it appears that the Tampa Bay Times stopped updating its SYG database in 2013. To get a sense of the type of information Lott is referring to, the archived version of the site is available here: http://stand-your-ground-law.s3-webste-us-east-1.amazonaws.com/data.
\end{itemize}
Krouse provided data to the Commission that showed the number of firearms-related intra- and inter-racial homicides involving black and white individuals (single victim/single offender incidents) from 2001-2010.\textsuperscript{29} The number of black-on-black homicides was the largest, hovering around 2,000 homicides annually. The number of white-on-white homicides hovered around 300-500 fewer homicides annually – around 1500-1700. The number of inter-racial homicides was quite small. The number of black-on-white homicides held steady at around 250-350 annually, and the number of white-on-black homicides was steady at around 150 annually. The number of black-on-white homicides was always greater than the number of white-on-black homicides.

The number of firearms-related, intra- and inter-racial justifiable homicides involving black and white individuals from 2001-2010 was quite small, starting around 150 in 2001 and rising to just over 200 in 2010.\textsuperscript{30} The annual numbers of black-on-black and white-on-white justifiable homicides both hovered around 60 and slowly rose over 10 years. There was only one year (2004) when the number of white-on-white justifiable homicides was larger than the number of black-on-black justifiable homicides. The number of black-on-white justifiable homicides was miniscule – perhaps around 5 annually – and the number of white-on-black justifiable homicides, although small, was much larger, around 25-30 per year.

Viewing these two charts in conjunction brings to mind a possibility that was not mentioned by Krouse, or indeed by anyone at the hearing: if the number of black-on-white homicides (let us say 250 in a particular year) is much larger than the number of white-on-black homicides (150), perhaps it is not surprising that there are more white-on-black justifiable homicides. If whites are more likely to be on the receiving end of inter-racial violence, they are more likely to use violence to defend themselves. If there are 250 murders of whites by blacks per year, it is perhaps unsurprising that 25 whites per year kill a black attacker in self-defense.

John Roman, also testified at the briefing. His work in this area has received quite a bit of attention. In a report for the Urban Institute, Roman argued that whites were more likely to successfully utilize a SYG defense than were blacks.\textsuperscript{31} In particular, Roman argued, white-on-black homicides were more likely to be ruled justified than were black-on-white homicides, and this disparity became more pronounced after a state became a SYG state.\textsuperscript{32} In Roman’s report for the Urban

\begin{flushleft}
\textsuperscript{29} Appendix A, “Firearms-Related, Intra-and Inter-Racial Homicides Involving Black and White Individuals (Single Victim/Single Offender Incidents, 2001-2010),” from Written Statement of William Krouse, at 12.


\textsuperscript{32} Transcript 2 at 25-26.
\end{flushleft}
Institute, he found that of all justified homicides from 2005-2010 (that were included in the FBI’s Uniform Crime Statistics Supplementary Homicide Reports):

> Overall, 2.57 percent of homicides in the six-year period were ruled justified (1,365 out of 53,019). White-on-black homicides were most likely to be ruled justified (11.4 percent), and black-on-white homicides were least likely to be ruled justified (1.2 percent). Whether a state was an SYG state also affects the likelihood of a homicide being ruled justified.33

If you examine shootings that share the salient characteristics of the Martin-Zimmerman shooting, the statistics look different. Roman wrote in his report for the Urban Institute that in shootings where there is a single victim and a single shooter, they are strangers, both are male, and the defendant is older than the assailant, 41.14 percent of white on black homicides are ruled justified in non-SYG states, and 44.71 percent of white on black homicides are ruled justified in SYG states. When you have the same incident characteristics, except that the assailant is white and the defendant is black, 7.69 percent of homicides were determined to be justified in non-SYG states, and 9.94 percent in SYG states.34

It is worth noting that according to Roman’s research, the only time a self-defense claim was less likely to succeed in a SYG state than a non-SYG state was when there was a black assailant and a black victim.35 In fact, a greater percentage of black-on-white homicides were deemed justified in SYG states (11.10 percent) than were black-on-black homicides (9.94 percent). This would seem to cut against the claim that law enforcement is hopelessly explicitly or implicitly biased against blacks and in favor of whites in SYG states.

Furthermore, John Lott pointed out at the Commission briefing that Roman’s analysis actually indicates the opposite of what he claimed – SYG states actually have a smaller disparity between whether a white-on-black homicide will be found justified rather than a black-on-white homicide. Lott testified:

> If you look at Table III of his reports, what he has is, he has a column for the rate of justifiable homicides for black-on-white, white-on-black, for non-Stand Your Ground States, and for Stand Your Ground states. If you look at the coefficients for the non-Stand Your Ground states essentially, when a white kills a black he has a coefficient of like 41, and the coefficient of 7 for blacks killing whites. So it’s a

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35 Id.
ratio of about 5.4 to 1. So it’s saying whites who kill blacks are 5.4 times more likely to be found 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 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. . . .

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 between black and white that are there.\[^{36}\][emphasis added]

Lott presented his own research at the briefing using cases from the Tampa Bay Times’ database of Florida Stand Your Ground cases. He responded to the Tampa Bay Times’ [remember that Lott and others consistently referred to the paper as the “Tampa Bay Tribune,” but the correct name is the “Tampa Bay Times”] finding that “67 percent of those who killed a black person faced no penalty compared to 57 percent of those who killed a white.”\[^{37}\] Lott wrote:

Just because two people are charged with murder doesn’t mean the two cases are identical. In particular, black and white victims are usually killed by their own race. The Tribune data shows that seventy-six percent of blacks who were killed in cases where Stand Your Ground was invoked as a defense were killed by other blacks. Similarly, the vast majority of those who killed whites were white, though that isn’t true for Hispanics.

Again, since most blacks are killed by other blacks, that also means that blacks who claim self-defense under the Stand Your Ground law are convicted at a lower rate than are whites. About 69 percent of blacks who raised the Stand Your Ground defense were not convicted compared to 62 percent for whites. Interestingly, Hispanics who raise the Stand Your Ground defense are successful the most often – 78 percent of the time.

If blacks are supposedly being discriminated against because their killers so often are not facing any penalty, wouldn’t it also follow that blacks are being discriminated in favor of when blacks who claim self-defense under the Stand Your

\[^{36}\] Transcript 3 at 57-58.

\[^{37}\] John R. Lott, Jr., Written Statement, at 4. In analyzing the Tampa Times data, Lott found that in Stand Your Ground cases where a black person was killed, 76.3% of the killers were black, 18.4% were white, and 5.3% were Hispanic. In Stand Your Ground cases where a white person was killed, 11.9% of the killers were black, 80.6% were white, and 7.5% were Hispanic. In Stand Your Ground cases where a Hispanic person was killed, 22.2% of the killers were black, 55.6% were white, and 22.2% were Hispanic.
Ground law are convicted at a lower rate than are whites? If this is indeed a measure of discrimination, rather than merely reflecting something different about these particular cases, why are conviction rates so low for Hispanics who raise the Stand Your Ground defense? The figures used to support claims of racism are cherry-picked from the data.

There were also other important differences across the cases not reflected by the simply averages. Using the Tribune data, blacks killed in these Stand Your Ground confrontations were 26 percentage points more likely to be armed with a gun than whites who were killed. This strongly suggests that their killers reasonably believed they had little choice to kill their attackers. By a 42 to 17 percent margin, the blacks killed were also more often in the process of committing a robbery, home invasion, or burglary. Further, it is much more likely that there is both a witness and physical evidence around when a white person was killed (by a 51 to 38 percent margin). [emphasis added]  

Stand Your Ground and Criminal Records

Panelist David Labahn stated that individuals with arrest records 39 successfully invoke Stand Your Ground legislation. As I discussed above, an arrest is not the same as a conviction and should not prohibit you from losing important rights. Furthermore, simply because you have engaged in criminal activity in the past does not mean you are engaging in criminal activity now. A person who has a criminal record may be more likely to live in a poorer area that has higher crime rates, and thus be more likely to need to engage in self-defense.

