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HB 1319

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Bill/Resolution No. HB 1319

House Judiciary Committee

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Minutes:

Chairman DeKrey: We will open the hearing on HB 1319.

Rep. Todd Porter: I am the sponsor of this bill, and explained it. This bill deals with the duty to retreat. Currently in the Century Code, 12.1-05-07 that says it is an individual's duty to retreat. This bill strikes that duty to retreat. Basically it says that you can stand your ground and defend yourself if you or your family are threatened. The other portion of the bill in section 2, talks about the presumption of fear, death or serious bodily injury and puts into code those particular portions. The third section talks about the immunity from criminal prosecution in the use of justifiable force. Currently the way the law is now, if an individual uses deadly force to protect themselves or their family, they are at risk of being brought up on charges. The last instance that I was aware of, was an incident that happened over in Mandan, where a 54 year old man shot two men at a house while they were at a party. The Morton County State's Attorney filed charges against him, a class C felony. The case went all the way to the judge and the judge had to throw the charge out for self-defense. I think that when you look at this particular language in the bill, that it should be the exact opposite. The person who is defending himself should be innocent until proven guilty. Not guilty because they shot someone and then proven innocent. I think that this law changes that so that we're looking at

a situation of self-defense for that individual. The police and state's attorney still have their duty to do their investigation and show what happened in that situation. But the individual who is defending themselves also has the right to be free and not have the charges brought against him.

Rep. Dahl: In section 3, the blanket immunity, who decides what is justifiable or not.

Rep. Todd Porter: They are immune as long as it was justifiable. In subsection 2, they may use standard procedures for investigating the use of the force, but they may not arrest the individual unless it has been determined that there is probable cause that force was used unlawfully.

Rep. Griffin: Would this duty to retreat be removed from all circumstances.

Rep. Todd Porter: Yes, it would.

Rep. Koppelman: I see on the top of page 2 of the bill, it says that an individual does not have the duty to retreat if the individual is in a place where that individual has a right to be. That would imply that in some cases, where an individual would have the duty to retreat.

Rep. Todd Porter: It was my understanding in discussions with the AG's office that is probably a typo. I think we may need a subcommittee to clean up things that the AG's office has recommended and that is one of them.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Ron Carlisle: I am a sponsor. This bill is a citizen's version of Homeland Security.

Chairman DeKrey: Thank you. Further testimony in support.

Rick Jorgenson: (see attached testimony).

Rep. Onstad: On page 3, line 16 it talks about "defensive force", does that mean any kind of defense, shooting, using a 2x4, etc.

Rick Jorgenson: Yes, if you have a baseball bat handy and you smack somebody with it, that's deadly force. I don't think it has to be with a firearm or anything like that. Many people don't have a firearm at home.

Rep. Onstad: So you're saying that would be justifiable.

Rick Jorgenson: Yes, I believe so.

Rep. Onstad: On line 17, so if you use defensive force, "an unlawful and forcible entry". Can you just end it right there, so you're saying it's okay to shoot first and ask questions later.

Rick Jorgenson: Well, I think that the bill intends to set forth the conditions under which you can use deadly force. Those conditions are outlined in section 2, #1 here in the beginning, that an individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if: the individual against whom the defensive force was used was in the process of unlawfully and forcibly entering, the home or automobile. So in that circumstance, yes, you would assume that this individual, you have the reasonable assumption that he has broken into your home and he's going to continue with his forceful activity.

Rep. Klemin: On page 1, the language that was stricken, relates to the duty to retreat or try to cause the other person to retreat first. From the standpoint of someone in their home, your average citizen, I don't know if they understand that they've got some kind of duty to try and talk someone out of coming in or whatever. I really don't know how much time you have to think about this either under these circumstances. Would you care to comment on that.

Rick Jorgenson: My position on this is the same as you just brought out. That is, if you are confronted with this kind of a forceful entry, you don't have a lot of time to have a dialog with a person who is entering your home. I'm not saying you can't talk to them, but it's not likely to be a long discussion. You're going to be placed in a very stressful situation, none of us outside of

law enforcement have ever been trained for. It's quite scary. If the person is familiar with the law, they are really in a bind. There's supposed to back up or retreat in some manner. I don't know if they ever planned how to do that. I think in most instances, what you are going to find is an individual who's not familiar with the law, if he's in a position to confront his attacker, he's probably going to confront the attacker. The person who is not willing to do that, is still going to retreat, and hopefully be successful. To put the person who is able to defend himself, in a position where they have to move back or retreat before they defend themselves, puts that person at a disadvantage. I just don't think that's appropriate when this perpetrator has entered your home by force, and placing you as a defender in a position of having to retreat. Retreating is wrong.

Rep. Charging: On page 1, the original law states that the use of deadly force is not justified if it can be avoided. Then on the bottom on line 24, the part that was stricken says "no person is required to retreat from his dwelling or place of work unless he was the original aggressor or is assailed by a person.

