

Testimony on House Bill 371
House Criminal Justice Committee
Rep. George F. Lang, Chair

Submitted by:
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Chair Lang and members of the committee, thank you for allowing me to submit this testimony on House Bill 371. My name is Randolph Roth and I am Professor of History and Sociology at The Ohio State University. I study the history of violent crime and violent death in the United States, from colonial times to the present; and I served as a criminologist on the recent National Academy of Sciences Roundtable on Crime Trends over the past thirty years. The research that my colleagues and I have done as social scientists and historians on firearms is clear: guns are not the fundamental reason why America is by far the most violent affluent society in the world. We even beat our children to death at the highest rate. But the fact that so many Americans own and carry guns (particularly modern handguns) has made violence in this country worse than it would otherwise be. We need to establish a better balance between rights and responsibilities when it comes to firearms. Sensible regulations on firearms ownership, carrying, storage, and technology would make our society less violent, even if it would not eliminate violence altogether.¹

When it comes to so-called “stand your ground laws,” our research is clear as well. These laws have always caused deaths—a lot of deaths. There is no way to sugar-coat that. These laws—and the inability of so many American men to walk away from a fight or an argument, even when it would be easy to do so—have killed a lot of people needlessly since the nineteenth century, when such “laws” first appeared, by way of rulings by jurors and state Supreme Courts.

These laws changed both the character of fights and the attitudes of the criminal justice system toward such fights.²

David Humphreys and his colleagues proved, in an article published in the *Journal of the American Medical Association*, that Florida's passage of a "stand your ground" law led immediately to a substantial increase in homicides in that state.³ These homicides can be tied directly to the passage of the law, because the law sanctioned—as such laws and court rulings have since the nineteenth century—the pre-emptive use of force in confrontations that could have either de-escalated or been completely avoided when one person—the one who later swears that he was afraid and thus justified in killing—just walks away.⁴

In 2019 historian Jeffrey Adler published a study of violence and criminal justice in New Orleans in the early 1920s. The murder rate there was astronomical, and jurors, backed up by rulings by the state's Supreme Court, lowered the bar for claims of "self-defense" and allowed an assailant to kill an unarmed adversary with a handgun from 20 or 30 feet away, even if the assailant instigated the confrontation and forced their adversary to issue threats in defense of their own honor.⁵ Not surprisingly, the vast majority of murderers in New Orleans faced no legal sanction whatsoever. All they had to say is that they "felt threatened," or that they "thought" their adversary had a weapon, or that they "thought" their adversary was moving a hand toward a belt or pocket where a concealed firearm could have been kept. As Adler discovered, only one of every seven men (counting both black and white assailants) arrested for killing a man was found guilty of anything, even of a lesser charge like felonious assault. They got away with taking a life, even though in the vast majority of these deadly confrontations, the assailants instigated the confrontation and could have walked away at any time. And for white men only? Of those who

killed someone other than a spouse (which was still frowned upon as an unmanly act), only one in nine were convicted; and only one in forty of the defendant claimed “self-defense.”⁶

Our situation is not as dire today as it was back then in New Orleans. Violence was worse, and the criminal justice system was weaker. But we still face a situation in which most killers face no legal penalty, because our jurors and legal institutions too often sanction the unnecessary use of violence and because people sometimes refuse to testify against men who kill in situations that don’t fit the legal definition of self-defense. So-called “stand your ground” laws and court rulings have just made prosecutions against illegitimate uses of violence more difficult.

I have studied thousands and thousands of homicides, attempted murders, and aggravated assaults over the course of American history, from colonial times to the present. And my colleague at Cleveland State University, Wendy Regoeczi, and I are creating a comprehensive database on homicides in Ohio from 1959 to the present—the first state-level database to be based on multiple sources. Our goal is to count more accurately the number of homicides that have occurred since World War II and to understand better the character and circumstances of those homicides. Our evidence to date shows that thousands of homicides that have occurred in Ohio over the past sixty years have occurred under circumstances that the proposed “stand your ground bill” hopes to sanction—confrontations in which the person who took a life could have walked away. The number of Ohioans who have been killed in bar fights or road rage incidents is remarkable. And in all too many cases, the person who used deadly violence unnecessarily sought legal protection in the claim that they felt threatened or thought the other person was armed. In fact, it’s hard to find an aggressor in Ohio who *didn’t* believe he was the victim, that he was the one under threat, that he was the one acting in self-defense, when the evidence showed the opposite was true. What was really at issue in nearly all of these confrontations,

however, was reputation—the fear that you would be seen as “less of a man,” if you walked away.

There is no question that we need laws to protect Americans who kill in self-defense. We live in by far the most violent affluent society in the world. Predatory violence is a daily occurrence—sexual assaults, robberies, home invasions. And some Americans, because of our occupations or the neighborhoods in which we live, face a far greater risk of such violence than others. But we have laws, sound laws, to protect Americans who kill in self-defense. We don’t need laws to protect Americans who kill in situations from which they could walk away. I urge you to oppose SB 237.

¹ Randolph Roth, *American Homicide* (Cambridge: The Belknap Press of Harvard University Press, 2009); and Roth, “Why Guns Are and Are Not the Problem: The Relationship between Guns and Homicide in American History,” in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019), 113-133.

² Richard Maxwell Brown, *No Duty to Retreat: Violence and Values in American History and Society* (New York: Oxford University Press, 1991), 3-37. In the nineteenth and early twentieth centuries, the doctrine of “no duty to retreat” was enshrined in American law not by legislation, but by the decisions of jurors and lower courts, which were upheld in the rulings by state Supreme Courts, including Ohio’s in 1876. The current “stand your ground” movement seeks to codify in legislation the rulings that Supreme Courts in Ohio and elsewhere have already handed down. Until recently, state legislatures balked at granting American gun owners an explicit license to kill in circumstances where retreat was possible, because such license was contrary to the basic tenets of Christianity. That is why legislatures left the matter to the courts, until the Florida legislature passed a “stand your ground” law in 2005.

³ David K. Humphreys, Antonio Gasparrini, and Douglas J. Weber, “Evaluating the Impact of Florida’s ‘Stand Your Ground’ Self-Defense Law on Homicide and Suicide by Firearm,” *Journal of the American Medical Association* 177:1 (2017: 44-50).

⁴ David K. Humphreys, Antonio Gasparrini, and Douglas J. Weber, “Association between Enactment of a ‘Stand Your Ground’ Self-Defense Law and Unlawful Homicides in Florida,” *Journal of the American Medical Association* 177:10 (2017: 1523-1524).

⁵ Brown, *No Duty to Retreat*, 3-37.

⁶ Jeffrey S. Adler, *Murder in New Orleans: The Creation of Jim Crow Policing* (Chicago: University of Chicago Press, 2019).