Florida Stand Your Ground Task Force
Senator Chris Smith, Chairman

Final Report to Governors Task Force
Rick Scott, Governor
Mike Haridopolos, Senate President
Dean Cannon, Speaker

April 2012

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHRISTOPHER L. "CHRIS" SMITH
29th District

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April 30, 2012

The Honorable Rick Scott, Governor
The Capitol
Tallahassee, FL 32399

Dear Governor Scott:

As you know, following your announcement that you would convene a task force to examine public safety and Florida's gun laws - notably, the "Stand Your Ground" statute currently at the center of the Trayvon Martin shooting and George Zimmerman's defense- I wrote to you and indicated that you should move more expeditiously. The Stand Your Ground issue did not start, nor did I expect it to end, with the Sanford tragedy.

Stand Your Ground has been on the books for seven years now. There is ample and overwhelming documentation of the law's use, and more importantly, its abuse. The Sanford shooting should not have been a cause for delay; to the contrary, it was a compelling call to action that something needed to be done about the law's confusing and often misapplied provisions.

To that end, I assembled a task force of my own. It consisted of a broad array of individuals well versed in the law's usage over the years, both supporters and detractors. It included legal scholars as well as those on the front lines. I was not looking for a concentration of proponents or opponents; I simply wanted the truth.

Enclosed are the results of the Task Force's public hearing, held on April 5, 2012, conference calls and email debates. As you will note, the Task Force found that there are numerous and extremely problematic areas inherent in the law as it was passed. They include the evolving use of Stand Your Ground not by "law abiding citizens" who it was originally intended to protect, but by those who have abused the statute for their own nefarious reasons: those engaged in unlawful activity, those with extensive criminal records, and those resorting to violence following escalating disputes with neighbors. Yet, in each and every one of these scenarios, the consequences were not only deadly,

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MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

but protected under the Stand Your Ground statute.

From its examination a majority of the Task Force has compiled a list of compelling recommendations that it believes are needed if Stand Your Ground is to continue as the law of this state. I have also included opinions to the contrary to illustrate the complexity of this statute that not only covers legal principles but also criminal procedure.

I strongly urge you to heed their findings.

Sincerely,

Senator Chris Smith
Florida State Senate, District 29

On April 5, 2012 Senator Chris Smith convened an independent Stand Your Ground Task Force, comprised of members drawn from law enforcement, state prosecutors, public and private defense attorneys, and other legal experts. This Task Force was charged with reviewing the current "Stand Your Ground" law found in Chapter 776 Florida Statutes and developing recommendations to improve the statute to increase public safety.

The Task Force began its work by hearing public testimony from various members of the community and identifying the problems which have arisen from the implementation of the Stand Your Ground statute. The committee discussed the issue at length and agreed that the statute is too broad and a significant, unnecessary, and dangerous departure from the traditional law of self-defense.

This report may be viewed on the website www.FloridaStandYourGround.org

Task Force Members

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Executive Summary

In the years since passage of the drastic revisions to Chapter 776 of the Florida Statute regarding the use of force in self-defense, Floridians have grappled with the tragic consequences of a arguably, ambiguous law which has shown demonstrable confusion within and among police departments, prosecuting offices and the courts. While commonly referred to as the "Stand Your Ground" law, the statutes have not simply helped law abiding citizens protect themselves from attack, but instead, have often been used as cover for the perpetrators of crimes. Each day that goes by without legislative action places innocent lives at stake. While the focus on public safety and the previously well-established principles of self defense are paramount to the Task Force's review, the evaluation is also concerned with preventing operation of a system tantamount to lawlessness, where any person can, within a matter of seconds, render himself investigator, judge, jury and executioner, all in one. In a civilized society, governing institutions must provide all Floridians with grounds for confidence in the justice system. The work of the Task Force is geared to avoid extreme pendulum shifts, and to ensure the balance which provides all persons in Florida assurance in their safety and the rule of law. The Task Force's recommendations are arranged in the following order: recommendation unanimously agreed to, consensus recommendations - which had significant debate and dissention, and one discussion item.

Unanimous

- Cases should be presented to a Grand Jury to allow for a cross section of Society to determine what a reasonable person would do in that case.
- Educate the public and law enforcement.
- Create a system to track self-defense claims in Florida.
- Amend the Imminent Requirement
- Title Change

Consensus

- Remove the Presumptions.
- Make Presumption Rebuttable
- Eliminate the Presumption of Reasonable Fear.
- Define unlawful activity in section 776.013
- Clarify the role of provocation

Discussion

- Repeal

Background Information[1]

Florida's "Stand Your Ground" Law has been controversial since Governor Jeb Bush signed it into law on April 26, 2005. The Protection of Persons/Use of Force Bill (the Judiciary Committee's Committee Substitute for Senate Bill 436) expanded an individual's legal right to use force in self-defense, including deadly force, without fear of criminal or civil consequences. In doing so, the law abrogated "the common law duty to retreat when attacked before using force, including deadly force in self-defense or defense of others."

