

# OPINION & COMMENTARY

FROM DAILY BUSINESS REVIEW EDITORS & GUESTS

COMMENTARY Philip Gerson

## 'Stand Your Ground' law confounds common law tradition

The cliché, "if it ain't broke don't fix it," says it all about the long history of common law permitting use of violence for reasonably perceived self-defense.

Before law students have finished one year of study they have learned that hundreds of years of well-reasoned jurisprudence produced a sensible morally correct rule for when violence is protected by the common law.

The force needed to protect human life from a reasonable expectation of imminent harm rationalizes a measured level of violent defense of self or others. But, use of violence not necessary to protect life and prevent serious harm was not justifiable and therefore not protected with any immunity, civil or criminal.

For centuries this has been the accepted morality on which common law was based. There is no evidence to suggest, much less prove, that this cardinal limitation on the right to use force in self-defense is not enough to deter crime and protect life and property. Neither newspapers nor law books are filled with examples of unjust results for threatened persons acting excessively and beyond the law to defend life or property. Simply put, there was no problem to fix.

So why did we need to enact new laws which redefine self-defense to "stand your ground?"

There is no evidence,

despite its macho title, that this statute was based upon instances of Florida citizens afraid to use force to prevent serious bodily harm. Challenge this writer if you can with evidence of victims retreating because the law inhibited reasonable use of force to defend. I boldly assert and stand prepared to refute any such claims.

Politics, at its most perverse, has given way to the irrational legitimacy of the National Rifle Association. Whatever that organization might really embrace, it has hijacked Republican-supported public policy for decades, even though most Americans cannot identify or explain who or what the NRA really is.

Yes, we have had a few celebrity spokespersons, admired for their machismo; Charlton Heston, Chuck Norris, and others who became icons for the arm America movement. However, most social science and law enforcement studies, specifically, those sponsored and cited by the Brady Center to Prevent Handgun Violence, have shown that handguns and automatic weapons in the hands of ordinary people lead to exponentially more harm than good. Don't mass murder in movie theaters prove this truth?

In Florida, nobodies, particularly Marion Hammer, a self appointed activist lacking any academic research or statistical evidence, have spun rhetoric to legitimize a movement to expand gun ownership, eliminate regulation, and just recently, even to intimidate physicians about questioning



Marion P. Hammer, shaking hands with former Governor Charlie Crist, was the first female president of the National Rifle Association and has been the NRA's lobbyist in Tallahassee for more than three decades.

patients if there is a firearm in the household. If there is rank and file of the NRA nobody has ever seen them publicly.

The images of the above mentioned public spokespersons and the voice of Ms. Hammer are the only public face of this nefarious pro violence ideology. Who are and where is the real leadership?

The "Stand Your Ground" law has prevented no unjust conviction which otherwise would have occurred for a violent defense against a criminal actor. Instead it is opposite to the interests of our society. Prosecutors are intimidated by this so called reform. And, these public servants are not easy to intimidate.

But, now they must grapple with a new legal concept which could not have been enacted unless our legislators intended to change the self-defense

rules. Likewise, judges, all of whom unmistakably understood the historical place for self-defense in the common law tradition, now must struggle to put meaning into this legislative error.

Every judge is required to find a way to give meaning to the change so the "Stand Your Ground" defense can be applied to present cases. After all, if

it was enacted and passed by the Florida Legislature, even though they are mostly political surrogates for the invisible force of the NRA, it must have changed something and to do their jobs prosecutors and judges are challenged to find how something is different now from what we had before. Likewise criminal defense lawyers are clueless to put meaning to legislative change. Ethically bound to use all legal means to defend criminally accused they assert the "Stand Your Ground" statute in desperate claims to defend harmful and too often fatal violence. This dynamic results in illogical and often absurd outcomes otherwise competent and intelligent judges reach in their struggle to give meaning to a changed self-defense law. It is reported that since passage in 2005 SYG has been asserted

over two hundred times in Florida courts. Travon Martin is only the best known case. A killer chased an acknowledged thief hundreds of feet from his home, stabbed him to death and a good judge dismissed the homicide charge. In another case, a teenager shot a thief in the back of the head even though the thief was standing on a seawall facing away from the home and no charges have been brought. So, what right thinking people always have recognized as criminal, must now be re-focused through the lens of "Stand Your Ground". Because they fixed something that wasn't broken the Florida Legislature and Governor have turned hundreds of years of sensible law upside down so criminal acts can become legal behavior.

The ripple effect extends protection and immunity for violence which our society would never have tolerated before. The new commission stocked with the sponsors of this foolish legislation are now charged to study the operation of the new law. They are a poster child movement for a solution in search of a problem. Surely, they will blame the legal system — not themselves.

The nefarious NRA is the worst enemy of a peaceful civilized society and must be stopped. If our elected officials won't repeal this NRA dogma, we must elect new politicians to office.

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