Lisette Garcia

From: Don L. Horn <DonLHorn@MiamiSAO.com>
Sent: Friday, March 23, 2012 4:28 PM
To: Carswell, Amy (Advocacy)
Subject: FW: NY Times; Stand your Ground--Series of Opinions (including Bill Sponsor in Florida House)

FYI
In follow up to our meeting yesterday I thought you might want to share these columns that Ed forwarded to me and others in our office. The first one is written by the former member of the House of Representatives who sponsored the Stand Your Ground law.

From: Ed Griffith
Sent: Friday, March 23, 2012 3:45 PM
To: Don L. Horn; Jose Arrojo; Kathleen Hoague; Chet Zerlin
Cc: Melia B. Arnett; Janeen Jones; Raynald Louis; Terry Gonzalez-Chavez; Leonardo Mendoza; Tom Headley
Subject: NY Times; Stand your Ground--Series of Opinions (including Bill Sponsor in Florida House)

A Necessary Law, but Not in This Case

Dennis K. Baxley, Republican of Ocala, sponsored the Stand Your Ground law in the Florida House of Representatives.

March 21, 2012

The tragic story of Trayvon Martin's death has ignited a great deal of debate about the Stand Your Ground law that seems to allow the defense claimed by his attacker, George Zimmerman. As the prime sponsor of this legislation in the Florida House, I'd like to clarify that there is nothing in the law that provides for the opportunity to pursue and confront individuals. It simply lets those who would be victims use force in self-defense.

The catalytic event that the led to the legislation's passage in 2005, was the looting of property in the aftermath of hurricanes. Specifically, there was a situation in the panhandle of Florida where a citizen moved an RV onto his property, to protect the remains of his home from being looted. One evening, a perpetrator broke into the RV and attacked the property owner. The property owner, acting in self defense in his home, shot and killed the perpetrator. It was months before he knew whether he would be charged with a crime because there was no clear legal definition of self defense in such a case or of when a potential victim was required to retreat.

Inspired by homeowners fending off looters, the law wasn't meant to defend a shooter who pursued someone who had not threatened him.
The Stand Your Ground law, as passed, clarified that individuals are lawfully able to defend themselves when attacked and there is no duty to retreat when an individual is

attacked on his property. Since its enactment, 20 other states have implemented similar statues. Additionally, the American Legislative Exchange Council used the Florida law as model legislation for other states. Quite simply it is a good law that now protects individuals in most states.

But media reports about Trayvon Martin's death indicate that Zimmerman's unnecessary pursuit and confrontation of Martin elevated the prospect of a violent episode, and does not seem to be an act of self defense as defined by the law.

I have great sympathy for the family of Trayvon Martin and am grateful that a grand jury is further exploring what actually happened on that night in Sanford. I trust that justice will prevail.

An Unnecessary Law

Gregory O'Meara, a former prosecutor, is an associate professor of law at Marquette University.

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The difficulty with Stand Your Ground laws is that they are based on the assumption that neither the common law nor modern criminal codes adequately protect ordinary citizens who are under attack. This assumption is simply wrong. Contemporary criminal statutes express a nuanced and sophisticated concept of defensive force derived from hundreds of years of common law precedent. These laws adequately protect both the innocent and those who mistakenly believe they are under attack while permitting the criminal prosecution of trigger-happy cowboys.

Stand Your Ground laws provide a rock-solid defense to paranoid or dangerously aggressive people who are armed with deadly force.
To claim self defense or defense of others under current statutes, a person under attack (the defender) needs to raise credible proof: first, that he reasonably thought he (or another) was unlawfully under imminent deadly attack by another; second, that each forceful action, including deadly force, he took in response to this attack was necessary to stop the attack; and third, that he acted solely with the intent to thwart the unlawful attack. In many jurisdictions, the defender must withdraw from the fight before using deadly force if he can do so in complete safety. If the defender meets these requirements, he will be found not guilty. Furthermore, even if the defender is completely wrong about the situation but his mistake is reasonable about either the imminence of the deadly attack or the necessity of his forceful response, he still gets the full defense and will be found not guilty.