The new law, which took effect on October 1, 2005, substantially amended sections 776.012 and 776.031 and created sections 776.013 and 776.032 of the Florida Statutes. The amendment to section 776.012 eliminated the duty to retreat before using deadly force. The new law also created section 776.013, entitled "Home protection; use of deadly force; presumption of fear of death or great bodily harm," which states that a person is presumed to have the reasonable fear necessary to use deadly force if the person against whom the deadly force was directed was unlawfully and forcefully entering or had entered specified areas, including a dwelling, residence, or occupied vehicle, "or if the person had removed or was attempting to remove another person against [his or her] will" from these areas. For the presumption to apply, the statute also requires that the person who used the deadly force "knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred." Section 776.013(4) specifically states that any person who unlawfully and forcefully enters or attempts to enter another person's castle, defined to include a dwelling, residence, or occupied vehicle, is "presumed to be doing so with the intent to commit an unlawful act involving force or violence."

Additionally, section 776.013(3), which addresses the ability to "stand your ground" in any place that a person legally has a right to be, states:

> A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

[1] Background Information provided in part by Zachary Weaver, author of "Florida's 'Stand Your Ground' Law: The Actual Effects and the Need for Clarification" 63 U. Miami L. Rev. 395 (2008).

This provision is a significant departure from Florida common law which required a person to use every reasonable means available to retreat before using deadly force, except when the person was in his or her home or place of work. By amending this section, the legislature eliminated the common law duty to retreat before using deadly force in *all* places so long as the person meets the requirements of the statute:

> A person may use deadly force against another so long as he or she is somewhere he or she has a legal right to be (e.g., public streets, shopping centers) and he or she has a "reasonable belief" that the use of deadly force is necessary to prevent serious bodily injury or death. The statute is silent as to whether the use of deadly force is permitted under these circumstances if an attacker is unarmed, but some have inferred this to be the case. Florida's Fourth District Court of Appeal recently interpreted this provision as placing "no duty on the person to avoid or retreat from danger, so long as that person is not engaged in an unlawful activity and is located in a place where he or she has a right to be."

Thus, the law allows people to use deadly force so long as they feel threatened with death or great bodily harm, even if a person has other means of protecting his or her safety, such as calling the police or retreating from the situation if it is possible to do so safely. Like section 776.012, section 776.031 was amended to codify that there was no longer a duty to retreat so long as a person is somewhere they are lawfully permitted to be. Although the title of this section is "[u]se of force in defense of others," it actually pertains to the use of force for protecting property. The use of deadly force is only justified in the protection of property when a person "reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony."

In addition to section 776.013 discussed above, Senate Bill 436 also created section 776.032 of the Florida Statutes. This section provides that a person who is permitted to use deadly force under sections 776.012, 776.013, and 776.031 receives immunity from "criminal prosecution and civil action for the use of such force." ***The immunity from criminal prosecution includes immunity from arrest, detention in custody, and charges or prosecution of the individual for using deadly force.*** Section 776.032(2) of the statute further states that "[a] law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful." With the changes in the law brought by Senate Bill 436 have come major problems for prosecutors, law enforcement, and the general public.

In the purported reasoning for passing the law, the legislature stated that the law was passed in order to give "law-abiding people" the right to protect their family and themselves from intruders and attackers without having to worry about criminal or civil penalties before taking action in defense of themselves and others. But some of the individuals who might be able to claim the protections of the law do not appear to be the types of "law-abiding" individuals the legislature sought to protect. (*see appendix*) Future incidents may further illustrate that the law can shield people who do not abide by the law. Ultimately, the individuals that can be protected by the "Stand Your Ground" law may not be the "law abiding citizens" that the legislature claimed the law was intended to protect.

As written, the law also seems to be intended to protect individuals who are subject to *random* violence. Some of the reported cases, however, show that the law is protecting individuals from violence by acquaintances when the acquaintances' disputes escalate. (*see Appendix A: Frank Labiento was a long-time customer of Jacqueline Galas; Jason Rosenbloom was Kenneth Allen's neighbor; and Michael Frazzini's mother was Todd Rasmussen's neighbor, and Rasmussen knew Frazzini.*) These incidents involved disputes in which both parties were at least relatively well-known to each other. Such examples are far from the random violence that the law appears to be intending to protect against.

Judicial Interpretations

The appellate courts have rendered inconsistent, potentially contradictory opinions on what, if any, effect a victim's attempt to flee should have on the grant of immunity to a person who has used deadly force. The First DCA has stated "[t]he statute makes no exception from immunity when the victim is in retreat at the time defensive force is employed." Hair v. State, 17 So. 3d 804, 806 (Fla. 1st DCA 2009). In that case, an argument in a nightclub continued in a car in which the shooter was a passenger, and resulted in a man's death under circumstances where it was unclear whether he was attempting to retreat at the time he was killed. After an evidentiary hearing, the circuit court declined to dismiss the case, but the appellate court reversed, holding the shooter was authorized to use deadly defensive force and as such was entitled to immunity. However, in a previous case, the Second DCA determined that a Defendant was not entitled to immunity because the victim was in retreat at the time deadly force was used. State v. Heckman, 993 So. 2d 1004 (Fla. 2nd DCA 2007). In Heckman, an argument occurred in and near the Defendant's garage, but the victim was in the process of walking away from the garage and down the driveway when he was shot. Thus, the Hair court's statement that a victim's attempt to retreat makes no difference under the statute's grant of immunity seems to contradict the Heckman decision. Other courts have commented on the lack of clarity in the statute as relates to immunity. The federal 11th Circuit Court of Appeal observed that the state courts of appeal have "expressed opposite views" on this issue and that, as late as 2011 it was not clearly established

whether immunity under s. 776.032 applies when a person uses force after a trespasser is already in retreat. Reagan v. Mallory, 2011 WL 2322259 (11th Cir. 2011).

