

The Subcommittee on the Constitution, Civil rights and Civil Liberties
Testimony of Professor Deborah A Ramirez
Email: d.ramirez@neu.edu
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Room 2226
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Thank you Mr. Conyers and assembled speakers:

In the wake of the tragic death of Trayvon Martin, I want to focus on what we can learn from this tragedy and what we can do to ensure that more young men do not die as he did. From the anger and outrage, systemic problems can be identified and solutions born. I identify three systemic problems highlighted by his death and by the failure of police to investigate this homicide until forced to do so by public opinion, and propose steps that can be taken to address each of these problems.

First, Trayvon Martin was shot by a self-appointed neighborhood watch captain in Florida while he was patrolling a gated community. Generally, when we think of community security, we think of the police, but the fact of the matter is that there are as many private security officers in this country as public police officers, and that does not include the many thousands of persons who volunteer to provide security for their neighborhood in the type of community patrols that George Zimmerman captained. As a result, much, perhaps most, of the patrolling function that we think is fulfilled by professional public police officers is now being done by private security employees and neighborhood watch volunteers. It might be easy for state and local police departments to distance themselves from these private security forces and neighborhood watch groups by claiming that are not responsible for them or their activities because the police did not choose them, train them, or supervise them. But given their pervasive patrol presence and their routine carrying of firearms in our communities, the police need to participate in the training of private and volunteer security patrol officer, especially regarding issues of racial profiling, de-escalating potentially violent situations, and the use of force. They also need to be informed of the limits of their authority; they may think they are police, they may even want to become police officers, but they are not police officers and they do not have police powers. And when they abuse their authority as private citizens and exercise authority that we reserve for police officers, police departments must be vigilant in prosecuting them and, where appropriate, taking steps to revoke their license to carry firearms.

To assist financially-strapped police departments to assume this new training obligation, the federal government should fund a national community- policing resource and training center. The Center would assist state and local police departments to develop collaborative strategies with private security and volunteer patrol organizations to combat violent and property crime without racial profiling or the unnecessary use of force. And it would provide the funding, training, and education modules to allow public police departments to train private security

forces and volunteer community partners in the danger of racial profiling, the most effective ways to avoid the use of force, and the limits of their power as private citizens conducting private patrols.

Second, we cannot ignore the possibility that Florida's so-called "Stand your Ground" statute enables the needless use of deadly force by justifying the use of deadly force that would not be justified under the common law of murder. Under the common law of murder, a person is legally justified to use deadly force only when faced with the imminent risk of death or serious bodily injury, and only as a last resort. Our common law provides that, when a victim of a violent assault is not at home and can safely retreat and thereby avoid the need to use deadly force against the aggressor, deadly force is not necessary and therefore is not legally justified. The duty to retreat was based on the principle that all human life should be preserved, if possible, even where someone is committing a violent assault against you.

Beginning in 2005, the National Rifle Association began to lobby state legislatures to enact laws that would override the common law and expand the right of self-defense by eliminating the duty to retreat. While under the so-called "castle exception" the duty to retreat did not apply when a victim is in his own home, these Stand Your Grounds statutes make this exception the universal rule, and treat every inch of city street as if it were one's home. There is always a certain macho appeal to the Stand Your Ground laws because they are premised on the view that the only "manly" response to aggression is to hold your ground rather than engage in a "cowardly" retreat. But our forefathers who shaped our common law were no less manly and certainly no more cowardly than we are today, but they did not see the need to justify the so-called "manly" response of standing your ground against aggression; they preferred the sanctity of human life, even where that life belongs to the aggressor. Nor did most police chiefs prefer this more "manly" alternative to the common law of murder, because they recognized that it was preferable for civilian victims of violent assaults to make a tactical retreat in order to give the police time to arrest the aggressor for the assault rather than have another homicide on their streets. Law enforcement officers argued that police were trained to de-escalate encounters with aggressive people, while civilians were not. In at least 21 states, the common law and the police chiefs lost, and Stand Your Ground statutes were enacted and overrode the common law duty to retreat.

As the police chiefs predicted, there is evidence that the "Stand Your Ground" statutes have been used to justify killings in a variety of tense situations: gang turf battles, back yard disputes between neighbors, road rage incidents, arguments among drug dealers. In Florida, since the law was passed, the number of homicides described as justifiable has nearly tripled. After all, if you kill someone during a violent encounter and no one else saw the killing or is willing to say what happened, who will be there to rebut the killer's claim that he acted in self-defense. With a duty to retreat, a prosecutor can point to the location and circumstances of the killing and argue that the killer had an alternative of retreat that would defeat the claim of self-defense. Where retreat is not required, defeating such a claim beyond a reasonable doubt is a

much more formidable challenge where there are not other witnesses willing to describe what happened to trigger the killing.

Anecdotal evidence of the real world consequence of the Stand Your Ground laws, however, will probably not be persuasive to a legislature considering repeal of such a law. Hard data from carefully prepared studies might be more persuasive, and the Department of Justice is uniquely positioned to commission such empirical studies. The National Institute of Justice needs immediately to study these laws and determine whether they deter aggressors from initiating acts of violence, or more often encourage acts of violence by persons who otherwise could have walked away from their aggressor.

Third, perhaps the most shocking aspect of this tragedy is the apparent failure of the Sanford police department to investigate this homicide when it occurred. As best I can tell, the Sanford police department accepted the explanation of George Zimmerman that he acted in self-defense and took no steps to determine whether the other evidence in the case corroborated or was in conflict with his explanation. The police did not interview all the eyewitnesses to the encounter; they did not conduct an autopsy of the victim; they did not track down the victim's cell telephone, check his cell telephone records, or speak with those he spoke with just before his death; they did not compare his account with the 911 calls that described the encounter; they did not ask the assailant to provide a blood sample that would enable a toxicologist test to determine whether he was under the influence of alcohol or drugs; they did not take his clothes to conduct forensic tests.

The Department of Justice should establish protocols for state and local police departments to follow in the investigation of every homicide, even a homicide that appears to have been in self-defense. The police should never rely on the word of the killer without thoroughly investigating the case to determine whether the eyewitness and physical evidence confirms or contradicts the killer's account of events.

We sadly cannot bring Trayvon Martin back from the dead, but we can take steps to ensure that he did not die in vain. If a national community-policing center- policing resource and training center can emerge from his death, if empirical studies can be commissioned by the Department of Justice examining the practical consequences of the Stand Your Ground laws, and if Department of Justice protocols can be established for state and local police departments governing the minimum investigation required in any homicide, then this Congress can justly say that it made an enduring memorial to the legacy of his tragic death and perhaps spared other families the grief of losing their child to a killing supposedly committed in self-defense.

