

TESTIMONY OF JOSHUA HORWITZ
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U.S. SENATE JUDICIARY COMMITTEE'S SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS
HEARING ON "STAND YOUR GROUND' LAWS: CIVIL RIGHTS AND
PUBLIC SAFETY IMPLICATIONS OF THE EXPANDED USE OF DEADLY FORCE"
October 29, 2013

Mr. Chairman and Members of the Committee,

My name is Josh Horwitz and I am the executive director of the Coalition to Stop Gun Violence (CSGV). I appreciate this opportunity to provide written testimony on behalf of my organization, a coalition of 47 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy.

As this committee considers so-called "Stand Your Ground" laws that have been enacted in 27 states,¹ Members should understand that such legislation is an extreme departure from former concepts of self-defense in these jurisdictions, which typically included a "duty to retreat" from violence if possible.

The Evolution of Self-Defense Law

Laws and statutes dictating appropriate responses to potential danger have been around since biblical times.² The Hebrew Bible describes a duty to retreat from violence. There were, however, exceptions to the rule, such as when one's home was burglarized at night.³ That said, there was *never* any glory in taking another life, even if the killing was not criminal in intent.

The American duty to retreat originated in the English common law, which required an individual claiming a defense of justifiable homicide to prove he retreated "to the wall" in order to avoid conflict and that deadly force was necessary "in order to prevent his own death or serious [bodily] injury."⁴ The English duty to retreat was premised on the concern that the right of self-defense could potentially evolve into a right to murder. In his famous treatise "Commentaries on the Laws of England," William Blackstone wrote, "The law requires, that the person, who kills another in his own defence, should have retreated as far as he conveniently or safely can, to avoid the violence of the assault, before he turns upon his assailant; and that, not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood. And though it may be cowardice, in time of war between two independent nations, to flee from an enemy; yet between two fellow subjects

¹ Law Center to Prevent Gun Violence, *Shoot First Laws Policy Summary* (July 18, 2013) <http://smartgunlaws.org/shoot-first-laws-policy-summary/>

² Horwitz, Joshua, and Casey Anderson. *Guns, Democracy, and the Insurrectionist Idea*. Ann Arbor: University of Michigan, 2009. Pg. 209.

³ *Id.* See also Exodus 22.

⁴ Michelle Jaffe, *Up In Arms Over Florida's New "Stand Your Ground" Law*, 30 *Nova L. Rev.* 155, 160 (2005).

the law countenances no such point of honour: Because the king and his courts are the vindices injuriarum, and will give to the party wronged all the satisfaction he deserves.”⁵

Blackstone’s comment reflects two principles embodied in the duty to retreat; the value of human life and the importance of having an impartial arbiter resolve disputes. A victim of attack clearly has an important interest in protecting his life. The duty to retreat also recognizes the value of the alleged assailant’s life. Finally, the duty to retreat extols the virtues of courts of law, and expresses faith in their ability to redress the injuries of victims. The duty to retreat acts to balance the competing interests of the alleged assailant and the victim.

The “Castle Doctrine” is an exception to the general duty to retreat that allows an individual to use deadly force without retreating when attacked in his home. Many trace the origin of the Castle Doctrine to English common law, and, more specifically, to Sir Edward Coke in *Semayne’s Case* (1604). In *Semayne’s Case*, Lord Coke stated, “For a man’s house is his castle...for where shall a man be safe, if it be not in his house?”⁶ William Blackstone wrote that, while in the home, the dweller has special rights, “and the law of England has so particular and tender a regard to the immunity of a man’s house, that it stiles it his castle, and will never suffer it to be violated with impunity.”⁷