There are widespread reports in the media and in the case law which document the application of the "Stand Your Ground" law to excuse killings in bar brawls, gang shootouts and road-rage incidents. For example, in State v. Gallo, 76 So. 3d 407 (Fla. 2nd DCA 2011), an argument outside a nightclub in Sarasota County turned into a gunfight the court likened to the "Shootout at the OK Corral," however, the Court found the Defendant immune from prosecution under f.s. 776.032.

Task Force Recommendations

1. **Cases should be presented to a Grand Jury to allow for a cross section of Society to determine what a reasonable person would do in that case.** Under current law, the State Attorney has this power already. Giving the defendant a right to have a grand jury indictment and appear (if he chooses) before the grand jury addresses a concern within the traditional framework of Anglo-American criminal procedure without raising the many problems associated with the out-of-whole-cloth solution of immunity. This right might help allay concerns of the "innocent" homeowner having to go through a full trial where a strong basis for a self-defense claim exists without all of the problems that attach to the immunity provision.

2. **Educate the public and law enforcement.** While not an amendment, educating the public and law enforcement about the law is critical. They should understand when the use of deadly force (and other force) is lawful and when it is not. As evidenced by the forum, the public and law enforcement often have various misconceptions about when the law applies and when it does not. They must understand that the law does not entitle a person to be a vigilante. Education can also assist in rehabilitating perception of Florida in the national media.

3. **Create a system to track self-defense claims in Florida.** Floridians need to know the actual effects of the law and how it is working across the state. A system to track the number of self-defense claims and the case outcomes would assist in doing so.

4. **Amend the Imminent Requirement**. Amend § 766.013(3) to include the requirement that the individual who stands his ground must "reasonably believes it is necessary to do so to prevent [imminent] death or great bodily harm." The imminence requirement was maintained in § 766.012, but omitted from § 766.013(3).

5. **Title Change.** Retitle Florida Statue § 776.031 to state "Use of Force in Defense of Property" instead of "Use of Force in Defense of Others". The provision speaks of what a person may do to protect themselves from a trespass or other interference with property so the title is misleading. Fla. Stat. § 776.012 currently includes a provision for the use of force to protect another so the title of § 776.031 is just erroneous.

6. **Allow Detaining.** Amend Florida Statute 776.032 to delete "arrest and detaining" from the definition of "criminal prosecution".

Consensus Recommendations

1. **Make Presumption Rebuttable.** Create a provision that makes immunity provision inapplicable when the alleged attacker was unarmed or in the process of fleeing. In the alternative, create a rebuttable presumption that the suspect was not acting reasonably if they harm an alleged attacker who was unarmed or in the process of fleeing. Also provide

concrete provisions for judges to use in determining who should and should not be immune from prosecution and require the matter to be heard by more than one judge. The burden for granting immunity is too undefined and judicial discretion is unfettered.

Dissenting Views

A. *Judicial discretion is not undefined or unfettered. As in many areas, judges are required to make findings of fact. The law is very clear. We may disagree with a court's finding of fact (generally one side in every dispute disagrees with the court's findings of fact) but that doesn't make it undefined or unfettered.*

2. **Remove the Presumptions.** Remove the presumptions contained in Fla. Stat. § 776.013(1) or, in the alternative, make it clear that the presumptions are rebuttable. An irrebuttable presumption in this instance may be unconstitutional because it could be argued that the intent of the actor is a primary issue and, as such, is a question for the jury. *See, Morrisette v. U.S.*, 342 U.S. 246 (1952); *State ex rel. Boyd v. Green*, 355 So. 2d 789 (Fla. 1978). *Note that a Senate Report and one appellate court case have noted that the presumption is irrebuttable. See Fla. S. Comm. on Judiciary, CS for CS for SB 436 (2005) Staff Analysis 6 (Feb. 25, 2005), available at http://www.flsenate.gov/data/session/2005/Senate/bills/analysis/pdf/2005s0436.ju.pdf; see also State v. Heckman, 32 Fla. L. Weekly D 2906 (Fla. 2d DCA 2007). I don't agree that this provision is unconstitutional.*

Dissenting Views

A. *The statute does not contain an irrebuttable presumption. Rather, it is a presumption that a person held a reasonable fear they were in imminent peril of death or bodily injury based upon the alleged victim having performed a forcible felony (burglary- forcibly entering a dwelling or conveyance or kidnapping- removing or attempting to remove a person from the home or car against their will). This is an appropriate presumption under these circumstances.*