Even if you have a criminal conviction, you do not lose the right to defend your life, even if you are generally prohibited from possessing a firearm. 40 For example, a felon in possession of a firearm (at least in Florida, this seems to be a common offense that bars individuals from invoking

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38 John R. Lott, Jr., Written Statement, at 4-5.

39 Transcript 3 at 25 (“A recent study concluded that the majority of defendants shielded by stand your ground laws had arrest records prior to the homicide at issue.”).

40 See People v. King, 22 Cal.3d 12, 24 (Cal. 1978).

We conclude, therefore, that the prohibition of section 12021 [forbidding felons from possessing concealable firearms] was not intended to affect a felon’s right to use a concealable firearm in self-defense, but was intended only to prohibit members of the affected classes from arming themselves with concealable firearms or having such weapons in their custody or control in circumstances other than those in which the right to use deadly force in self-defense exists or reasonably appears to exist.


[Although Rhodes was a convicted felon, he had the right to defend himself, stand his ground, and use the amount of force reasonable under the circumstances. . . . The cumulative effect of these misdeeds [misstatements of law by prosecutor and erroneous jury instructions] was to impose upon Rhodes the duty to retreat when there was no such duty.]
Stand Your Ground\textsuperscript{41}, should not be punished for defending his life solely because of the other offense.\textsuperscript{42} The authorities can separately prosecute him for the firearms offenses, if need be.


Aaron A. Little seeks certiorari review of the circuit court’s order denying his motion to dismiss the criminal charge of second-degree murder with a firearm. Little argued that he shot the victim in self-defense and was entitled to immunity from criminal prosecution under section 776.032(1), Florida Statutes (2009), which is part of what is commonly known as the “Stand Your Ground” law. . . . We agree with Little that his use of deadly force was justified under the circumstances. We also reject the State’s alternative argument that Little was not entitled to immunity under the Stand Your Ground law because he was engaged in an unlawful activity at the time he used the deadly force. We therefore grant Little’s petition for writ of prohibition.

I. Facts

The incident in question occurred when Little was walking to his girlfriend’s house with his friend, Rashad Matthews. The two men happened upon Matthews’ friend, Terry Lester, who was standing in the driveway of his mother’s home. Lester was leaning into the driver’s door of a vehicle parked in the driveway when Matthews approached and engaged Lester in conversation. Little, who was a stranger to Lester, initially waited for Matthews by the street.

After a few minutes, Little started walking toward the two men. When Little reached the driver’s side of the car, Demond Brooks jumped out of the back seat. Little knew Brooks, but the two were not friends. Without warning, Brooks pulled two handguns from his waistband, pointed them at Little, and yelled that he was “going to make it rain.” Little believed Brooks was threatening to shoot him, so he ran behind Lester and asked Lester to intervene, or to “get” Brooks. Lester tried to calm Brooks down to no avail.

Lester’s mother, Janet Speed, heard the commotion from inside the house and came to the open front door for a moment. Little used the distraction as an opportunity to obtain shelter and ran into the house. Brooks followed Little but stopped on the second of the three front porch steps. From there, Brooks held his guns down by his sides and yelled through the open door for Little to come outside. Little pressed his back up against the wall, pulled a handgun out of his pants pocket, and held it down by his side. He called to Ms. Speed to “get” Brooks.

Ms. Speed had not seen Little arm himself. Ms. Speed was alerted to the gun by her daughter-in-law, Kimberly, who was also in the room. Little, who was visibly afraid, tried to explain that he was holding the gun because Brooks was threatening to shoot him from outside. Ms. Speed did not want a gun in her house and responded by telling Little to leave. But Brooks was still on the porch step yelling for Little to come outside. Little told Ms. Speed, “I ain’t going out there,” and said something about both men having their “fire.” Ms. Speed called for her son Lester.

Lester then came into the house and ordered Little out. Little begged for Lester to stop Brooks, but Lester offered no help. In fact, Lester appeared to think the situation was funny because he had been laughing with Brooks as he passed him on his way inside the house.

Seeing no backdoor exit, Little reluctantly exited the house through the front door. Brooks backed up to let Little pass, but Brooks still had his guns down by his sides. Little proceeded cautiously, turning sideways to stay facing Brooks and keeping his gun hidden behind his back. When Little reached the yard, Brooks walked toward him and said something like, “[D]o you know what he did to me?” Little told Brooks to calm down and backed away. Brooks did not take action until Little backed into the car parked in the driveway. Then Brooks raised his guns and pointed them at Little. Little brought his gun around, closed his eyes, and pulled the trigger several times. Brooks dropped to the ground and eventually succumbed to his gunshot wounds. Little fled to his girlfriend’s house.
Firearms-Related, Intra- and Inter-Racial Homicides Involving Black and White Individuals (Single Victim/Single Offender Incidents, 2001-2010)

Source: FBI Supplementary Homicide Reports
Firearms-Related, Intra- and Inter-Racial Justifiable Homicides Involving Black and White Individuals (Single Defender/Single Assailant Incidents, 2001-2010)

Source: FBI Supplementary Homicide Reports
STAND YOUR GROUND PUBLIC BRIEFING TRANSCRIPT (OCT. 17, 2014)
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)
Present:
Commissioner Michael Yaki
Commissioner Roberta Achtenberg
Marlene Sallo
Commissioner Marty Castro (Chairman)
Commissioner Karen K. Narasaki
Commissioner Patricia Timmons-Goodson
Commissioner Gail L. Heriot

Appearing by phone:
Commissioner David Kladney
Commissioner Peter Kirsanow

Panel Number 1:
Senator Chris Smith
Representative Todd Rutherford
Mr. Ahmad Nabil Abuznaid
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.
Now stand your ground laws, some of us are part of a larger issue. We see what happened here in Florida. Other states obviously have similar situations. We see what's happened in Ferguson. Names like Trayvon Martin, Jordan Davis, these are now part of the national fabric of conversation about race and the impact about race.

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

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

Today we're going to hear from folks from different perspectives and different points of view. Our job here at the U.S. Commission on Civil Rights is to shine our historic light on these issues and separate the wheat from the chaff of what is being said and what is being produced.
on these topics, and present to the President and
Congress and the people of the United States our
opinion based on over 50 years of advocacy and
being a watchdog on civil rights as to what we
believe to be the impact of these laws on minority
individuals and minority communities.

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

Commissioner Yaki.

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

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

This investigation is by -- today will
help the investigation. It is by no means an end,
but just a beginning of the analysis that will be
conducted by our staff. I did so because a year
and a half -- about two years ago I actually
started calling for this investigation, and it
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
days ahead that we will get evidence and hear data
and collect information that can help policy
makers, lawyers, judges, and others understand
better these laws and their impact on our society.

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

Thank you very much, Mr. Chair.

COMMISSIONER CASTRO: Thank you,
Commissioner Yaki.

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

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

And ultimately panel three, with
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
light turns red I ask you to wrap up your statements. And just be mindful of other panelists' times so we don't take away from anyone. I certainly don't want to cutoff anyone mid-sentence.

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

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

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

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

And let's see. Our third panelist is
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
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
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
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
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.
Still I provided the legislature with yet another opportunity to right the wrongs of this law. I proposed a simple, common sense amendment to a bill being considered on the floor of the Senate. My amendment would have specified the how, when, and by whom of using the statutes' defense.

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

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

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

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

And so an innocent person shot, clearly
the wrong person shot. But my client Shannon
Scott simply defending his home, his castle, and
his family who were cowering on the floor in the
kitchen trying not to get shot.
The one this week was an individual who was at home and some people tried to do a home invasion on his house. Beating on his door with a sledgehammer. They beat on it three different times as confirmed by witnesses across the street. He opened the door, did not realize that someone had tried to get in until he saw the marks on the door. He then went to leave his apartment. In doing so he was confronted by an individual with a gun. The other gentleman with the sledgehammer, who he thought had a gun, the individual pointed a gun at him, my client exited his vehicle, fired several shots, one of whom hit the gentleman with the sledgehammer. He was not prosecuted. Is going to do a statement to the police and will receive immunity under the stand your ground law for that case.