The Impact of “Stand Your Ground” Legislation

In American jurisprudence, an individual is allowed to use force to protect himself and/or others from the use of force by a third person.⁸ Traditionally, individuals are required to use proportional force for their protection and generally may not exceed the amount of force they reasonably believe is necessary to defend against attack.⁹ The use of *deadly* force is typically justified when it is necessary to prevent death or serious bodily injury to a victim or a third person,¹⁰ and when no other means would have been sufficient to prevent it.¹¹ Individuals have traditionally been required to retreat, when reasonable, before resorting to deadly force.¹²

This equation has been dramatically altered by “Stand Your Ground” laws. Utah adopted the nation’s first “Shoot First” law, permitting the use of deadly force in self-defense in public with no duty to retreat, in 1994.¹³ Though “standing one’s ground” was not

⁵ Jeannie Suk, *The True Woman: Scenes From The Law of Self-Defense*, 31 *Harv. J. L. & Gender* 237

⁶ Heidi Reamer Anderson, *The Mythical Right to Obscurity: A Pragmatic Defense of No Privacy in Public*, 71 *S. J. L. & Pol’y for Info. Soc’y* 543, n.60 (2012).

⁷ 4 William Blackstone, *Commentaries on the Laws of England* 223 (1765-1769).

⁸ J.P. Neyland, *A Man’s Car is his Castle: The Expansion of Texas’ “Castle Doctrine” Eliminating the Duty to Retreat in Areas Outside the Home*, 60 *Baylor L. Rev.* 719, 721 (2008).

⁹ 6 *Am. Jur. 2d Assault and Battery* § 52

¹⁰ Kenneth W. Simons, *Self-Defense: Reasonable Beliefs or Reasonable Self Control?*, 11 *New Crim. L. Rev.* 51, 52-53 (2008).

¹¹ 6 *Am. Jur. 2d Assault and Battery* § 52

¹² Neyland, *supra* at 721.

¹³ Law Center to Prevent Gun Violence, *Shoot First Laws Policy Summary* (July 18, 2013) <http://smartgunlaws.org/shoot-first-laws-policy-summary/>

unknown before Utah’s statute—a few states limited the duty to retreat in common law¹⁴—no state statute affirmatively advertised an individual’s right to use self-defense without the duty to retreat. Florida enacted its “Stand Your Ground” law in 2005. A model law bearing many similarities to the Florida statute was then developed by the National Rifle Association (NRA) and the conservative American Legislative Exchange Council (ALEC). Since 2005, 25 additional states have adopted part or all of the ALEC model law.¹⁵

Prior to the enactment of Florida’s “Stand your Ground” law in 2005, the state’s self-defense law was a combination of statutory and common law. Under Florida Statute § 776.012,¹⁶ an individual was justified in using deadly force in self-defense “if he or she reasonably believe[d] that such force [was] necessary to prevent imminent death or great bodily harm.” Florida common law established the duty to retreat when an individual was attacked outside of his home. In 1907, the Florida Supreme Court acknowledged in *Danford v. State* that “It is the duty of a party to avoid a difficulty which he has reason to believe is imminent, if he may do so without exposing himself to the apparent risk of death or great bodily harm.” The court also noted that the duty to retreat did not apply to “a man assaulted in his own house.” In 1987, a Florida district court declined to extend the Castle Doctrine to individuals attacked in an automobile.¹⁷

Florida’s “Stand Your Ground” statute removed an individual’s duty to retreat in “any [public] place where he or she has a right to be,” and expanded the justifiable use of deadly force to include incidences where an individual is not in reasonable fear of death or great bodily harm.¹⁸ By permitting an individual to respond to force with deadly force to prevent the commission of a forcible felony, the statute erodes the principle of proportionality in self-defense. A forcible felony in Florida, for example, includes robberies where an individual’s life is not in danger.¹⁹

In conjunction with Florida statute 776.032, “Stand Your Ground,” can also prevent shooters from ever having to face any meaningful review of their actions by a jury. Statute 776.032, in pertinent part, reads:

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force ... (2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for

¹⁴ E.g. NM UJI 14-5190; CALCRIM 3470; *State v. McGreevy*, 17 Idaho 453 (1909); *State v. Redmond*, 150 Wash.2d 489, 78 P.3d 1001 (2003).

