



## *Trayvon shooting doesn't justify a return to 'duty to retreat'*

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By Walter Olson

It's natural to feel confused about whether Florida's "stand your ground" law applies in the [Trayvon Martin](#) case. Craig Sonner, attorney for shooter George Zimmerman, reversed himself on the topic within hours this weekend, first telling [CNN](#) his client would not invoke the 2005 law, then telling [ABC](#) he would.

So what gives?

Let's start with one of the most common misreadings of the law, namely that (in the words of [Washington Post](#) columnist E.J. Dionne) it sets out a rule of "Feel threatened, just shoot." Florida law justifies lethal self-defense in a public place only under reasonable belief that force is necessary to prevent imminent death or great bodily harm.

Belief that's not reasonable is of no account. No wonder, according to Sentinel reporting, Central Florida police regularly arrest people who try to claim self-defense after committing violent acts, and courts regularly convict them. That's consistent with the "stand your ground" law.

The best-known provision of "stand your ground" rejects the so-called "duty to retreat." Under that rule, prosecutors could sometimes overcome an otherwise valid claim of self-defense by arguing that you could have safely fled your attacker.

But — to clear up another misconception — the old duty of retreat would not have put Zimmerman at fault for following Trayvon around the neighborhood. Instead it came into play only when a confrontation had boiled up to a point of imminent violence.

In addition, Florida's "stand your ground" law preserves a key part of the old duty to retreat: Someone who provokes a quarrel must indeed seek escape or disengagement before resorting to force. So if Zimmerman is found to have initiated the fight with Trayvon, he loses the benefit of the 2005 change.

How would the law work if instead, as Zimmerman claims, Trayvon started the fatal confrontation by jumping him?

Even under the old retreat duty, prosecutors needed to show your route of escape was truly safe; the rule did not require you to turn your back on someone who might well catch up and do you harm. By many accounts, Trayvon had the upper hand in the scuffle between the two before the gunshot (according to his attorney, Zimmerman had a [broken nose](#)).

If Zimmerman claimed he had no safe way to disengage from the beating, prosecutors might have had trouble establishing the "safe line of retreat" required under the old law.

There's a pattern here. If Sanford police lacked probable cause to charge Zimmerman under the post-'05 law, they most likely also lacked probable cause under the older law. (Whether they should have worked harder to develop evidence of probable cause is a separate question.)

As UCLA law professor Eugene Volokh argues — and contrary to many press accounts — "most American states rejected the duty to retreat even before the recent flurry of new 'stand your ground' laws." At this point, a large majority of U.S. states join Florida in rejecting the duty, which still prevails in England and elsewhere.

All that said, one relevant provision of "stand your ground" does call for scrutiny. The 2005 law couches the self-protection right not as a defense to prosecution but as an immunity.

That dry-seeming lawyerly change shifts the dynamic in several ways, and specifically bars arrest until there is probable cause to refute a self-defense assertion. And a variety of other disputed "stand your ground" provisions probably deserve a second look, including widened rights to use force in defense of third parties, in cars, and against imminent nonviolent felonies.

But bringing back the duty to retreat? At best, case not proved.

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