The next one in November is an 18 year old -- ah, he's a 17 year old child at the time, was at a restaurant, fast food place, after a basketball game. He -- it was a -- because it was a basketball game with rival teams there was -- there were several words being thrown back and forth in the restaurant. My client leaves the
restaurant, goes and gets in his vehicle and as he is leaving the restaurant is approached by another kid -- because these are 17 year olds -- who comes up to his window, and the allegation is that the victim in this case, or the person who was stabbed, reached in the window and tried to grab my client. And certainly put him in fear for his life. My client reached out the window with his knife -- the knife that his grandfather had given him -- and he stabbed him one time, cut off the bottom of his heart, and the victim died within the next five minutes.

Tragic cases in every single instance.

But, cases that in South Carolina would have left an African American male charged with a murder charge that they would probably not be able to defend financially. That would have left them in jail in South Carolina typically for a year, two years before they would have ever gone to trial. And having the ability to use the self-defense case law, South Carolina does not have a self-defense statute prior to stand your ground so you would have had to have relied on case law, which suggests that you must retreat. That you
cannot elevate the use of force. Which in most instances is troubling in and of itself, but certainly in these cases, it would have led to the most recent client, the child -- the basketball game, because he used a knife on someone who was unarmed, not able to avail himself of the self-defense law.

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

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

That case came up in South Carolina. A gentleman that was in the middle of a home
invasion tried to claim that he was forced to do the home invasion. And when he shot the homeowner that he deserved immunity under stand your ground. The judge laughed at it. Sent it up to the Supreme Court and the Supreme Court tossed it out.

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

I can tell you that I watch the news as everyone else and I am concerned about the Trayvon Martin case, about all of the cases in Florida that seem to be going in the wrong direction. But I don't know that I've seen one where the stand your ground law was used successfully and used in
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
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
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
case. In a recent analysis of FBI homicide data prepared by the Urban Institute comparing stand your ground and non-stand your ground states and examining the use of stand your ground laws in cases involving women defendants, 13.5 percent of cases where a white woman killed a black man were found justified, whereas in contrast only 2.9 percent of cases where a black woman killed a white man were found justified. Again, this highlights the disproportionate role that race plays in justifiable homicides and how that is overlaid in cases involving women defendants.

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

Even worse, blanket immunity and broad
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
Florida. We have been the first state to enact such a law and Florida should be the first state to repeal such a law. The federal government must support such a repeal. The federal government must step in to condition funding to states based on its ability to guarantee equal protection of all of its citizens and elimination of laws that hinder their ability to fulfill that duty.

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

Unfortunately, the people's call for a repeal has been ignored by the Florida legislature. Not only that, but more legislation being sent down the pipelines to gun us down, including a so-called "warning shot" bill whose advocates propelled it forward under the guise of support for Marissa Alexander. But these lawmakers have shown that they don't care about Marissa. They don't care about Trayvon, Jordan or our communities. Florida and other states are
currently looking at laws that would arm
schoolteachers with guns, and I would postulate
that it would not be long before one of our
teachers stands their ground against one of our
kids. We are not safe in our streets, our
neighborhoods, gas stations, movie theaters, and
soon to be schools.

Thank you.

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

COMMISSIONER YAKI: Thank you very much,
Mr. Chair. And this goes to all three panelists.
I was struck by the notion of due process, and I
think for, especially Mr. Rutherford who's a
lawyer as well. The issue of due process I think
is very important in stand your ground from a
number of different factors. But especially from
the standpoint of the person who may be the victim
of a stand your ground defense. That person may
be injured, that person may be dead, and not being
able to present his or her side of the story
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 --
in implicit bias a black person is much more likely
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
patted his back pocket, not finding it there he
turned to go into the car and Trooper Groubert of
the South Carolina Highway Patrol shot at him four
times hitting him once in the hip.

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

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

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

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

It cannot be taken out of the system in
one fell swoop. And to suggest that by myself or
any other proponent of stand your ground is simply
ridiculous. I would be curious to know in --
within the statistics how much racism as a whole
played into the impact in the end. And that means
that the law enforcement officer didn’t care that
stand your ground laws existed. There was a black
person with a gun and a dead white person and he
was simply going to arrest them anyway and ignore
stand your ground. Which I have had happen as
well. Stand your ground, the way that I intended
when I voted for it, the way that I stand behind
it as a proponent is meant so that people do not
have to live in fear. That you don't have to walk
down the street with your children and someone
intends you harm and you would have to retreat
back to the furthest place. You could not elevate
force. You could not do any of those things,
which to me negates common sense.

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

But in a situation where an individual
is using the law and the law as it is currently
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
scene in a park with a dead person and a person
holding a gun that says, "I'm invoking stand your
ground," realistically that officer cannot detain
that person, thus do a full investigation. We saw
it play out in the Trayvon Martin case where the
officers were confused as to whether we can even
detain Mr. Zimmerman.

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

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

Prior to 2005 we had self-defense in
Florida that's often ignored. The Florida law has
always been, you had a duty to safely retreat.
There wasn't a "turn and run" portion of the
Florida law. It always had "safely retreat,"
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
we're going allow for, you know, vigilantes to not be afraid then those of us minorities who are often viewed as threats by society might start being very afraid of walking around our neighborhoods.

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

SENATOR SMITH: If I can, Mr. Chair. It's -- in part of my introduction I talked about the lack of statistics. We can only go by what's been reported in say the St. Pete Times and those others. That's part of the problem, we don't keep the actual statistics about black, white, and Latino. A lot of times when you're looking at it you can only go by if it was said that "this was a black male," or it doesn't say, "this was a Hispanic male." And so it's hard to really give you a definitive answer and that was part of the
concern that we have in Florida is actually keeping statistics because part of what we proposed is that if an officer comes up on the scene in Hialeah and it's involving a Latino and someone else and that officer determines that it's a -- this is a stand your ground case, they could go home. We wanted to make that officer keep actual records that stand your ground, victim, aggressor and perpetrator or however, so that we can -- so that you can come back in 2 or 3 years and discuss that.

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

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

If you look at the Department of Corrections, you'll look down at the list of
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
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
the Supreme Court looked at how to deal with stand
your ground cases. It not only offered civil
liability -- I'm sorry, civil immunity, it also
allows for the return of attorney fees if someone
is sued after they are found immune from
prosecution under a stand your ground case.

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

That person is determining that the
individual, the perpetrator in this case because
there's a shooting or a stabbing or whatever the
-- the -- it's the person that took the life. So
I don't want to call them the victim, but the law
enforcement officer may consider them to be the
victim.
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
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.
And the reason why I say that, where I was going was, because on a lot of these cases those where no one is arrested or detained there's not going to be enough information out there for a civil case.

But nine times out of ten, and I would venture to say 99 times out of a 100 for innocent victims, for victims in these cases, there's not going to be any recompense on a civil basis anyway. Rarely could you find insurance to cover a -- someone that was involved in a stand your ground case. And for the innocent victim -- there's a perfect case on that in South Carolina, an individual who is a convicted felon was in an entertainment district, another individual walked up and pulled a weapon, clear on video. The second individual pulled his gun, shot at the guy that was pulling the gun and hit and paralyzed a University of South Carolina student. The shooter in that case would have been able to avail himself of the stand your ground law because it was clear on video that he was reacting to someone else pulling a gun.

He was a convicted felon. He did not
have a right to possess a firearm and the federal
government gave him 23 years in prison.

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

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

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

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

REPRESENTATIVE RUTHERFORD: Thank you.
And, yes, to answer that question succinctly, an
innocent bystander who is shot can always sue,
whether they could ever collect is a different
story. Even under this they could sue someone
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 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.
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
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
causd 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.
In the case that I just mentioned in the entertainment district it would be that they would sue the person that pulled the gun. In the case that I talked about initially where the people were in their home, they would sue the girls in the car, if all of these people are rich, and understand that you have to have the ability to pay.