B. *I don't believe the Morissette unconstitutionality argument applies here and would thus remove it as a rationale. Morissette and that line of cases bars conclusive/irrebuttable presumptions against the defendant (because they go against the defendant's presumption of innocence by not requiring the jury to find every element of the crime beyond a reasonable doubt). Under the SYG statute, on the other hand, the presumption actually is in favor of the defendant, and I can't recall seeing a case where the gov't/state was allowed to object to a presumption favorable to the defendant on constitutional grounds (and this is because the due process argument in Morissette is aimed at protecting a defendant's due process rights). That said, I think the core point is correct - that* ***it should not be irrebuttable because the reasonableness should be an issue for the jury to decide, so either the presumption should be eliminated or it should at least be***

clarified that the presumption is rebuttable by the state *... but unless I'm missing something (and that is very possible), the unconstitutionality argument should not be a part of the argument because the real point is that either the statute is unclear that the presumption is rebuttable by the state, or if irrebuttable, then it effectively changes the definition of self defense to apply per se in the situations described in 776.013 even if the defendant had no reasonable fear of imminent harm (and while I disagree with that as a definition of self-defense, I don't think it raises a constitutional issue) ...*

3. **Eliminate the Presumption of Reasonable Fear.** Eliminate § 776.013(3) presumption of reasonable fear, or in the alternative eliminate the word "reasonable," so that the statute creates a presumption of subjective fear leaving the question of whether such fear was reasonable for the jury. In a wide range of cases and contexts, the question of whether the defendant's perception and response were reasonable is a critical question for the jury to decide while weighing all of the evidence presented at trial. This section of the statute improperly but effectively converts a question of fact into a question of law. If the facts, however, tell a different story, i.e., a reasonable person would not have fear of death or great bodily harm under the circumstances, then the statute should not provide protection.

Dissenting Views

A. *The presumption of fear should be removed or altered as it only applies if the victim is committing a forcible felony.*

B. *The word "reasonable" is a longstanding principal in criminal law that dates back since forever and clearly defined by case law. Moreover, even if the case goes to a jury trial, the defendant would be entitled to move for a judgment of acquittal before the case goes to a jury. In said instance, the facts are still being determined and applied by the judge not the jury. Although intent/state of mind is a question of fact (routinely for the jury), case law is clear that it still should not go to the jury unless the state has overcome the Defendant's reasonable explanation of innocence, i.e. in good faith belief cases.*

4. **Define unlawful activity in section 776.013.** The Legislature needs to make a decision on when a person is engaged in "unlawful activity." One proposal could be to make it any activity in violation of Florida criminal law. Regardless of how it is defined, there needs to be some definition so that law enforcement, courts, and juries can determine whether the statute applies to certain individuals. Without some definition, some individuals may be protected by the law that the Legislature did not intend and vice-versa.

Dissenting Views

A. *The term "unlawful activity" is clear: activity which is against the law.*

B. *This recommendation gives the mistaken impression that legislatures know best which is a proposition that I reject wholeheartedly. There is existing case law that addresses/attempts to define "unlawful activity" already. But it seems simple enough to me that unlawful activity is any activity that violates a criminal law whether it is state law or federal law.*

5. **Clarify the role of provocation.** Although § 766.041 precludes the initial aggressor from availing himself of the defense of justification, § 766.013(3) applies to anyone not engaged in unlawful activity.

Dissenting Views

A. *I do not agree that the statute allows an initial aggressor to avail himself of the justification defense given the clear language of F.S.776.041- Use of force by aggressor: "The justification described in the preceding section of this chapter is not available to a person who:...Law enforcement officers have very difficult jobs. They are required to make judgment calls every day. Sometimes, those calls are wrong. I don't believe there is anything fundamentally wrong with this statute which makes it more or less likely that law enforcement will make the wrong call.*

B. *The role of provocation is not unclear. It is for the jury to decide if the defendant initially provoked the use of force (and provoked could certainly be racial taunting) unless the defendant then attempted to withdraw from the conflict or the victim responded with such violence that the defendant was in imminent danger of death or great bodily harm. We also "do not agree that the statute allows an initial aggressor to avail himself of the justification defense given the clear language of F.S.776.041- Use of force by aggressor: "The justification described in the preceding section of this chapter is not available to a person who:"*

C. *Section 776.041 makes clear that you are not allowed to claim the stand your ground law's protections if you are the aggressor (absent two exceptions), as that section provides: "The justification described in the preceding sections of this chapter is not available to a person who: (1)Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or (2)Initially provokes the use of force against himself or herself . . . ."*

D. *It is for the jury to decide if the defendant initially provoked the use of force (and provoked could certainly be racial taunting) unless the defendant then attempted to withdraw from the conflict or the victim responded with such violence that the defendant was in imminent danger of death or great bodily harm.*

Discussion Item

Repeal. Repeal Fla. Stat. § 776.032 in its entirety to do away with immunity and the procedural hurdles placed on law enforcement. Repealing this section will allow the

Stand Your Ground law to operate as an affirmative defense established at trial, rather than apparatus that can halt an investigation at the outset. As written, the law causes confusion for law enforcement on when the police may arrest/detain a suspect who claims Stand Your Ground. Additionally, the law allows for an evidentiary hearing where the defendant has a low burden of proof to establish the defense and get complete immunity. Such a procedure undermines the role of the courts and the importance of trial by jury. Repealing this section would make the investigation and prosecution of Stand Your Ground cases just like any other case, *i.e.*, a case that goes through the standard investigative, prosecutorial, and judicial process. Furthermore, this amendment would be a compromise - - removing much of the difficulty and confusion in enforcing the law by law enforcement while still maintaining the "stand your ground" aspect.