¹⁵ Id. (Ohio, Missouri, North Dakota and Wisconsin’s “Stand Your Ground” laws apply only when the shooter is in a vehicle.)

¹⁶ FLA. STAT. § 776.012 (2004).

¹⁷ *Baker v. State*, 506 So. 2d 1056, 1059 (Fla. 2d Dist. Ct. App. 1987). See also *Reimel v. State*, 532 So. 2d 16, 17 (Fla. 5th Dist. Ct. App. 1988).

¹⁸ FLA. STAT. § 776.013(3) (2005).

¹⁹ FLA. STAT. § 776.08 (2005). See also FLA. STAT. § 812.133; FLA. STAT. § 812.13.

using force unless it determines that there is probable cause that the force that was used was unlawful.

A study by Texas A&M economists revealed that not only do “Stand Your Ground” laws fail to deter violent crime, they are also correlated with a clear increase in homicides²⁰ —with up to 700 more people killed per year across the twenty-three states studied.²¹ Florida law enforcement agencies reported an average of 12 justifiable homicides a year committed by civilians from 2000-2004 before “Stand Your Ground” went into effect.²² From 2006-2010, that number jumped to 36 per year, an increase of 200 percent.²³

Federal Implications

The combination of proposed federal legislation, which would make it easier to carry firearms in public, with “Stand Your Ground” laws, which make it easier to use deadly force, is cause for concern.

In 2012, the "National Right-to-Carry Reciprocity Act"²⁴ and the "Respecting States' Rights and Concealed Carry Reciprocity Act"²⁵ were introduced in the U.S. Senate. These bills would have forced nearly every state to accept concealed handgun permits issued by other states, even when the permit holder could not qualify for a permit in the state in which he was traveling. This is especially troubling because a majority of states allow individuals to carry concealed weapons with little to no training in the actual use of firearms or the self defense laws of other states.²⁶ The Stand Your Ground laws combined with national concealed carry reciprocity could lead to confusion with potentially deadly consequences should individuals from “Stand Your Ground” states travel with their firearms to states that still maintain a duty to retreat.

Conclusion

As Members of this committee consider the development and implications of “Stand Your Ground” laws, we urge you to keep in mind the radical changes this legislation has made to state self-defense laws, and the increased violence they are leading to. These laws greatly lower the cost of using deadly force and encourage individuals to shoot first and ask

²⁰ Cheng Cheng and Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, available at http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf

²¹ Shankar Vedantam and David Schultz, 'Stand Your Ground' Linked To Increase In Homicides, NPR January 2, 2013 <http://www.npr.org/2013/01/02/167984117/-stand-your-ground-linked-to-increase-in-homicide>

²² Christopher L. Smith, *Self-defense deaths in Florida have increased dramatically since 'stand your ground' became law in 2005*, lawmaker claims, Politifact Florida, March 21, 2012 <http://www.politifact.com/florida/statements/2012/mar/26/christopher-l-smith/sen-chris-smith-claimed-deaths-due-self-defense-fl/>

²³ Id.

²⁴ National Right-to-Carry Reciprocity Act of 2012, S. 2188, 112th Cong. (2012). <http://www.govtrack.us/congress/bills/112/s2188/text>

²⁵ Respecting States' Rights and Concealed Carry Reciprocity Act of 2012, S. 2213, 112th Cong. (2012). <http://www.govtrack.us/congress/bills/112/s2213/text>

²⁶ Law Center to Prevent Gun Violence, *Concealed Weapons Permitting Policy Summary* (May 21, 2012) http://smartgunlaws.org/concealed-weapons-permitting-policy-summary/#footnote_17_5701

questions later. Finally, the potential combination of national concealed carry reciprocity and “Stand Your Ground” laws could further degrade civil society on the streets of America.