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

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

SENATOR SMITH: Well, I guess we're -- I'm a little confused. The wrongdoer even if -- when I gave the scenario of the person doing the shooting from the car -- and I understand under the Representative's scenario the person who initially -- who initiated it and caused the
incident to happen should be the person liable.

But if the person that's actually doing the
shooting even though they're defending themselves,
if they defend themselves in a negligent manner
under the case law they're immune from -- from --
even in the case of negligence they're immune from
civil liability.

REPRESENTATIVE RUTHERFORD: Yes, sir.

And this is where this came up and this is prior
to stand your ground. And it came up several
times in the case that I tried with the 15 year
old deceased victim.

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

Do we mandate that the police always
shoot straight? Do we take guns from police
officers who mistakenly hit innocent victims? The
answer is, that the wrongdoer, the person that is
causing the problem in the first place, is the one
that's subjected to civil liability and criminal
liability. That's the way that it should go.
I understand that under stand your
ground we have an issue of whether this actually
-- whether this person is actually the wrongdoer.
And that's the bigger issue. But as it relates to
civil liability, the civil liability goes to the
person that created the wrong in the first place.

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

You don't mandate that people shoot
straight. You would hope that they would not have
to shoot at all. And stand your ground, in my
opinion, suggests that I have a right to defend
myself and I should not fear defending myself that
later on someone's going to say, "Well, you should
have shot better." And that was actually the
testimony from the police officer as to why he
arrested my client, he said, "He should have been
a better shot."
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
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 accidently 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
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
a hoodie could avail themself 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.
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?
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?
What was the -- was there a precipitating event that encouraged the legislature to throw out a hundred years of common law and to change the paradigm such that implicit bias is then baked into the system?

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

SENATOR SMITH: It's funny that you mention it, there was a case in North Florida that was that cited as the impetus of this. It was a -- it was after a hurricane, an elderly gentleman and his wife -- and what was told to the legislature by the proponents of it, there was an elderly gentleman and his wife living in their trailer after a hurricane and a man from South Carolina who was working in Florida to help with the clean up came to the gentleman's house, and an
altercation ensued and the older gentleman shot
the young guy. And it was told that the older
gentleman was arrested and had to go through all
of these months of worrying about whether he was
going to be convicted, had to get lawyers and
everything. But it turned out to be a fallacy
once the purporters started looking into it later.
But just -- the climate in the Florida legislature
is the easiest law to pass is something, you know,
giving people more gun rights or tough on crime or
something like that.

And to go more to your concern it wasn't
thought that it would be such a subjective
standard. When it was passed and I voted against
it, but even colleagues of mine that voted for it
did not know and it wasn't fully explained that it
would be a subjective standard. And that's why
we've tried to go in subsequently and at least
move it to more of an objective standard. Because
as you've stated that's where the racial bias
comes in. That's where some of the concerns come
in because it's such a subjective standard that
people can avail themselves of this even -- not in
a reasonable circumstance. I don't reasonably
think that I should shoot someone in a movie theater because they threw popcorn at me. But if it's subjective, if I go to a subjective and did this person actually fear when the person stood up and threw popcorn, they can avail themselves.

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

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

SENATOR SMITH: At the time in 2005 I
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
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
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
effect or applied relating to self-defense prior
to stand your ground laws, why they were archaic,
you know, what makes you say they were outdated?

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

The non-elevation --
COMMISSIONER TIMMONS-GOODSON: Well, let me just ask you. How does that differ from any other defendant defending themself 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
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.
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?
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
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
against black males, a trigger-happy person who
believes he's under attack, but isn't. You know,
he thinks the black male is about to attack him,
but it's not true, he pulls the gun. And, you
know, that problem's always there.

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

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

self-defense knows that he can retreat but chooses

not to, that's a very small number of cases.

Stand your ground adds an implicit bias problem

against the black male who is perceived to be

attacking.

But on the other hand it helps the black

male in the opposite position, the one who's

actually purportedly exercising self-defense, he

has to worry about implicit bias at the time of

trial whence the jury is second guessing him on

whether or not he could have retreated. They

weren't there. And they may be more likely to

find "Hey, you know, the guy says that he was

under attack, we don't believe him." Or "Hey, he

says that he could have retreated, we don't

believe him."

So implicit bias is everywhere in that

respect. And stand your ground doesn't add to the

problem for the black male it simply helps a

different category of black male.

REPRESENTATIVE RUTHERFORD: Absolutely.

You succinctly stated exactly what my position has

been. And I agree with you. I think that a lot
of these cases that have been mentioned aren't necessarily turning on stand your ground, but an officer and an investigator's perception of what is self-defense any way. And then he's saying, "Well, because of stand your ground I'm not going to arrest you -- I'm not going to detain you."

But it's his assertion of self-defense in using that as a --

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

REPRESENTATIVE RUTHERFORD: Right.

COMMISSIONER HERIOT: Was -- in the area -- Senator Smith, you mentioned the detain issue in the Florida statute. But isn't that just what the basic law would be with regard to self-defense if police officers investigate a crime and it's not a stand your ground case, it's just basic self-defense, everybody agrees there was no ability to retreat so stand your ground doesn't make any difference. You don't arrest someone if
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,"
and "by the way if I detain I might get sued."
And so it affects the way that officer truly
investigates. As before he would just use
investigative skills and figure out do I have due
process. Now he has this hover above his head
saying, "Oh, my God, if I use my investigative
skills and I may be wrong I have a statute
particularly pointing to civil liability for me
and my department."

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

REPRESENTATIVE RUTHERFORD: Yes, but
that's exactly what should happen. You should not
detain people that simply defended themselves that
are not wrongdoers.
Commissioner, you're exactly right and
that turns on, in my situations, African American
males who are guilt -- who are dealing with that
implicit bias from police officers going, you
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,
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
got it wrong and you shot somebody even though it
was reasonable and it turns out to have been wrong
you were civilly liable. And some people have
advocated such a rule.

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

SENATOR SMITH: Ma'am, I would disagree
when you talk about the civil liability because
you keep getting to reasonableness and under prior
common law and course law -- case law even when
you're talking about civil liability you say
reasonableness. But under stand your ground and
stand your ground specific, you don't even get to
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.
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.
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,
"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
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
self-defense. And within the jury instruction
that was used by George Zimmerman's case and any
other self-defense case in Florida there's no
separation between stand your ground and
self-defense.

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

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

But the -- well, let me put it this way.
I live -- I'm a black male living in what is
generally considered in Cleveland a high crime
neighborhood. And in the last, I'd say, three
decades I've probably been in situations three,
possibly four times where I could have invoked if
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
black male living in Cleveland, I'm a black male living in South Carolina. And I have not had the -- and fortunately, had to defend myself anytime recently. But I would suggest that anyone that does is simply acting on common sense and self-defense and still faced with the test of reasonableness. Reasonableness does not go out of the window based on stand your ground.

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

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

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

Why are we saying that people must run, retreat, turn your back. It was stated in Florida it said "safely retreat." That was not the law in South Carolina, it was retreat. And in many other
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
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 KLABDEY: Thank you,
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
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
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
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 KLADNE Y: 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.
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
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
However, in doing that we mandate that concealed weapons permit holders that are going into a bar can have absolutely no alcohol. So if a concealed weapons permit holder in South Carolina was in a bar and had a weapon on them and was, as in your scenario, punched in the face, would they have a right to defend themselves? Absolutely.

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

COMMISSIONER KLASTNEY: Would anyone else on the panel like to comment --

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

COMMISSIONER CASTRO: Here's what I'm going to do. We're technically out of time, but I want to -- two commissioners -- Commissioner Kladney you need to wrap it up, I've got two commissioners who want to ask two brief questions,
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 --
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 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
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
are dying. More people are dying than would have
died before. In your situation that you talked
about if someone throws a punch at me I have the
right, according to you, to take out a gun and
shoot him.