Dissenting Views

A. *This section provides a protection for any person who finds themselves in a position of defending themselves. Without this section, many such persons, especially poor people who are predominantly minorities, will be forced to remain in custody with very high or no bonds for years awaiting trial. For example, most murder cases take 2-3 years to go through the trial process.*

B. *One of the task force members suggested removing the language in the immunity section (F.S. 776.032) which says "criminal prosecution" includes detaining in custody. I would not object to this as long as the detention was brief and solely for the purpose of investigation. However, I don't think this change is necessary given (2) of this section which allows law enforcement to use "standard procedures for investigating use of force" since that would include detention. I also believe the standard for law enforcement is "probable cause" that a crime (not a justifiable act) has occurred- just as it in all other areas of criminal procedure. Frankly, I am not aware of any cases wherein reasonable fees or costs have been awarded under the immunity statute so I don't know if this is an issue of concern.*

C. *I do not think that 776.032 should be repealed. Notwithstanding the above, I am in support of two minor amendments: 1) Allow the suspect to be detained for questioning. It is difficult to conduct an investigation if you cannot detain the suspect for questioning; and 2) Substitute the word "may" for "shall" in subsection two so that it reads law enforcement SHALL use standard procedures for investigation.*

D. *I am pretty sure that the concern addressed by immunity is that an average citizen can find himself or herself facing a homicide charge and the stress of trial and verdict when simply defending their home or family, and they should be spared having to go to trial where upfront we could know they were acting in self-defense. I personally have not seen the cases prior to SYG where prosecutors have pursued cases where there isn't a colorable argument that the defendant did not act in self-defense, but I know that the "common wisdom" behind the law's*

passage is that they did exist and "innocent" citizens were needlessly put through the ordeal of a trial. It seems that giving the defendant a right to have a grand jury indictment and appear (if he chooses) before the grand jury addresses this concern within the traditional framework of Anglo-American criminal procedure without raising the many problems associated with the out-of-whole-cloth solution of immunity. This right might help allay concerns of the "innocent" homeowner having to go through a full trial where a strong basis for a self-defense claim exists without all of the problems that attach to the immunity provision (a provision I have not seen in any other criminal statute I am aware of).

Task Force Members' Vitae

Chief Frank Adderley
City of Fort Lauderdale Police Chief
A 32 year veteran of the Fort Lauderdale Police Force. Adderley is a highly commended officer who has been a pioneer at the department, having been its first black captain, major and assistant chief. In 2008, he was appointed as the first African-American Chief of Police in the history of Fort Lauderdale. Chief Adderley oversees a department which includes an annual budget of $100 million, 511 sworn police officers and 190 civilian employees.

Alfreda Coward
Criminal Defense Attorney
Alfreda D. Coward is a partner of Coward & Coward, P.A., a law firm in Ft. Lauderdale, Florida. She practices with her sister, Kimberly D. Coward, primarily representing indigent clients in the areas of criminal law and family law. During her fifteen years as an attorney, Ms. Coward has had well over 100 jury trials. Some of these trials were recorded and aired on Court TV, MSNBC and NBC Dateline. In addition to Coward & Coward, Ms. Coward currently serves as the co-founder and executive director of One Voice Children's Law Center. One Voice Children's Law Center is a non-profit organization that represents kids that have pending matters in the dependency, delinquency and/or educational systems. She also served as an adjunct professor at FIU College of Law teaching educational advocacy. Ms. Coward is a graduate of the University of Florida, where she received her Juris Doctorate degree in 1995 and her Bachelor of Science Degree in Psychology in 1992. Ms. Coward is a member of The Florida Bar. She is also admitted to practice in the United States District Courts for the Northern, Middle and Southern Districts of Florida.

Richard M. De Maria
Chief Assistant Public Defender
Miami Dade County 11th Judicial Circuit
Since January of 2009, Richard M. De Maria has served as the Chief Assistant Public Defender of County Court for the Law Offices of Public Defender Carlos J. Martinez (11th Judicial Circuit of Florida). His responsibilities include the supervision of all assistant public defenders assigned to the County Court Division including the office's Domestic Representation Unit. He obtained his undergraduate degree, *Cum Laude,* from the University of Miami in 1983 and his Juris Doctorate degree from Florida State University in 1985. In addition to serving as an assistant public defender, Richard has also practiced law as a private criminal defense attorney and Senior Staff Attorney with the Florida Department of Children and Family Services. He has represented clients at the trial and appellate level in both state and federal court.

Howard Finkelstein
Public Defender
Broward County 17th Judicial Circuit
Howard is the elected Public Defender. He has practiced both as a government lawyer and in the private sector. He also serves as the on-air legal analyst for the Fox networks local affiliate, WSVN Channel 7 News.

Dan Gelber
US Attorney
Former Florida State Senator
University of Florida College of Law in Gainesville. Just a few months out of law school, Dan was appointed as a federal prosecutor in Miami, spending nearly a decade prosecuting hundreds of corrupt public officials, drug dealers, scam artists and violent street gangs. Dan was elected to the Florida Legislature in 2000 represented the 106th District of the Florida House from 2000 – 2008 and the Florida Senate 2008-2010. In 2005, his Democratic colleagues unanimously voted him to be their Democratic leader in the upcoming term.