This is and has been the law in the Anglo-American system for over 400 years. As a result, these sorts of cases are almost never charged by prosecutors with limited state resources. In my home state of Wisconsin, a large group of criminal prosecutors, defense attorneys and judges could come up with only one case in which any homeowner was prosecuted when he shot someone who entered his home illegally. That conviction was later overturned.

By contrast, under the Stand Your Ground law, there is never a requirement that one withdraw or retreat before using deadly force, and the requirements of reasonableness are attenuated or essentially removed because the other witness is dead, and the defender may shade the truth. Thus, Stand Your Ground laws may provide a rock-solid defense to paranoid or dangerously aggressive people who are armed with deadly force.

Current law protects those using defensive force, including deadly force, while insisting that they act reasonably. Stand Your Ground laws upset that careful balance by removing the requirement that the defender act reasonably. For that reason, these laws should be repealed.

Focus Must Be Narrower

Adam Winkler is a professor at the University of California, Los Angeles, School of Law and the author of "Gunfight: The Battle over the Right to Bear Arms in America."

March 21, 2012

Stand Your Ground laws, which eliminate the longstanding legal requirement that a person threatened outside of his or her own home retreat rather than use force, are the latest manifestation of the political strength of the gun rights movement. First adopted in Florida in 2005, Stand Your Ground laws, drafted and promoted by the National Rifle Association, have since been enacted in some form in more than 20 states. The Trayvon Martin shooting suggests that, in the rush to adopt these laws, lawmakers and gun advocates have gone too far in authorizing the use of deadly force.

Stand Your Ground laws should only allow what their name suggests; they should not encourage vigilantism.

Although the facts of Trayvon Martin's death remain uncertain, we know that George Zimmerman, who was active in the local neighborhood crime watch, suspected Martin was a criminal and shot him on a Florida street. Despite being instructed by police to stay away, Zimmerman confronted Martin. The situation escalated quickly into violence. The police have yet to arrest Zimmerman, apparently because Florida's Stand Your Ground law entitled Zimmerman to use deadly force.

Florida legislators, however, insist the Stand Your Ground law does not provide a defense for people like Zimmerman, who pursue and confront someone. Florida Senator Durrell Peadon, who sponsored the law, said that Zimmerman "has no protection under my law." According to state Representative Dennis Baxley, "There's nothing in this statute that authorizes you to pursue and confront people." The law, Baxley notes, was designed only "to prevent you from being attacked by other people."

The problem is that nothing in Peadon and Baxley's law says this. It provides that any person may use deadly force when "he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another." So long as someone reasonably thinks he or someone else is in danger, he can shoot to kill, regardless of whether the shooter is the one who initiated the hostile confrontation.

Indeed, given the law's authorization of the use of deadly force to protect other people and, as the law also provides, "to prevent the imminent commission of a forcible felony," Florida's law unambiguously authorizes people to pursue and confront others. Whatever the merits of standing your ground when personally threatened, Florida's law goes much further and encourages vigilantism. It tells people, who today are increasingly likely to be carrying concealed weapons, that they can pretend to be police officers and use their guns to protect and serve the broader public.

Stand Your Ground laws should only allow what their name suggests: permit people who are threatened to stand their own ground and protect themselves. They should not give people the right to use force to defend someone else's ground. Under no circumstances should people be able to confront others in a hostile manner, end up using deadly force, and escape punishment.

Racism Is the Problem Here

Kenneth Nunn is a professor at the University of Florida Levin College of Law, and is a member of the Florida Innocence Commission.

Stand Your Ground does not permit the use of deadly force against an initial aggressor unless "the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger." Ordinarily, one would expect that a reasonable force requirement would provide ample protection against idiosyncratic or morally suspect behavior. But this is not the case when victims happen to be black.

As several legal scholars have pointed out, the connection between reasonableness and race is problematic. African-Americans, black males in particular, have been constructed in popular culture as violence-prone and dangerous.

Decisions regarding the reasonableness of self-defense claims should be made in court. Sociologists tell us this attitude toward black males is widely shared, sometimes unconsciously, as the Harvard implicit racism test discloses. In the minds of Americans

who hold these views, fear of black males, and consequently the use of deadly force against them, is "reasonable."

