

*Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human
Rights*

On

*“‘Stand Your Ground’ Laws: Civil Rights and Public Safety
Implications of the Expanded Use of Deadly Force”*

**Submission by John M. Phillips,
Attorney for the family of Jordan Davis**

My name is John Phillips. I have the honor to serve as the lawyer for the family of Jordan Davis, a teen killed by a grown man who took offense to his music, his skin color and his choice of words. Michael Dunn was empowered by the Stand Your Ground law. He fired 10 times, never called police and still confidently knows there are tipped scales of justice for legal gun owners in this country.

Like my father, I am a lifelong Republican. He was from Monroeville, Alabama and my mother was from Mississippi. Like my father, I own guns. I grew up in the conservative south, even attending the University of Alabama. I worked for a stalwart member of the GOP, Representative “Sonny” Callahan while in college. I am one of the 1.1 million concealed weapon permit holders in the State of Florida. I value the Second Amendment. I am unlike many of my clients in all of those respects. In fact, it is because of the inequality of these gun laws and the inhumanity of some of those who so zealously advocate for them, I have second-guessed all of these things. Jordan’s death was the most wrongful death I have ever known.

The Second Amendment is the only Constitutional Guarantee so tightly tied to an article of commerce that it can alienate its sisters,

like the Sixth Amendment- the Right to Trial by Jury. Stand Your Ground laws hold jury trials are a nuisance to the legal gun owners' freedom. And, with Stand Your Ground, the Second Amendment plays favorites when it comes to “life, liberty and the pursuit of happiness.” It does not simply stop intruders from invading your space as the name conveys, it allows a biased population, a person with unreasonable fears based on skin color and others to “shoot first” provided they can tell the police they had the requisite fear and walk away, stepping over the body of his or her victim who cannot defend himself or herself ever again.

Some claim Stand Your Ground had “nothing to do” with George Zimmerman’s trial. That is untrue. When Florida Circuit Court Judge Debra Nelson issued the jury instructions in the second-degree murder trial of George Zimmerman, she read:

If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had ***the right to stand his ground*** and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.

Here is the jury instruction read to Florida juries BEFORE the Florida legislature’s enactment of Stand Your Ground:

The defendant cannot justify the use of force likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force. The fact that the defendant was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force.

Jurors admitted confusion, both of the lawyers were admonished by the judge on the grammatical errors of improper comma placement and a half a nation wonders why Trayvon Martin could not stand his ground.

Some claim Stand Your Ground is “grounded in history.” That is also untrue. On April 19, 1775, John Parker was the captain in command of 77 members of the Lexington militia when, according to history, he issued the famous order: *“Stand your ground; don’t fire unless fired upon, but if they mean to have a war, let it begin here.”*

His legendary quote is even engraved on a monument to him on Lexington Green. One problem - he didn’t say that at all. Historians have acknowledged this quote was fabricated in the 1800s and is not accurate to 1775. Further, by Parker’s own sworn deposition, as the British troops approached, he realized that his force was greatly outnumbered. He gave his men the order to disperse- to retreat.

Even in the wildest days of the wild west, justifiable homicide was weighed by a jury of one’s peers- not a cop deciding not to arrest, not a prosecutor deciding not to charge, not a judge based on some NRA-written standard. It was a jury- a jury tasked to weigh the facts and decide right and wrong.

The right to a trial by one’s peers was one of the biggest fights of the American Revolution. When Massachusetts enacted its colonial charter in 1641, it expressly guaranteed the right to juries in criminal and civil trials despite making no mention of the right to free speech. This right was stripped from the American colonies, as American colonial judges served pleasure of the King. King George III abolished trial by jury in the colonies to ensure his power and to restrict autonomy of the colonists.

In 1777, Edmund Burke, an Irishman and member of the British Parliament, wrote, *A Letter to John Farr and John Harris, Esqrs., Sheriffs of the City of Bristol, on the Affairs of America*. In this letter, he pointed out the unfairness of recent laws passed pertaining to Britain's "rebellious colony" of America. Burke critiqued the laws because they imposed "a much deeper malignity" and carried "into execution, purposes which appear to me so contradictory to all the principles, not only of the constitutional policy of Great Britain, but even of that species of hostile justice which no asperity of war wholly extinguishes in the minds of a civilized people." Burke could echo that concern today.

Burke's rebuke was heard a year later in the Declaration of Independence. We all know how that begins, "When in the course of human events . . ." and "We hold these truths to be self-evident." Many are not as familiar with the complaints it made thereafter against those unfair and tyrannical laws the king placed on our American forefathers. Those injuries included "depriving us, in many cases, of the benefit of Trial by Jury" and "transporting us beyond Seas to be tried for pretended offences (old English spelling)," to which Burke objected. And which Stand Your Ground laws shrug away.

It is un-American to look at excused or justifiable homicide or "Stand Your Ground" laws without looking at the institution of a jury system to balance out "right and wrong." **The laws we have now take power AWAY from the jury and have become so confusing that they entirely CONFUSE the jury, making them weak.** Even the drafters of the most zealous opinions on one's Right to Stand One's Ground would be upset because we've gone from letting a jury sort things out to letting a killer's words let him be excused and justified without even one unbiased peer weighing the actual facts- not just from the "state of mind" of the killer now that he faces a life sentence.

I obtained my concealed weapons permit in 2012 after our house was burglarized. In the 4-hour class, the two “teachers” spent most of their time in the Florida state mandated class on a sales pitch, pulling out 6-8 guns hidden on their person and detailing the merits of each. They spent ample time discussing Stand Your Ground and other laws, preparing us for possible run-ins with the law and also pointing out they keep a law book they sell on the counter in their cars and homes just in case you need “quick help.” They told us the places in town where guns were not allowed and to “boycott” them. Most offensively, they taught the grey area of the law. They explained it well.

I left that class knowing many there had just shot one bullet- ***the first and only bullet they might have shot in their lives and now they were about to be armed in public, filled with fear and a non-lawyer’s rendition on the law.*** I hope none have a bad day and sense fear from people of a different race, creed, ethnicity or country of origin. Yet, I heard some acknowledge JUST THAT.

We are in danger. Stand Your Ground has fueled acceptance of killing. In just a few hours, a gun store named “Shooters” took 100 or so people and further instilled fear and empowered them to not only defend themselves, but to arm themselves with enough “reason” to get away with it. In Florida alone, 10,000 to 15,000 more are undergoing this training each month and they soon will be Standing Their Ground, harnessing this fear to justify killing without consequence of a fair judgment by their peers.

I will end stating this- Jordan’s life and the lives of all of our children have the power of the butterfly effect- to trust that the flapping of his wings as he ascends into Heaven will open one mind. Mine, was one of the first. I humbly beg you to hasten the winds and create a tsunami. Pandora’s box of guns and crime, hate and bigotry is wide open in our Great nation. Only the combined winds of love and understanding, passion and hope can close it.

Thank you for your time and God Bless the United States of America.