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

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

And you're essentially giving ordinary
citizens the right to draw and fire wherever they
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.
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
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
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
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
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
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.)
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
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)
Present:
Commissioner Michael Yaki
Commissioner Roberta Achtenberg
Marlene Sallo
Commissioner Marty Castro (Chairman)
Commissioner Karen K. Narasaki
Commissioner Patricia Timmons-Goodson
Commissioner Gail Heriot
Dr. Sean Goliday

Appearing by phone:
Commissioner David Kladney
Commissioner Peter Kirsanow

Panel Number 2:
David Harris
William Krouse
John Roman
Arkadi Gerney
Attorney Benjamin Crump
Katheryn Russell-Brown
COMMISSIONER CASTRO: If we can get the commissioners to come back up to the podium, please.

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.

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

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

Our third panelist is John Roman of The Urban Institute.

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

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

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

I will now ask each panelist to swear or affirm that the information that you are about to
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?
Unconscious, unintended, but very real bias, how would that play into stand your ground laws in practice?

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

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

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

It is unconscious, these biases are not known to the people in whom they operate. They operate and exist even in people who have perfectly strong egalitarian conscious beliefs and would articulate them to you.
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
see on the screen, they see a face and a word and they are asked to make associations by clicking on a computer key. It's really not that complicated. At first they are -- please -- at first they are asked to associate a white face with a positive word or concept. And a black face with a negative word or concept.

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

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

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

The test has been taken by millions of people. I think the last thing that I read was 13 or 14 million. You can take it online. I have. And your data is used as part of the overall
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
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
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
has the other effect of when a white person or
somebody goes to court and says, "I stood my
ground," and the victim is black, the jury
harboring those very same biases will be more
inclined to acquit when the victim is black.

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

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

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

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

COMMISSIONER CASTRO: We understand
that. Thank you.

MR. WILLIAM KROUSE: Thank you. Also
this live presentation is not in any way intended
to be an evaluation of stand your ground laws.
Rather what I'm about to present to you are some
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.
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
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
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.
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
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.
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 --
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 an 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
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
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
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
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
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
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.
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.
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
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
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
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.
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
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
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
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
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
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
individual to comport his actions within the confines of the law and that's to prevent being slain 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
going to bring it up -- first they said they
would, and then they said, "No, no, we're not
going to argue it." Because if it's applied the
way that it's supposed to be applied you bring it
up as a pretrial motion and it's before the trial
ever begins. If you win it, you win it. You go
home, there is no civil immunity attached to you
or anything, you are completely exonerated.

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

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

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

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

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

COMMISSIONER CASTRO: Thank you, Mr. Crump.

Professor Russel-Brown.

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

I want to note that I'm also here in my
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
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 --
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
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
conversation on race. There's a general ignorance about the role that race has played in the development in history of this country. You can graduate from high school in this country without ever learning about seminal aspects of U.S. history involving African Americans in particular, about slave patrols, about black codes (phonetic), about the Klan, about white race riots, about lynching, sundown towns, the Tuskegee Syphilis Experiment, redlining, freedom riders, white Flight, mass incarceration. These are things that young people can graduate from high school and really never have had any detailed discussion, conversation, reading about.

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

And we seem to come back to the same place that we're talking about, images of race, in
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
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?
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 --
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 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
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
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
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
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
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.
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?


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

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

COMMISSIONER CASTRO: Okay. Thank you.

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

MR. JOHN ROMAN: I have not.

COMMISSIONER CASTRO: I'm going to read you an excerpt and I'd like to hear your thoughts on it. He actually, specifically, addresses your report -- The Urban Institute Report.
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
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
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
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 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?
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
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.
There are same sex relationship ones. So there's quite a variety of this and it's there for looking -- and the test taking, whether this would be a concern whether those kinds of implicit bias would be a concern in any stand your ground state, I would say, yes. The question is going to be whether you have any particular population in the stand your ground state that you're focusing on that is going to end up using the statute -- or as the victim in a shooting.

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

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

When in a misguided attempt, perhaps one remembers, to have a 55 mile an hour speed limit,
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
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,
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
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.
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
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
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
Giles, there's nothing there. But when you come to the reasonableness of fear and how this law's been applied, it's startling because the testimony was first based on attempted murder. The victim got on the stand and said, "No, he wasn't trying to kill me. If he was wanting to kill me he could have shot me." So the prosecutor had to drop that. But the prosecutor still insisted on going forward on the case, on aggravated battery.

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

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

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

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

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

COMMISSIONER CASTRO: Okay, Commissioner Kirsanow.

Commissioner Achtenberg, you have the floor.

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

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

But this whole thing of just the reasonableness, like, how do you qualify that to make it uniform and not be arbitrary so we have everybody getting equal justice and it's not one thing in this court, and South Florida one way in this court, and North Florida one way, and Georgia one way, and Arizona one way, and Arkansas one way, and South Carolina, because when you start looking at it being applied like those things -- being applied like that, but yet you go back to the Constitution of the United States -- and saying -- where is a Constitutional privilege to Americans being deprived here. Being, I think, you can bring it to uniformity of everybody in the state saying we're not saying you can't have a stand your ground law, but your stand your ground law gotta be un-vague, it has to be clear, it has to tell people what and when they can take
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.
It gets a lot more subjective when you say, "I'm walking down the street in Sanford, Florida, in a gated community and I think somebody's not supposed to be there, and I go confront them, and I make sure that when I shoot -- because that's the message that we're sending, that the person is dead because if they live -- Marissa Alexander -- it's a lot harder to win your stand your ground argument when somebody can argue that "I wasn't a threat to your life."

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

We haven't got a writ of certiorari yet, but we're hoping that the court is going to let us argue it, we're waiting. The commission can speak to that issue and help so much this group of lawyers and parents who are crying out to say "We can't bring our children back but let's try to do something for their legacy so it won't happen to your children."
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
do so if it's reasonable and it's safe. Now if it's not reasonable and safe you can defend yourself. But if it's reasonably safe you can do it.

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

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

Where does it end? The theater with the popcorn. You know, I thought that he was a threat to my life. And so it's so subjective, so now
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
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
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
ture. 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
and that means making them share data.

If you share data it forces you to see all of your words. 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
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.
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
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
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
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
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
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,
could be that someone reasonably may believe that they had to defend themselves where an attacker is armed with a gun as opposed to being unarmed or where someone is being confronted in their home or there's a home invasion as opposed to being on the street. So I kind of wonder if, maybe, this is best put to Mr. Roman. In that context, isn't it true that the Tampa Bay Tribune data show that the blacks killed in stand your ground confrontations are 26 points more likely to have been armed with a gun as opposed to whites killed in stand your ground, in nearly 3 to 1 margins are blacks more likely to be killed in home invasions and burglaries as opposed to whites killed in stand your ground confrontations?

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

The fact is that, is a white shooter of a black victim is 10 times more likely to have
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
white, and as we discussed Mr. Zimmerman would be classified in the state as being white. The victim is black, the shooter is older than the victim, you would find that in those cases it's ruled to be justified a little more than a third of the time. 34 percent of the time compared to 2.5 percent overall of all homicides.

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

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

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

COMMISSIONER YAKI: This is for Mr. Gerney. Doesn't the presence, availability,
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
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.)
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
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)
Present:
Commissioner Michael Yaki
Commission Roberta Achtenberg
Marlene Sallo
Commissioner Marty Castro (Chairman)
Commissioner Karen K. Narasaki
Commissioner Patricia Timmons-Goodson
Commissioner Gail L. Heriot

 Appearing by phone:
Commissioner David Kladney
Commissioner Peter Kirsanow

Panel Number 3:
Elizabeth Burke
John Lott, Jr.
David LaBahn
Ilya Shapiro
COMMISSIONER CASTRO: Are Commissioner's Kirsanow and Kladney on the phone.

COMMISSIONER Kladney: Just talking baseball.

COMMISSIONER CASTRO: Okay. Good.

COMMISSIONER YAKI: Go Giants.

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 means 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.

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

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

Our second panelist is John Lott, who's
right there -- the Crime Prevention Research Center.

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

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

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.

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.

Is that correct?

PANELISTS: Yes.

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

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

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

MS. ELIZABETH BURKE: Thank you so much --
COMMISSIONER CASTRO: A little closer.