A jury is particularly likely to credit a defendant's fear of blacks when the determination of reasonableness is made not in an objective manner but from the position of someone in the defendant's situation. Indeed, Bernhard Goetz's acquittal of charges for the shooting of four black men in the New York subway in 1984, and the acquittal in 2008 of the police officers involved in the Sean Bell shooting, were due in no small part to their lawyers' "fear of the black man" manipulations.

Simply eliminating Stand Your Ground would not get rid of racially disparate applications of the reasonableness test. It would not prevent young men like Trayvon Martin from getting killed and their killers getting off scot-free. Self-defense claims should be limited to cases in which they are objectively reasonable, not when they are reasonable to someone in the defendant's shoes.

Additionally, decisions regarding the reasonableness of self-defense claims should be made in court. Many Stand Your Ground statutes grant killers who claim self-defense immunity from prosecution, so they cannot be arrested if the police view their assertions of self defense to be reasonable. This is wrong. The reasonableness of a killer's actions ought to be decided in open court by juries made up of ordinary people, and not determined prior to trial in the secrecy of the police station.

Stand Your Ground statutes may be problematic for a number of reasons. But if we really want to save lives and prevent future miscarriages of justice, we will have to confront the reality of race.

Due Process Will Prove the Facts

Walter Olson is a senior fellow at the Cato Institute and edits the blog Overlawyered.

March 21, 2012

Under any criminal law, injustice can result if cops get the facts wrong. The Sanford, Fla., police, accused of buying a dubious self-defense tale after the Trayvon Martin shooting, will now come under searching scrutiny for that decision. Sanford's mayor says his town is eager to stand corrected by the evidence as a fuller story emerges. So who's left to disagree? Not the authors of Florida's Stand Your Ground law, who told The Miami Herald that the law they sponsored applies only to cases of genuine self defense and won't protect neighborhood-watcher George Zimmerman if critics of the Martin shooting are right about what he did that night.

Despite doomful predictions from gun foes, concealed carry and liberalized self-defense laws haven't touched off a surge of gun violence.

The old "duty to retreat" rule made it hard to invoke self defense even if you had faced an immediate threat of assault: "you could have run away," the state would argue, and conviction would follow. Among those who often lost out under that old rule were domestic violence victims who turned on their assailants; feminists pointed out that "you could have run away" may not work well when faced with a stalker or vengeful ex.

Despite doomful predictions from gun foes, concealed carry (now the dominant rule) and liberalized self-defense laws (adopted by half the states) haven't touched off the great warned-of surge of gun violence. Yes, prosecutors may now need to take more care to marshal a show of actual evidence to counter claims of self defense. For those who value due process in criminal justice – a group that should emphatically include members of historically mistreated minorities – that should count as not a bug but a feature.

Self Defense Is Part of Our Heritage

Jeannie Suk is a professor at Harvard Law School, and the author of "At Home in the Law."

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Stand Your Ground laws that have caught on in many states since 2005 are also called Castle Doctrine laws – referring to the traditional legal concept that a man's house is his castle. But what does a doctrine that relieves us, *in our homes*, of the duty to try to flee an intruder's attack before resorting to force in self defense, have to do with shoot-outs in public streets?

Beginning in the late 19th century, most states extended the previously home-located privilege to anywhere a person has a right to be, influenced by ideals of true manhood on the American frontier.

Stand Your Ground laws were influenced by ideals of true manhood on the American frontier.

So the provisions of legislation like Florida's, eliminating the duty to retreat from an attacker in public space before killing in self defense, are not in themselves radical departures from what we have traditionally known. Indeed they track the same old move – leveraging the appealing idea of standing one's ground at home, into any other place a person "has the right to be."

The real outrages are not actually in the provisions of the new self-defense laws, as nothing in those laws give permission to shoot or refuse to retreat when one isn't attacked to begin with. The dangers lie rather in incorrect and confused law enforcement perceptions of what the law allows, fueled by the cultural background and emotions that surrounded the laws' passage.

In a post-9/11 decade of anxiety about securing the "homeland" against attack, it was perhaps unsurprising to see sudden and sweeping preoccupations with self defense against intruders. Tragically, the expansive rhetoric of home protection that gave the new laws such momentum during that time has also made it more likely that a vigilante would perceive the shooting of a black teenager in a gated community as self defense.