

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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)

1

2

2

3

Present:

4

Commissioner Michael Yaki

5

Commissioner Roberta Achtenberg

6

Marlene Sallo

7

Commissioner Marty Castro (Chairman)

8

Commissioner Karen K. Narasaki

9

Commissioner Patricia Timmons-Goodson

10

Commissioner Gail L. Heriot

11

12

Appearing by phone:

13

Commissioner David Kladney

14

Commissioner Peter Kirsanow

15

16

Panel Number 1:

17

Senator Chris Smith

18

Representative Todd Rutherford

19

Mr. Ahmad Nabil Abuznaid

20

21

22

23

24

25

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

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

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

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

1

4

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

1

5

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

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

13 Commissioner Yaki.

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1

7

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

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

11 Thank you very much, Mr. Chair.

12 COMMISSIONER CASTRO: Thank you,
13 Commissioner Yaki.

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

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

25 And ultimately panel three, with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1

9

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

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

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

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

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

25 And let's see. Our third panelist is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

misapplied by courts.

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

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

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

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

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

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

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

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

25 Over and over some legislators have

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

prosecuted.

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

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

Representative Rutherford, you can have the floor.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to make it any better.

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

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

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

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

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

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

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

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

1

21

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

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

25 Even worse, blanket immunity and broad

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

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

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

9 Thank you.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

REPRESENTATIVE RUTHERFORD:

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

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

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

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

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

25 I, like, Attorney General Holder was

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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,"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1

39

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

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

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

1

40

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that case?

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

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

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

COMMISSIONER NARASAKI: Civil liability.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

offense was --

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

REPRESENTATIVE RUTHERFORD: The recompense --

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

REPRESENTATIVE RUTHERFORD: No, ma'am.

1

47

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

COMMISSIONER CASTRO: Ah, Representative -- Senator --

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

logical conclusion --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ground law.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a hoodie could avail themselves of stand your ground.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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?

1

60

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

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

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

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

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

1

62

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

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

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

25 SENATOR SMITH: At the time in 2005 I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1

66

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

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

14 The non-elevation --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you, sir.

COMMISSIONER CASTRO: Commissioner Heriot, you have the floor.

COMMISSIONER HERIOT: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 REPRESENTATIVE RUTHERFORD: Right.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1

79

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

"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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER KIRSANOW: I think it can.
Thank you.

COMMISSIONER CASTRO: Thank you,
Commissioner Kirsanow.

Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

self-defense were.

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

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

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

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

REPRESENTATIVE RUTHERFORD: Outside --

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

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

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

2 so.

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. AHMAD NABIL ABUZNAID: But --

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

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

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

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

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

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

Commissioner.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1

100

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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