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

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

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

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

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

Those were part of the tenets of common law of -- self-defense. There was logic to
those requirements, that a defendant should show that his fear was reasonable, after all we shouldn't allow someone to unnecessarily shoot someone else simply because the shooter sort of wrongly perceived himself to be in harms way.

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

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

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

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

In other words, they don't really even
have to put in evidence that they were in fear if
they shoot on their property or in other limited
cases, but the fact is that in those cases the
stand your ground defendant is the only surviving
person available to testify and therefore the
presumption is going to carry the day in those
cases, and it can result in an innocent verdict in
what would actually be a non-justified homicide.

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

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

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

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

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

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

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

So that's just background as we hear
these important quotes that are held up as well,
the law supports stand your ground. In fact, this
is a departure. So when we review changes to the self-defense doctrine, it's important to look at them in the context of our current gun laws and realize that any consideration of relaxing self-defense laws should be viewed in the context of an increasing arming of American citizens.

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

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

Finally, and I see my time is running short. So when you look at stand your ground laws within the combination of sort of the lax concealed carry laws and the increasing
militarization and lethality of the weapons, and then you combine that with the civil immunity discussion we were having earlier where the stand your ground laws shift the cost of violence. They take away the potential risk to a shooter by giving him civil immunity. And they -- therefore they eliminate the generally accepted American rule and leave really only the wealthy individuals able to bring actions against shooters in an effort to bring change to society.

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

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

And I'd like to get back quickly if I could to the dramatic testimony about someone punching you and you being able to then shoot them. If we think about that in a land with concealed carry, someone -- you know, a drunken stranger punches you and you shoot them and you've now taken a life, and I contend that's no small matter for either party, right?
If you don't have a gun with you -- if you don't have concealed carry allowed everywhere, someone punches you, you have a black eye, and a complaint for assault. You know, and that's really what we need to think about when we put in place laws that relax self-defense, but at the same time increase access to guns we're just creating a more dangerous society.

COMMISSIONER CASTRO: Thanks, Miss Burke. Thank you.

Mr. Lott, you have the floor.

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

I'm -- have a PowerPoint here that I think may help a little bit. Let me just make a couple of quick comments before I get into that. And that is, people many times today have talked about Florida as starting some new law, in fact, there have been stand your ground type rules even in common law going back to some states since they've been part of the Union. California, for example. In other states have essentially had this is not some new experiment that's going on
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
percent of the stand your ground cases. So they're -- they're much more likely than the average Floridian, blacks are, to go and use stand your ground. And they're more successful when they do use it. Blacks who use stand your ground are 4 percentage points more likely not to face -- not to have criminal charges than a white in that same situation.

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

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

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

And when you take that into account what you find is that even though you're not likely to 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
in the process of committing a robbery, home
invasion, or burglary.

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

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

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

    You had -- there's lots -- it's a very
rich data set. There's lots of things you can try
to account for. And the thing is once you account
for those things there's no statistically
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
departments in the country reporting justifiable homicides. And it's been changing too in terms of the composition. You're getting police departments for more heavily minority areas reporting towards the end of the period than you did at the beginning. So if I see an increase in justifiable homicides in total or if I see an increase in justifiable homicides involving minorities, a large part of that, if not all, is simply due to the fact that you're having more places reporting. And more places reporting for areas where minorities are living.

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

Those are -- all seem like important things. There's no explanation why they don't
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,
relative to the states that don't and how it was beforehand.

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

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

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

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

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

On behalf of APA I'm pleased to have the opportunity to address the issues surrounding the
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,
law enforcement considers this age group to be particularly desensitized to violence and more prone to quote "unprovoked violence" as a result of being quote "disrespected." The Castle expansion will not have a deterrent effect on juveniles and young adults claiming to be "disrespected" as a reason for occurrence of assaults, but instead could create a legal shield from criminal and civil immunity."

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

Since 2009, APA has been tracking the legislative progression of stand your ground and assisted prosecutors who have been working to enforce these expansive new laws. I have attached to my testimony APA’s Statement of Principles regarding stand your ground laws as these laws
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
arresting and detaining criminals, and have
stymied prosecutors deterring them from
prosecuting people who claim self-defense even
while killing someone in the course of unlawful
activity.

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

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

Stand your ground laws provide safe
harbors for criminals, prevent prosecutors from
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 Tavarius 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
of the Florida provision, the very case used to justify this broad measure, it involved no arrest or prosecution. The law enforcement community responded properly to the shooting and the homeowner was never arrested or charged in his lawful exercise of self-defense.

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

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

Secondly, immunity is rarely granted in criminal law, with the few exceptions existing in order to encourage cooperation with law
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
minimize the racial disparate and detrimental effects and restore the ability of investigators and prosecutors to fully enforce the law and promote public safety, while continuing to respect the rights of law-abiding citizens to protect themselves and their families.

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

The final issue that I'd like to address would be the Jordan Davis case. In my opinion, the Jordan Davis case is the loss of two lives not one. Jordan, obviously was shot dead. This was the loud music case. He was shot dead because they were listening to rap music and because he disrespected Mr. Dunn. At the same time, Dunn is now, and we just heard today, is going to serve 105 years to life. His life is also gone. He was celebrating, I believe, his son's wedding, he's now going to spend the rest of his life in prison.
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
sow dangerous conflict in our neighborhoods. Both
want these enhanced self-defense laws reviewed,
which of course means repealed.

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

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

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

About 31 states now have some type of
stand your ground doctrine. The vast majority in
common law before legislators took any action.
Some, like California and Virginia, maintain stand
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
imminent use of unlawful force; Where there's no
duty to retreat, as in most states, she's further
justified in using deadly force if it's necessary
to prevent forcible felonies. That's the norm
throughout the country. Deadly force may be used
only in cases of imminent death or great bodily
harm that someone reasonably believes can only be
prevented by using such force.

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

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

In other words, in most states, "would be"
victims of violent crime don't have to try to run
away before defending themselves. That's why the
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 verus 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
victims can be imprisoned just for defending
themselves. And among those who often lost out
under that old rule were domestic violence victims
who turned against their assailants. Feminists
pointed out that “you could have run away” may not
work well when faced with a stalker or someone you
live with.

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

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

What's been overlooked in the current
debate is that these laws only apply to people
under attack. So as Justice Oliver Wendell Holmes
wrote for again a unanimous Supreme Court in
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
overpowered him, he lost the protection of stand
your ground law.

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

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

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

With stand your ground laws, yes,
prosecutors may need to take more care to show
evidence to counterclaims of self-defense, not
simply argue that the shooter could have
retreated. So it's not surprising that a
prosecutor’s organization would be against the law,
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 LABAHLN: 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
was being pounded, and the fact that he could use
the deadly force. That is right out of Florida's
stand your ground legislation. And even more
particularly Florida is dead on point that they
provide the use of force by aggressor within their
statute.

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

Thank you for allowing me to respond.

COMMISSIONER CASTRO: You're welcome.

Commissioner Yaki.

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

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

But I wanted to talk -- ask Mr. LaBahn
something and that is, you point out the
difficulties in the prosecutor aspect of this but isn't there another way to look at this is -- isn't this in some ways a delegation of your authority, the jury's authority, a judge's authority, a cop's authority, to a private individual to make decisions in a split second on whether or not to take the life of someone?

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

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

But what you've done with this law by putting immunity in here, not an affirmative defense, but literally immunity, you're telling somebody that they can make a decision to do an otherwise criminal act and then seek this hearing,
as we've heard earlier in the panel "I want to get out real quick. I want to take a life. I want to stand behind -- it cannot be properly investigated. I cannot be detained. And I want to be able to walk free on a life and death decision." It is -- I don't know how to express it, it is so extraordinary.

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

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

So if a law enforcement officer takes
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
we have -- we're trying to get statistics that may
or may not get reported or -- you can't get to
that analysis about whether or not there is any
racial -- any -- any overall racial animus
involved to the extent that you can -- when a
police officer had -- by reporting for an entire
department justice can come in and determine
whether or not that person or that department is
acting in a way that is contrary to equal
protection.

