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Testimony of Sherrilyn Ifill
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Before the United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on
“Stand Your Ground’ Laws: Civil Rights and Public Safety
Implications of the Expanded Use of Deadly Force”
Dirksen Senate Office Building
Room 226
October 29, 2013

On behalf of the NAACP Legal Defense & Educational Fund, Inc. (LDF), I am pleased to offer this written testimony in connection with the hearing on so-called “Stand Your Ground” laws. We urge you to address the significant civil rights and public safety concerns presented by Stand Your Ground laws. Although these laws may have been enacted to provide law-abiding citizens with a necessary tool for self-protection, research and experience demonstrate that, in practice, Stand Your Ground laws have the paradoxical effect of increasing the risk of violence. Specifically, Stand Your Ground laws have been proven to be uniquely vulnerable to racial bias and, as a result, jeopardize the safety and well-being of communities of color; foster, instead of ameliorate, the exercise of lethal force in the states in which they exist; and undermine the efforts of law enforcement to prevent and deter violence. Because the deleterious effects of these laws implicate core principles of equal justice and threaten the legitimacy of the criminal justice system, LDF believes that Congress should encourage states to abandon these misguided laws and instead adopt reforms that appropriately regulate the use of force and improve public safety for all communities.

LDF is the nation’s first civil rights law firm. It was founded in 1940 by Charles Hamilton Houston and Thurgood Marshall to redress injustices caused by racial discrimination and to assist African Americans in securing their constitutional and statutory rights. For over seven decades, LDF has worked to eradicate the influence of race on the administration of justice. Thus, LDF has consistently advocated for pragmatic reform of laws, policies, and practices that impose a

disproportionately negative impact on communities of color and frustrate the proper functioning of the criminal justice system.

At their inception, Stand Your Ground laws were heralded as moderate reforms of self-defense laws that would offer necessary protection to law-abiding individuals who defended themselves against violent attacks.¹ Functionally, these laws expand the traditional notion of self-defense by eliminating the duty to retreat in the face of a threat and, instead, permit the use of deadly force where there is a reasonable belief that such force is necessary to prevent bodily harm or the commission of a forcible felony.² Pursuant to Stand Your Ground, the exercise of deadly force in defense of persons or property is presumed to be reasonable, and in many states those who are found to have used such reasonable lethal force are immune from criminal prosecution and civil actions.³ Thus, unlike traditional self-defense laws that mandate a retreat from violence, Stand Your Ground laws *encourage* the use of deadly force when there is a reasonable belief that such force is necessary, even if retreating is a viable option.

Unfortunately, stereotypes and biases linking race, criminality, and dangerousness influence the life-and-death judgments about whether deadly force is needed to meet a perceived threat in ways that repeatedly lead to the unjustified use of lethal force.⁴ For example, psychological research shows that false

¹ See, e.g., *Florida Members! Restore Your Right to Self-Protection*, Nat'l Rifle Assoc. Inst. for Legislative Action (Feb. 4, 2005), <http://www.nraila.org/legislation/state-legislation/2005/2/florida-members!-restore-your-right-to.aspx?s=Castle&st=&ps=>

² See, e.g., Fla. Stat. Ann. § 776.013 (West 2013).

³ See, e.g., Fla. Stat. Ann. § 776.032 (West 2013).

⁴ L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 Iowa L. Rev. 293, 307-310 (2012) (explaining that individuals rely on stereotypes

stereotypes linking African Americans with criminality are pervasive and often unconscious.⁵ Although the largest percentage of criminals and convicts in the United States are white, the common perception remains that African Americans perpetrate the majority of crime.⁶ African Americans are more likely than any other racial or ethnic group to be characterized as violent or aggressive by the general public and the media.⁷ Even those who do not consciously harbor negative associations between race and criminality are regularly infected by unconscious views that equate race with violence:⁸ indeed, the vast majority of Americans perceive the same behavior as more threatening when performed by an African American than by a white person.⁹

when attempting to predict the likelihood that another person poses a threat because of a cognitive preference for intuition over rational judgments); Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. Personality & Soc. Psychol. 5, 15 (1989), [https://myweb.space.wisc.edu/wtcox/web/trishpubs_files/Devine%20\(1989\).pdf?uniq=-c4okl9](https://myweb.space.wisc.edu/wtcox/web/trishpubs_files/Devine%20(1989).pdf?uniq=-c4okl9).