Carey Haughwout
Public Defender
Palm Beach County 15th Judicial Circuit
She took office in January of 2001 after working as a private criminal defense attorney in Tallahassee and Palm Beach County for 17 years. From 1985 to 1990 she worked as assistant public defender in Tallahassee and Palm Beach County working her way from misdemeanor to capital cases.

Tamara Lawson
Law Professor
St Thomas University School of Law
Tamara has her B.A., Claremont McKenna College, J.D., University of San Francisco School of Law, LL.M., Georgetown University Law Center, with distinction and S.J.D. (candidate), Georgetown University Law Center. Professor Lawson teaches Criminal Law, Criminal Procedure, and Evidence. Formerly, she was Deputy District Attorney at the Clark County District Attorney's Office in Las Vegas, Nevada, from 1996-2002. As a criminal prosecutor, Professor Lawson served on the Special Victims Unit for Domestic Violence. She has successfully argued multiple cases before the Nevada Supreme Court, including death penalty appeals. In addition to general criminal cases, Professor Lawson, in her capacity as Deputy D.A. handled environmental crimes, involuntary mental commitments, and bail bond hearings. Moreover, Professor Lawson participated in public and televised presentations on various controversial topics in criminal law, including hate crimes, capital punishment and sentencing,

and the mental health of criminal defendants. She has published a lead article in the American Journal of Criminal Law, entitled "Can Fingerprints Lie?"

Joëlle Moreno
Law Professor, Associate Dean for Faculty Research & Development
Florida International University College of Law
Experienced teacher of Evidence, Scientific and Forensic Evidence, Criminal Procedure, Criminal Law, Criminal Advocacy, and Alternative Dispute Resolution. Before beginning her academic career, she served as a federal prosecutor for the United States Department of Justice in the Litigation Section of the Antitrust Division.

Charles Chuck Morton
Assistant State Attorney
Broward County 17th Judicial Circuit
Broward Chief Assistant State Attorney Charles B. "Chuck" Morton, is an adjunct professor in trial advocacy at the Nova Southeastern University Shepard Broad Law Center and has been presented with a lifetime achievement award for legal education by The Florida Prosecuting Attorney's Association. Throughout Morton's 33-year career, he has traveled throughout the state teaching countless classes on effective litigation to prosecutors from Florida's 20 circuits. At the 2010 award presentation during the Association's annual meeting in Lake Buena Vista, Florida, Morton was recognized for his "service in furthering prosecution education in Florida." Morton has been Chief Assistant State Attorney in the 17th Circuit in Broward since 2005. Before that, he served as head of SAO's Homicide unit for 16 years. Morton, a graduate of Rollins College and the University of Florida law school, was the first prosecutor that State Attorney Mike Satz hired after Satz took office.

Michael Satz
State Attorney
Broward County 17th Judicial Circuit
Mr. Satz was elected State Attorney for the 17th Judicial Circuit in November of 1976 and has been re-elected every four years since. Throughout his tenure as State Attorney, Mr. Satz has responded to Broward County's diverse crime problems by instituting specialized units within the State Attorney's Office to enhance the focus and expertise of prosecutors experienced in these specialized areas of the law and increase the public safety of the citizens that he serves.

Scott Sundby
Criminal Law Professor and Dean's Distinguished Scholar
University of Miami School of Law
Author of: *A Life and Death Decision: A Jury Weighs the Death Penalty* Professor Sundby's writings focus on criminal law and constitutional law issues, including articles that have

appeared in the Virginia, Columbia, Cornell, UCLA, and Texas law reviews. Much of his research has been conducted as part of the Capital Jury Project, a study funded by the National Science Foundation that is designed to understand how juries decide whether or not to impose the death penalty.

Perry E Thurston, Jr.
Criminal Defense Attorney
State Representative, District 93
Graduate of University of Miami School of Law, Juris Doctor, 1987. Representative Thurston joined the Broward County Public Defender's Office as Assistant Public Defender in 1988. He moved into private practice in 1992, where he specializes in criminal defense and public finance. Rep. Thurston was elected as State Representative for House District 93 in 2006. The House Democratic Caucus elected him to serve as the Democratic leader for the 2012-2014 legislative term. Representative Thurston is the House appointee to the Council for the Social Status of Black Men and Boys.

Zachary Weaver
Attorney
Zach received his law degree, magna cum laude, from the University of Miami School of Law in May 2009. While in law school, he was a member of the University of Miami Law Review, on which he served as a member of the editorial staff and publication review panel. Zach is the author of "Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification", 63 U. Miami L. Rev. 395 (2008). Zach completed his undergraduate degree at Clemson University in 2006, where he earned a B.A. in History, summa cum laude. During his undergraduate career, Zach was a member of the Phi Kappa Phi and Golden Key honor societies and completed an internship with the Greenville County Public Defender.