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

COMMISSIONER YAKI: Thank you.

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

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

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

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

COMMISSIONER CASTRO: Mr. LaBahn did you
want to respond?
MR. DAVID LABAHN: I don't see how you separate one from the other. So when you put in the inferences, the subjective, the no duty to retreat and the very next section that -- that -- you know, as he said, "Well they didn't -- they didn't amend that." How do you say, "Well, we gave all these new benefits and we expanded it, yet we didn't limit the ability of the aggressor to use force and so we didn't intend for aggressors to use force," to me is absolute nonsense.

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

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

COMMISSIONER CASTRO: Miss Burke, did
you want to say something?

MS. ELIZABETH BURKE: Yeah, and just --

I just wanted to bring up an additional point on sort of historical self-defense coming -- growing out of common law and then being sometimes codified in state law. But there was always a first aggressor limitation in, sort of, historical self-defense law, in that you could not be the first initiator of violence and then later turn around and invoke self-defense.

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

COMMISSIONER CASTRO: Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Mr. Chair.

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

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

MR. ILYA SHAPIRO: I'll -- start.

And I'll defer the very first question about data to John, because that's clearly his bailiwick.

And I'll start with the last question because it goes to show how a lot of the questioning I think conflates a lot of different issues. Stand your ground laws are a very kind of narrow technical/legal point.

Self-defense justifications are more broad and affirmative defense are also more broad.

Gun regulations and restrictions which a whole other sort of debate that's, beyond the scope of this hearing. You know, stand your ground laws are very narrow and very technical. The only difference in stand your ground jurisdictions versus non-stand your ground jurisdictions is what do you have to do if you're being attacked and it's possible to retreat

If it's not possible to retreat, like in
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
or aggressors who should lose the right to stand your
ground, absolutely, I agree with that. And I
think that most if not all states have that in
their stand your ground laws. And that's why the
911 operator told Zimmerman not to pursue.

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

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

MR. ILYA SHAPIRO: Oh, Zimmerman?

COMMISSIONER NARASAKI: Yes.

MR. JOHN LOTT: I can answer that --

MR. ILYA SHAPIRO: I'm sorry?

MR. JOHN LOTT: I can answer that.

MR. ILYA SHAPIRO: -- I
don't know the full facts of his -- you know, I
understand that he had some alcohol issues in the
past. I don't know if he had committed any
felonies or done anything that was -- rose to the
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
you've -- 2.6 million people for all of those years. Florida, their website for example, has detailed data on revocations over time. If you look at firearms revocations between January 1, 2008 and the end of 2011, they had 4 firearm revocations. But, revocations for any type of firearms related violation. That comes to revocation rate of about 1/10,000th of 1 percent in terms of the permits that were there.

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

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

And, so the issue here is are there -- is there a safety problem in terms of people with permits somehow getting permits improperly, is it something that you can even measure.
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
use data all the time on stuff. I don't mind
having data. The only thing I would ask is that
if you're going to have data it needs to be more
than just justifiable homicide and race.

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

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

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

COMMISSIONER KIRSANOW: Yes, Kirsanow
would like one question.

COMMISSIONER CASTRO: Okay.

COMMISSIONER KLABNEY: Kladney would
like a question.

COMMISSIONER CASTRO: Okay. So
Commissioner Heriot you're next, followed by
Commissioners' Achtenberg, Kirsanow, and Kladney.
COMMISSIONER HERIOOT: 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...
about earlier in response to questions from Commissioner Heriot, with regard to the fact that they don't go back and correct these things systematically. There's all sorts of errors even in that small percent that you have there. And so the question is, what places report? Why did they report it? What are the errors in their data that's there?

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

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

I'll just give you one other trivial example. As I mentioned, over time more states are reporting the data. You have more jurisdictions reporting the data. Well, if stand your ground states tend to be adopting the, you know, relatively later in the period compared to the other states that are there just by having the time trend in there you're going to end up having them have higher rates of justifiable homicide than the earlier ones would be. And, you know, that's just a simple example of the types of biases that you create in there if you don't try to de-trend these things in terms of things like the number of places that are reporting.
COMMISSIONER CASTRO: And just let me add for the record since Dr. Roman's not here right now we're going to ask him to supplement his response based on what you've explained today --

MR. JOHN LOTT: I wish we could have debated on here. I've been emailing your staff --

COMMISSIONER CASTRO: Well, we're going to -- well, this is not a debate, this is a hearing. But maybe one day we'll have a debate and you all could come in and we'll sell popcorn, but we're going to ask Dr. Roman to have the opportunity to present us with data along the lines of responding to what you said that way we have a complete record when we evaluate the data.

Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman. Mr. LaBahn I'm curious, does the Prosecutors Association typically take the kind of definitive position that you've taken with regard to stand your ground laws based on bad data, bad facts, and the fact that, you know, there's really not a departure here from the common law, at least according to some lawyers.

I mean, I was quite frankly, quite
intrigued by the position of the Prosecutors
Association, understanding as I do that you're not
part of the group of typical suspects, you know,
to be taking the position that you're taking.

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

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

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

First, on behalf of APA, The Association
of Prosecuting Attorneys, our National
Association, we do not have a position on stand
your ground laws. We have the Statement of
Principles that is attached to my materials, but
we do not either support or oppose, because as I
said in my testimony, a lot of the states have
implemented the laws, there's a separation of
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
in. We laughed at it. We laughed that you're going to have criminal immunity and civil immunity for taking somebody else's life. We thought it was almost funny that -- you've got to be kidding me.

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

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

But that's instead not what this was. This is an entire package including the -- and we've talked about subjective versus objective. In the world of a prosecutor that's a huge change. That's not a minor little detail. In fact we've
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
whether or not it's as has been suggested here
that they just added duty to retreat or whether
they added the four pieces. And that's what we've
been doing on behalf of the Association is we have
been tracking -- we've been working with various
states on what does their legislation mean. And
it's all up to each State Association whether they
support it or oppose it or even the individual --

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

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

So that is the reason why we did it. We
would -- and always on behalf of prosecutors I'm
now working in Washington, we're always ready to
come to the table. There are plenty of problems
within our justice system. We like to have the
data behind it. We like to know what the problem
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
place of employment, like Mr. LaBahn said, those
31 states include protections beyond the home.
That's what basically works as stand your ground,
and that's why this innovation in the law which as
I said isn't an innovation it's 150 years old, is
just pushing the normal Castle Doctrine in the
home which certainly doesn't --

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

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

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

COMMISSIONER CASTRO: Go ahead.

Commissioner Yaki, go ahead, please.

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

COMMISSIONER CASTRO: Okay.

Commissioner Kirsanow.

COMMISSIONER KIRSANOW: I think that Commissioner Kladney had his hand up first.

COMMISSIONER CASTRO: Okay. You have very good eyesight Commissioner Kirsanow.

(Laughter).

COMMISSIONER Kladney: Such courtesy, I have to tell you.

I'd like to ask. I think it's Mr. LaBahn, from the prosecutors office and anybody else on the panel. I just want to get this clear, when we refer to the Florida statute, and I'd like to refer to the Florida statute because I think from the testimony that I've heard there's like -- like every state there's little changes to statutes all over -- that are similar in nature, but they aren't exactly the same, but -- so it's my understanding that the stand your ground law allows an eggshell shooter to walk away from a shooting because their psychological perception of the world and individuals for the shooting, whatever it was, regardless of what
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 --

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

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

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

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

And that's why you have situations like was seen on TV with George Zimmerman, they -- they had initially taken him into custody, and then
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.
There is a legal presumption created which then
the state would have to overcome.
So that just takes things a step
farther. And certainly much farther than any
common law definition of self-defense.

COMMISSIONER CASTRO: Commissioner
Kladney, are you done?

COMMISSIONER KLADNEY: I am,
Mr. Chairman.

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

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

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

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

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

COMMISSIONER KIRSANOW: Thank you.