⁵ Richardson & Goff, *supra* note 4, at 310-11.

⁶ Kelly Welch, *Black Criminal Stereotypes and Racial Profiling*, J. of Contemp. Crim. Just. vol. 23 no. 3 (Aug. 2007), at 276-88, <http://www.sagepub.com/gabbidonstudy/articles/Welch.pdf>.

⁷ *Id.*

⁸ Devine, *supra* note 4, at 7. See generally Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 Group Dynamics 101 (2002).

⁹ See Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. Personality & Soc. Psychol. 590, 595 (1976) (finding that 75 percent of individuals observing an African American shoving a white person thought the shove constituted “violent” behavior, while only 17 percent of individuals observing a white person shoving an African American characterized the shove as “violent” behavior and 42 percent characterized the interaction as “playing around”). See also H. Andrew Sagar & Janet Ward Schofield, *Racial and Behavioral Cues in Black and White Children’s Perceptions of Ambiguously Aggressive Acts*, 39 J. Personality & Soc. Psychol. 590, 596 (1980) (finding that both African-American and white children tended to rate relatively innocuous behavior by African Americans as more threatening than similar behavior by whites).

These false, preconceived notions can – and do – lead individuals to mislabel innocent behavior as criminal or violent and, thus, respond with deadly force. Young African-American men, in particular, are vulnerable to violence committed by individuals who – relying on false stereotypes that link race with criminality – mistakenly perceive them to be dangerous.¹⁰ Tragic examples of this phenomenon abound.¹¹ The recent shooting death of Trayvon Martin at the hands of George Zimmerman dramatically highlights the relationship between implicit racial biases and the improper use of lethal force. Mr. Zimmerman viewed Trayvon – an African-American youth who was walking home from the store in the rain, wearing a hooded sweatshirt and carrying candy and iced tea – as a dangerous criminal. In the absence of any objective evidence to confirm that view, Mr. Zimmerman relied solely on his intuitive assessment that Trayvon “looked like he was up to no good.”¹² After a brief altercation, Mr. Zimmerman shot Trayvon in the chest, claiming afterwards that he fired his gun in self-defense.¹³

¹⁰ Sophie Trawalter et al., *Attending to Threat: Race-Based Patterns of Selective Attention*, 44 J. Experimental Soc. Psychol. 1322 (2008) (“There is overwhelming evidence that young Black men are stereotyped as violent, criminal, and dangerous . . . both implicitly as well as explicitly.” (citations omitted)).

¹¹ See, e.g., Lizette Alvarez, *Murder Charges Upgraded in Florida Killing of Youth*, N.Y. Times, Dec. 14, 2012, at A11 (17 year old African-American youth shot and killed after argument about loud music); Patrick Michels, *Joe Horn and Five Years with the Texas Castle Doctrine*, Texas Observer, May 8, 2012, <http://www.texasobserver.org/joe-horn-and-castle-doctrine-shootings-in-texas/> (15 year old African American child shot by a Texas man who assumed teenager was a burglar); Stephen P. Garvey, *Self-Defense and the Mistaken Racist*, 11 New Crim. L. Rev. 119 (2008) (describing the shooting of four unarmed African-American men in New York City by Bernie Goetz).

¹² Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not-Yet-Post-Racial Society*, 91 N.C. L. Rev. 1555 (2013).

¹³ *Id.* at 1558.

Given the pervasiveness of implicit racial biases, Stand Your Ground laws have produced stark racial disparities in the full range of homicide cases. For example, homicides of African Americans committed by whites are more likely to be declared justified in Stand Your Ground states than in jurisdictions without Stand Your Ground laws. Thus, in Stand Your Ground states, over 1 in 6 homicides of African Americans committed by whites – 16.85 percent – are deemed justified.¹⁴ In non-Stand Your Ground states, however, only 9.5 percent of such homicides are classified as justifiable.¹⁵ While there is no evidence to suggest that whites facing deadly force by an African American are more likely to act reasonably than African Americans facing deadly force by a white person, the immunities provided by Stand Your Ground laws appear to disproportionately benefit whites who kill African Americans.¹⁶ And these are exactly the kinds of racial disparities that contribute to

¹⁴ These estimates were calculated using data from the Federal Bureau of Investigations Supplementary Homicide Report, as compiled by John Roman, a senior fellow in the Justice Policy Center at the Urban Institute. Mr. Roman recently published a study on race and justifiable homicide that explores the racial disparities produced under Stand Your Ground laws. John Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute, 7 (July 2013), <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

¹⁵ *Id.* Notably, there is essentially no difference in the percentage of homicides of whites committed by African Americans that are classified as justifiable in Stand Your Ground states (1.4 percent) and non-Stand Your Ground states (1.13 percent).