Tania Williams
Critical Skills Professor
Nova South Eastern University School of Law
Tania Williams is a Critical Skills Instructor at Nova Southeastern's Shepard Broad Law Center. Professor Williams assists first year law students in getting acclimated with the demands of law school and guides graduating students through the rigor of preparing for the bar exam. Professor Williams is also a former Assistant State Attorney for Orange and Osceola counties. During her time at the State Attorney's Office, Professor Williams conducted over 70 trials in the Misdemeanor, Juvenile and Felony divisions of the office. She is a licensed attorney in Florida, California and DC and will be sworn to the bar of the Supreme Court of the United States at the end of April.

Appendix A

Notable Florida Incidents Deemed Justifiable per "Stand Your Ground"

New Port Richey 2006 - Jacqueline Galas, a prostitute of New Port Richey, shot and killed her longtime client Frank Labiento. According to the police and prosecutors, the evidence showed that Labiento intended to kill Galas. In fact, he told her of his intent while the two sat at Labiento's kitchen table. When Labiento stood up to answer the phone, he left his .357-caliber handgun on the table in front of Galas.109 According to the story she told police, Labiento then came at her in a threatening manner, and she shot him in the chest. The arrest report stated that Galas "made no attempt to flee, nor did she verbally warn the victim that she was going to shoot him," and she did not call for medical help as Labiento was dying. Although originally arrested and charged with second-degree murder, prosecutors dropped the charge. Assistant State Attorney Michael Halkitis stated that Galas's decision to shoot rather than flee would have made his choice not to prosecute much more difficult under the old law which still required the duty to retreat before using deadly force. Halkitis further remarked, "It's a very clear case of an issue covered by 'Stand Your Ground.'"

Clearwater - Jason M. Rosenbloom was shot twice by his neighbor Kenneth Allen in Allen's doorway. Allen had complained to the local authorities about Rosenbloom putting out more trash bags than local ordinances allowed. When Rosenbloom knocked on Allen's door, the two men began to argue. Allen claimed that Rosenbloom had his foot in the door and was attempting to rush inside the house before he pulled the trigger. Rosenbloom denied this allegation. The conflicting claims only converge on the fact that Allen shot Rosenbloom, who was unarmed, in the stomach and then in the chest. Afterward, Allen said he was afraid, and stated, "I have a right . . . to keep my house safe." Without other witnesses, it is Allen's claim versus Rosenbloom's claim. Section 776.013(1)(a)–(b) would protect Allen from civil and criminal suits so long as he could show that Rosenbloom was "unlawfully" and "forcibly" entering or attempting to enter his home, and that he believed such entry was occurring when he shot Rosenbloom. If Allen proved this, then he is presumed to have the reasonable fear necessary to justify using deadly force. Thus, even if the State could prove that Allen did not fear Rosenbloom and could see that he was plainly unarmed and had no malicious intent, it is irrelevant because the presumption in favor of Allen is conclusive and irrebuttable.

Fort Myers 2006 - Michael Frazzini was in a camouflage mask and carrying a fourteen-inch souvenir baseball bat when he was shot and killed by Todd Rasmussen. According to Frazzini's family, Frazzini was watching over his mother's home and backyard because she thought twenty-two-year-old Corey Rasmussen "had stolen her car keys and [had been] disturbing her property." The only accounts of the events that transpired and led to the death of Frazzini are

from Todd Rasmussen and his family. Corey Rasmussen, Todd's son, was alerted by his sister that someone was lurking in the bushes behind the backyard. Corey confronted and pulled a knife on Frazzini when he saw Frazzini's novelty bat (which he allegedly believed to be a lead pipe). Todd Rasmussen told police that he had his daughter retrieve his .357 revolver and went outside where he saw Corey and Frazzini standing off. According to Todd, he yelled a warning, and then he shot and killed Frazzini, claiming Frazzini lunged at him and Corey. The prosecutors declined to arrest or bring charges against Todd Rasmussen for murder or manslaughter because they said that so long as Todd Rasmussen had fear of death or bodily injury to himself or another—in this case his son—then he had the right to use deadly force. The prosecuting attorney, Hamid Hunter, said that, taking the Rasmussen family's account of events at "face value," there was reasonable belief that Todd Rasmussen feared for his son's life. Lee County Chief Assistant State Attorney Randy McGruther remarked that the state would not prosecute a case if there is not a reasonable belief that a jury will convict. Hunter candidly concluded, "Nobody involved in this decision feels good about it."

Miami 2009 - While playing on the front stoop of her home, Sherdavia Jenkins was killed by a stray bullet from a shootout between Damon "Red Rock" Darling and Leroy "Yellow Man" LaRose. Although the police originally said that they would not charge Darling, both men were eventually arrested and charged with second-degree murder with a deadly weapon, attempted second-degree murder with a deadly weapon, and possession of a weapon/firearm by a convicted felon. The Jenkins incident raises three more problematic aspects of the law. First, if a person using deadly force is protected by the law, then even innocent bystanders who become victims are prohibited from filing civil suits, and the state cannot bring criminal charges against the user of deadly force. There is an inherent injustice to families who lose a loved one and then have no recourse because a law provides absolute immunity from criminal prosecution and civil suits for a person using deadly force within the requirements of the statute.

