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

Place: The Rosen Hotel
9700 International Drive
Orlando, Florida 32819
9:00 a.m. - 3:30 p.m.

Date: October 17, 2014

Reported by:
Kathy Wescott, CSR

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

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3 Present:

4 Commissioner Michael Yaki

5 Commissioner Roberta Achtenberg

6 Marlene Sallo

7 Commissioner Marty Castro (Chairman)

8 Commissioner Karen K. Narasaki

9 Commissioner Patricia Timmons-Goodson

10 Commissioner Gail Heriot

11 Dr. Sean Goliday

12

Appearing by phone:

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Commissioner David Kladney

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Commissioner Peter Kirsanow

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16

17 Panel Number 2:

18 David Harris

19 William Krouse

20 John Roman

21 Arkadi Gerney

22 Attorney Benjamin Crump

23 Katheryn Russell-Brown

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

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

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

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

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Our third panelist is John Roman of The Urban Institute.

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

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

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

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

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

PANELISTS: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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What happens here is that test takers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Program.

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

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

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

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

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

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

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

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

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

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

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

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

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justifiable homicide almost on -- in equal numbers.

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

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

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

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

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

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

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

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

COMMISSIONER CASTRO: Thank you, Mr. Krouse.

Mr. Roman, you have the floor.

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

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

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

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

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

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

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

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

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

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

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

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been justified in committing that homicide?

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

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

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

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

2 order to say anything about the race of the victim
3 and the race of the offender, of course we have to
4 know something about the offender. And we don't
5 always know who did it so we can't always say
6 that, so we end up with the data set of about
7 53,000 people.

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

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

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

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

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

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

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

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

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

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

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

The first question is -- is what is the

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

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

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

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

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

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

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

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

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COMMISSIONER CASTRO: Thank you,
Mr. Roman.

Mr. Gerney.

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

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

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

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

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

Those felony charges were ultimately

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

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

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

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

And then just last month this same man

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

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

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

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

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

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Florida.

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

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

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

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

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

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

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

Additionally some states provide some

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

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

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

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

25 The question is, what should the scope

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

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

COMMISSIONER CASTRO: Thank you, Mr. Gerney.

Mr. Crump.

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

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

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effected by the stand your ground laws.

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

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

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

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

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

Since the shooting of Trayvon Benjamin Martin the laws constitutionality is being questioned.

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

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

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

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man, our complaint states.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Michael Giles, even more extreme. A

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

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

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

21 Professor Russel-Brown.

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

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

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

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

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

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

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

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

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

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

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

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

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

Earlier this year there was a bill

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

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

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

Second, we need to have more than a

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

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

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

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

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

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

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

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

10 Thank you for your time.

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

14 And, Commissioner Yaki.

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

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

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MR. DAVID HARRIS: I know that others

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are going to testify Commissioner about the

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empirical evidence and some already have, but I

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think -- there is no evidence that this is

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protecting -- that it makes anybody safer in a

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sense because homicides increase in states with

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these laws. And it does not, as was also

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advocated, in the initial run up to these laws,

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they do not seem to stop other kinds of serious

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crime either.

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So I think that there's no -- there's

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certainly no evidence that this is making anyone

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safer. And as far as whether it makes African

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Americans safer, just go back to Dr. Roman's

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research, there's real evidence that this

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introduces a level of bias into the system. It

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increases the bias that might already be there,

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because as a number of people said this morning,

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there is already background bias in the system but

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it makes it -- it just makes it more so.

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COMMISSIONER CASTRO: Commissioner

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Heriot --

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COMMISSIONER ACHTENBERG: I think he

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asked the panel --

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COMMISSIONER CASTRO: Oh, I'm sorry.

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

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

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

So it's making a disparity that's

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

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

17 MR. BENJAMIN CRUMP: No.

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

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

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

COMMISSIONER CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: Thank you, Mr. Chairman.

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

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

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

At what point do they report it? If

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

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

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

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

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

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

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

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

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

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do it on their own.

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

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

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

 COMMISSIONER HERIOT: If I --

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

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

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

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

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

COMMISSIONER CASTRO: Mr. Roman.

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

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

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

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

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

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

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

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

My two questions -- the first one is one

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

Anybody?

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

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

And when you look at people who are of

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

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

12 COMMISSIONER CASTRO: Okay. Thank you.

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

21 MR. JOHN ROMAN: I have not.

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

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

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

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

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

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proves the opposite of what Roman claims."

Could you address those concerns?

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

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

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

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

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

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

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

COMMISSIONER CASTRO: Thank you.

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

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

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

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

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

Commissioner.

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

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

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

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

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

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what can often be a challenging criminal system.

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

Thank you.

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

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

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

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

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

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

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

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

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

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

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

And third, the state and local law

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

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

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

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right, but Asian is a race category --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 COMMISSIONER CASTRO: Anybody else?
17 Mr. Crump.

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

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

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

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

You look at the history of Michael

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

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

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

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

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

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

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

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

18 COMMISSIONER CASTRO: Okay, Commissioner
19 Kirsanow.

20 Commissioner Achtenberg, you have the
21 floor.

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

25 My first question is to

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

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

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

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

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

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

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

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

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

COMMISSIONER ACHTENBERG: Thank you very much.

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

MR. BENJAMIN CRUMP: Yes, ma'am.

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

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

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

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

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somebody's life and it be uniform.

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

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

But it is one of the things -- I'll say in conclusion and -- where is it is here -- in conclusion, when we talked about the Castle Doctrine it was objective as my classmate Miss (Inaudible) -- you know, we got taught in law school, the Castle Doctrine it was objective because you were in the house. And so if the person had a mortgage or they had a lease and stuff, it was real objective. They have to guess about whether the person -- whether it was their house and there was an issue of self-defense. It was their house and why are you in their house threatening them.

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

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

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

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

17 Is that your understanding of the way
18 the law operates?

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

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

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

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

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

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

COMMISSIONER ACHTENBERG: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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and that means making them share data.

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

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

 COMMISSIONER CASTRO: Thank you, Professor.

 Yes, Mr. Crump.

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

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the commission.

COMMISSIONER CASTRO: Thank you.

Any other responses to Dr. Goliday's questions?

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

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

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

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

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

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

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

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stab at it I'd appreciate it.

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

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

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

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

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

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

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problem.

COMMISSIONER CASTRO: Any other responses?

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

And so you go from that very objective

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

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

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

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

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the initial aggressor?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, everybody.

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

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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF POLK

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

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

Kathy Wescott, CSR
Court Reporter