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

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

As I sat here it occurred to me, I was wondering if any of our witnesses would care to offer any thoughts on how they see implicit bias
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
Davis, the ultimate decedent got out of the van and basically -- and did cuss at him or used some sort of words toward him. And at that point Dunn opened fire killing Jordan and also opened fire into the van.

I submit to you that I have no idea about Dunn and his background. But whether it's implicit or explicit, but we'll go with the implicit bias -- you have an age difference, you have a different taste in music, and you absolutely have a different amount of respect towards the individuals. No respect to an older individual and also the willingness to use particular language and get closer in an individuals face.

I bring that up because I do a tremendous amount of basketball coaching and a lot of young people don't have the same sort of space that -- I'm an older white guy, I like my space a little bit. And so a lot of my players will get very much into my face. They're not getting into my face in any sort of an aggressive manner, it's just they feel more comfortable getting up closer.

That's your implicit versus explicit.
But for someone who's not comfortable with that, and that different sort of cultural feeling they can feel that that's an aggressive movement toward them. And because here we're talking about the use of deadly force that likely can take somebody's life.

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

COMMISSIONER TIMMONS-GOODSON: Thank you.

Mr. Lott.

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

So you can control for those to see whether they make a difference. And in fact, even after you control for those things you find no
statistically significant difference in terms of the way -- the sentence depends upon either the race of the victims or the race of the person who fired the gun.

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

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

COMMISSIONER TIMMONS-GOODSON:

MR. DAVID LABAHN: Yes, if -- if I may. I was not suggesting that older white males are in any way always going to be bias towards young black males. Instead what was going on in my mind and I think we heard this statistic was 34 percent
of the cases where the age difference, when the individual was older and you had the racial difference, that 34 percent of those cases in fact were deemed to be justified. That's where I suggest is -- the implicit bias comes in when you move it from being an objective standard, would a reasonable person in the same or similar circumstances have acted in that way. To the subjective standard is, what did that individual believe. That -- once you've got a subjective standard now the implicit biases weigh in on that decision to take another life.

MR. JOHN LOTT: The reason --

MS. ELIZABETH BURKE: Could I --

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

And I'm saying, when you control for them the data set's publically available or you can
run your own regressions on it.

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

COMMISSIONER CASTRO: Commissioner Yaki, and then Commissioner Heriot.

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

COMMISSIONER CASTRO: Okay.

Commissioner Heriot, go ahead.

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

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

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

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

COMMISSIONER HERIOT: Clearly not.

UNKNOWN PHONE SPEAKER: Let him answer the question.

COMMISSIONER CASTRO: Mr. LaBahn, go ahead.

MR. DAVID LABAHN: I -- I -- I don't know if I can come back, because when it is a reasonable person standard it says reasonable
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,
et cetera that I think are not necessarily those that are reported as part of the normal databases that are collected by the federal government.

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

I think it's important to put that in there because one of my issues with regard to trying to take the notion of implicit bias and simply apply it at one part of the stage, is that when you look at how the stand your ground statute is formulated implicit bias can be there at any particular stage. It can be at the moment that a person decides that someone is a threat to them. It can be there the moment when the investigating officer upon hearing the persons assertion of stand your ground, makes a decision right then and there, "Well, it was a -- it was a -- "This person talking to me is white, the person attacking was black," not that he's a racist, but there could be right then and there a decision, "Okay, I'm going to let this person go and worry -- and then decide later on whether or not there's probable cause."
And going to the point where the judge makes a decision at an immunity hearing. It can be at any different locale, and I think that's why we need to look at the data in all sorts of areas to determine whether or not there is that kind of thing there. But that's just a statement about that.

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

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

It used to be if you needed a concealed weapon that you could apply for a permit. That
you would go to your sheriff, your police officer,
they would know you from the community, and they
would make a determination of high moral character
of a non-dangerous personality, and the fact that
you needed a gun, perhaps you were being stalked,
perhaps you worked in a very dangerous
neighborhood and moved cash at night. There was
all sorts of reasons that a reasonable society
would say "this person needs to be armed for their
self-defense." And that situation was working
very well.

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

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

And the issue of civil liability and the
fact that this law protects people from negligent
shooting is another travesty because, you know, I thought it was a very interesting discussion with the prior panel about the 15 year old in the car behind the thugs who was shot and killed and had no recourse -- her family had no recourse to bring a suit against anyone.

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

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

COMMISSIONER CASTRO: Mr. Lott and then Commissioner Narasaki.

MR. JOHN LOTT: Yeah, thanks. Just as a response to Miss Burke. We have data
cross-states. We have data in terms of the different rules, the types of rules that she's looking at. Let's them look to see what revocation rates differ. And in fact there's no statistically significant difference in terms of revocation rates for the states that have the types of rules that she's having or the states that are more liberal.

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

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

COMMISSIONER NARASAKI: Yes, thank you. I actually find it that it doesn't necessarily prove that the system is working if there aren't any revocations. I actually believe that proves
that perhaps it's not working. It's like when my
90 year old grandmother in California got her
drivers license renewed without an exam. That
did not make me feel any better about the driver's
in California and getting on the road.

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

What I am interested in understanding is
that, in the issue of implicit bias, it's not just
how the justice system treats you, but it's also
the question of when are you going to get shot.
Right? And that's the irrevocable fact that in a
split second your bias allows you to shoot someone
and then the legal system either treats that --
treats everybody fairly or not fairly after what
happened. So I think that's maybe where we're
sort of parting ways, Mr. Lott.

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

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

I want to talk for a minute in terms of
your example with your grandmother getting the
driver's license. What we would do then is we
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
agree that's a very important bottom line.
So it's not just looking at revocations,
I agree revocations are just one possible way of
looking at it, but you need to look at other
factors and I look at all of those different
things.

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

COMMISSIONER CASTRO: No, you're right.

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

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

MS. ELIZABETH BURKE: -- 8 percent --

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

MS. ELIZABETH BURKE: -- I think it was
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,
which clearly has a Castle Doctrine type state rules. But, Chicago, during that period of time that they were looking it was basically impossible for people to get handguns, you know, except if you were a very wealthy individual. So what impact -- what's the point of testing whether or not the Castle Doctrine had an impact there. Or in Boston, Massachusetts where even former police officers can't even get a permit to own a handgun

MS. BURKE: I think it's disingenuous.

COMMISSIONER CASTRO: Okay. Mr. Lott, let Miss Burke speak and then Commissioner Yaki is going to have the last question.

MS. ELIZABETH BURKE: I think it's disingenuous to ask this commission to believe that in Chicago there were only wealthy people having handguns even though there was a ban on handguns in the state. So, you know, the murder rate -- many studies have shown that the murder rate goes up as all these laws become more lax.

COMMISSIONER CASTRO: Commissioner Yaki, you have the last question.

COMMISSIONER YAKI: I was just going to
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
frankly, the basis of this hearing is that when you have those elements present adding -- and then you add to that bias, implicit bias, explicit bias you start to see this -- this problem, this tend, and that's what this hearing and this data is all about. And that's all that I wanted to say.

COMMISSIONER CASTRO: Thank you. We have now reached the appointed time to conclude this brief -- did you want to say something very quickly?

MR. DAVID LABAHN: May I just --

COMMISSIONER CASTRO: Yeah, go ahead, you'll have the last word then I'll close.

MR. DAVID LABAHN: Well, thank you, Mr. Chair.

COMMISSIONER CASTRO: Sure.

MR. DAVID LABAHN: I wanted to address the implicit bias question because it's too bad that Mr. Sullivan was unable to attend.

He is Special Counsel to the Brooklyn District Attorney. One of the things that he is doing with the Brooklyn D.A.'s Office is training all of the prosecutors on implicit bias.

We have done that. On behalf of APA, at
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.
Lastly, the record for this briefing is going to remain open for the next 30 days. If panelists or members of the public would like to submit materials they can mail them to the: U.S. Commission on Civil Rights, Office of Federal Civil Rights Evaluation, 1331 Pennsylvania Avenue Northwest, Suite 1150, Washington, D.C., 20425 or via e-mail to publiccomments@usccr.gov.

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

Thank you.

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

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