Valrico, Fla. 2010 – After an argument in a public park about whether a skateboarder was allowed to skate in the park, 71 year old Trevor Dooley shot and killed 41 year old David James, who had argued that a skateboarder should be allowed to skate in the park, while Dooley, who lived across the street, wanted the skater to stop and leave. Neither man knew the teenaged skateboarder prior to the incident. Dooley claimed he was leaving the scene of the argument when James followed and attacked him; however, it is unclear whether James simply wanted to disarm the man to protect his own 8 year old daughter as well as the skateboarder. As the two men struggled for possession of the gun, Dooley shot James to death. Dooley was charged with manslaughter and weapons charges; his case is currently pending a decision on his "Stand Your Ground" claim. Additional briefing by the prosecutors is due on April 25, 2012.

Palm Harbor 2012 - Brandon Baker, shot and killed in early March in Palm Harbor. Baker and his twin brother, Chris, were coming home from a party that night, driving in separate cars. A

23-year-old security guard named Seth Browning started following Baker. Browning later claimed Baker had been driving suspiciously. All three cars stopped on Seagull Drive in Palm Harbor. That is where the story is disputed. According to Browning, Baker confronted him and -- acting in self defense -- he pepper-sprayed, shot and killed Baker. If Browning had a reasonable fear for his life, he would be protected under Florida's 'Stand Your Ground.' Baker's family, though, contends Baker was not the aggressor and they don't understand why a disagreement escalated into violence.

Tampa 2005 – first "Stand Your Ground" test case – after a fight, the Defendant James Behanna followed the decedent down the street, prompting another fight during which the Defendant stabbed the decedent to death. He was convicted, but won a new trial on appeal. Before the new trial, Defendant pled guilty and received 42 months of probation. Tampa Bay Times

Riviera Beach 2007 – Michael Palmer shot to death after a boating disagreement; Palmer was in a fight with Timothy McTigue – ultimately the two were fighting in the water, and afterward, when the unarmed Palmer was pushing himself up on a floating dock, McTigue shot Palmer. According to prosecutors, Palmer had retreated from the argument when shot, but the jury found the shooter not guilty.

Palm Beach County 2007 - During a squabble about unpaid boating violations, Michael Monahan shot two men to death after the decedents boarded his boat; neither of the decedents was armed and neither one touched Monahan. Monahan shot one of the men from 20 feet away. Charges against Monahan were dropped. Palm Beach Post

Wellington 2007 – Jason Payne, age 22, shot to death outside a party. Payne was the host of the party and at some point asked William Wilkerson to leave. Both men were drunk. According to trial testimony Wilkerson threatened to kill Payne, who was unarmed. While Wilkerson was in his car, Payne struck the car window, breaking it. Rather than driving away, Wilkerson shot Payne in the chest. The jury found Wilkerson not guilty of murder, per "Stand Your Ground" but Wilkerson was later found guilty of discharging a firearm from a vehicle, and was sentenced to four years in prison for that offense.

Pasco County 2008 – Max Wesley Horn shot Joseph Martel to death after an argument in a public place. Horn was acquitted. Tampa Bay Times

Tallahassee 2008 – a street fight between two gangs resulted in a gunfight in which 30 shots were fired and a 15 year old was killed. The gang members were absolved from criminal liability.

Miami 2009 - two Florida Power and Light workers, dressed in FPL blue uniforms including pith helmets were shot at by a homeowner. In this case, the workers approached a mobile home

to cut electrical service, but the homeowner came storming out, and shot at the FPL workers as they ran away. A judge later dismissed charges of armed assault and improper exhibition of a firearm, finding that under the "Stand Your Ground" law, the homeowner's fear for his life was not unreasonable. Miami Herald

Miami 2009 – After a drug deal dispute, the parties engaged in a high speed car chase and gunfight in which innocent drivers were forced off the road and one was sideswiped. One of the drug dealers was ultimately shot dead, but the case never went to trial due to the "Stand Your Ground" law.

Plantation, Broward County 2009 – Nour Badi Jarkas shot his estranged wife's boyfriend four times inside the wife's house. Circuit Judge Ilona Holmes released Jarkas, citing "Stand Your Ground" and, according to the Miami Herald, she stated that "nothing was presented … to rebut the reasonableness of the fear that [Jarkas] testified that he had."

Wesley Chapel 2009 – a drunk, unarmed and confused man named William Kuch was shot after trying to enter the wrong house. The shooter, Gregory Allan Stewart, was charged with aggravated battery, but the charges were ultimately dropped. Tampa Bay Times

Tampa Bay area 2010 - a man out on a jog was punched in the face by a teenager. When the man pulled a gun, the teenager started to run, but the man shot 8 times, killing the teenager, apparently as the teen was running away. According to the Times, the man was not charged, and the court file says "justifiable homicide."

Jacksonville 2010 – Marissa Alexander – a battered wife who had an injunction against her husband – was threatened by the husband in her own home; she fired a shot into her own ceiling, did not kill anyone, but was prosecuted and found guilty by a jury; she faces a possible 20 year prison sentence.

Miami 2012 – January incident in which alleged burglar Pedro Roteta was chased roughly a block from the scene of the burglary and stabbed to death by Greyston Garcia. Although the Miami police arrested and charged Garcia with 2nd degree murder, a judge later found the killer immune from prosecution due to the "Stand Your Ground" law. The chief investigator, Sgt. Ervens Ford called the decision a "travesty of justice." Miami Herald