¹⁶ *Id.* at 5-6. Mr. Roman controlled for a range of factors, including whether a handgun was used, whether there was a single victim or a single shooter, the region of the country where the homicide occurred, the year, the age of the victim, the age of the offender, and whether the offender was older than the victim. No variable other than race explained the disparities found in the outcome of homicide investigations in Stand Your Ground jurisdictions.

the pervasive sentiment in communities of color that African Americans and other communities of color do not receive fair treatment in the criminal justice system.¹⁷

Furthermore, although Stand Your Ground laws were promoted as deterrents to violent crime, they appear to actually foster violence and hamper law enforcement efforts to secure public safety. By nearly eliminating the cost of using lethal force, Stand Your Ground laws incentivize the regular use force.¹⁸ As a result, controlling for other factors, states with Stand Your Ground laws experience significantly higher rates of homicide than states without such laws.¹⁹ Furthermore, since they were first introduced in 2005, Stand Your Ground laws have induced over 3,000 additional homicides across the United States.²⁰ While some of these homicides may have been justified, economists believe that at least half were not.²¹ Thus, an undeniably negative consequence of Stand Your Ground laws appears to be an increase in homicides without any deterrent effect on other forcible felonies, such as burglary, robbery, and aggravated assault.²²

¹⁷ In a July 2013 poll by the Washington Post and ABC News, a majority of adults of all races opined that racial minorities received unequal treatment in the criminal justice system. Sixty-eight percent of non-white adults expressed that opinion, including 86 percent of African Americans. July 2013 Washington Post-ABC News Poll, *Q: On another subject, do you think blacks and other minorities receive equal treatment as whites in the criminal justice system or not?*, Wash. Post, (July 26, 2013), http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/07/22/National-Politics/Polling/question_11458.xml?uuid=xlqfYvLnEeKEZFflevhikA#.

¹⁸ Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, forthcoming in J. Hum. Resources (2012), at 28, available at http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf.

¹⁹ See *id.* (detailing a net 8 percent increase).

²⁰ *Id.* at 28.

²¹ *Id.* at 25-27.

²² *Id.* at 16-18.

Once a homicide does occur, Stand Your Ground laws weaken the capacity of the justice system to enforce laws against violence. Stand Your Ground laws create additional burdens for criminal investigators who must collect evidence to disprove self-defense claims in any incident involving the use of force.²³ Moreover, because Stand Your Ground laws presume the use of deadly force is reasonable, law enforcement officers may only conduct a cursory investigation of an incident when, at first blush, the lethal actions taken to meet a perceived threat appear warranted.²⁴ The failure to thoroughly investigate would, in turn, hobble prosecutors' ability to make a full presentation of the facts at subsequent proceedings.

By any measure, Stand Your Ground laws undermine the fair and proper administration of justice, and merit serious attention and legislative action. Congress, therefore, should take a number of steps to address the adverse consequences of Stand Your Ground laws through federal funding mechanisms. For example, Congress should require states to collect and report data regarding the application and implementation of Stand Your Ground laws. This would include, but not be limited to, data concerning the number of homicides justified by Stand Your Ground laws and the race of the victim and shooter in such homicides. In addition, through grant money administered by the Department of Justice, Congress should require the training of state and local law enforcement that promotes fair enforcement of criminal laws (including Stand Your Ground laws where they exist),

²³ Stephen Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine: Implications for Policy and Practice*, Nat'l Dist. Attorneys Assoc., Mar. 2007, at 9, 11, <http://www.apainc.org/files/DDF/Castle%20Doctrine.pdf>.

²⁴ *Id.* at 9.

violence reduction strategies, and efforts to reduce racial disparities in the criminal justice system. LDF strongly urges Congress to consider these and other measures to address the significant and troubling concerns raised by Stand Your Ground laws.

Thank you for the opportunity to submit this statement.