Rick Jorgenson: My reading of this is as a layperson, I'm not an attorney or judge. But my concern is that if you read that, it says that no person is required to retreat from his home or place of work. That would mean that you would have to vacate your house. I don't think it's reasonable to give up our home to a person like this. If you place yourself in a situation like this and say you have two young children, you're at home, someone breaks into your home, are you going to be in a position to gather your children up and leave your home. I don't think we are. But the first portion up here does require that we retreat. It doesn't explain how we're supposed to do that, and I don't believe we are going to be in a position to gather up our children and leave our home. We're going to have to make a decision on defending ourselves. I think that should be an individual's decision. Some people could defend themselves with a

baseball bat, some people would run into a room and close the door, and hopefully lock the door and successfully weather the break-in. Other people may feel that they are unable to do that, if they move to their bedroom, what about your kids in the other bedroom. I think it is a tough situation when you're asked to retreat, or demanded to retreat. If the person did confront this individual, and you had two children at home, and you were at home and you confronted the individual and you used deadly force to stop them. You could still be charged because you didn't retreat, this individual or his family could bring a lawsuit against you and say you operated outside the law, and then you have to defend yourself. I think you would be successful under current law, but why should you have to do that. Why should you have to defend yourself in this circumstance where it's obviously reasonable that you defended yourself.

Chairman DeKrey: Thank you. Further testimony in support.

Darrin Dohns, NRA: I am here to testify in support (see attached testimony).

Rep. Koppelman: In the states where this has passed, in the 15 states, have you heard about any cases where it has been abused, where someone has claimed this right saying I was defending myself, but in fact they were the aggressor. Is that an issue.

Darrin Dohns: Yes, I believe that there were some cases where criminal on criminal and there was a shooting in FL and they made the defense, and in those cases the self-defense claim was dismissed and the person was prosecuted.

Rep. Koppelman: So you don't know of any case where you feel that a miscarriage of justice actually took place because the state had this law on the books.

Darrin Dohns: On the flip side, there is a miscarriage of justice on the individuals who are being falsely charged with murder.

Rep. Koppelman: I'm saying no one has successfully used this as a shield for violent crimes.

Darrin Dohns: Absolutely correct.

Rep. Dahl: How many states in which similar laws are passed have provided for the immunity section, all of them?

Darrin Dohns: I don't want to overstate it and say all, but certainly most, and possibly all. Most of the states have put the immunity clause in there. I know in ND statute, you already have some civil protection, meaning that if someone breaks into your house, you have civil immunity that they can't sue you if the self-defense claim is valid. This portion of the immunity would strengthen the civil portion, but then also address the criminal immunity as well. Most states contain an immunity provision. There are basically three things that this bill does, it creates the presumption, it extends it outside the home and it grants the immunity. Those are the three main components of most of the legislation that has passed.

Rep. Dahl: Has there been discussion about this being a big policy change.

Darrin Dohns: No, not necessarily, in case law, you have an entire process in place, but they rely on it when they get to the trial phase of it. This simply puts it in statute, so that you still have the state's attorney reviewing it on a case by case basis and decide whether or not to charge the person. Obviously, if it's clear cut whether you are in your home and somebody comes in with a sawed off shotgun and you shoot them in defense of yourself, and the police officers show up and they look at the evidence, and it's clear or have witnesses, yes then the police officer probably wouldn't even arrest them.

Rep. Klemin: I have a couple of questions. First of all, this creates a presumption; this is a rebuttal presumption, correct.

Darrin Dohns: Correct.

Rep. Klemin: Who has the burden on proof on this presumption.

Darrin Dohns: The presumption means that when breaks into your home, the presumption is in favor of the victim, the person who was defending themselves. So the prosecuting attorney needs to show that there is a reason to charge them, that there is a likelihood that they would be convicted based on the evidence that the person took the wrong action. The presumption is that the person breaking into your home is there to do no good and to harm you; rather than someone is coming in, maybe I should investigate and quiz them while they are here. So the presumption would be with the homeowner and the burden of proof would be on the prosecutor to show that there was criminal intent.

Rep. Klemin: Whereas under existing law, we have this as an affirmative defense where the homeowner, who's actually a victim, has to come forward and prove that he was acting reasonably. Is that correct.

Darrin Dohns: I would say that is absolutely true. Basically the presumption is on the victim to prove that I was acting in self-defense under current law.

Rep. Klemin: On this issue of the immunity part, from criminal prosecution and civil action, do I understand this correctly, that this immunity would be raised as a defense, but you still have to defend yourself, hire a lawyer to raise that defense in a civil action.

Darrin Dohns: Yes, that's true. The cases that we're seeing already, that have been in effect for a year, where these defenses have been raised, absolutely. You just don't get up and say I plead self-defense. That doesn't work. The legal system still goes through the mechanics of determining whether or not that person acted lawfully, in accordance with the new law.

Rep. Klemin: We could still examine whether the presumption should apply or whether immunity really should be given in this particular case.

Darrin Dohns: Correct.

Rep. Klemin: You said this extends outside the home and you were talking about carjacking, or the business.

Darrin Dohns: Those are the two obvious examples because it happens a lot. People's homes are burglarized and we've seen a problem with carjacking. A lot of times, the country has changed considerably in terms of the nature of crime. When a lot of case law was developing, obviously in the 1930 and 1940's people weren't being carjacked. A lot of time statute doesn't reflect that. But that's certainly what we're talking about. Your business, you're closing up late at night and you're being robbed, or you are with your wife and going to dinner and you're at a stop light and somebody sticks a gun through the window. If someone sticks a gun in your window and you pull out a gun and shoot them, you don't know if they were there just to take the car or do worse. You don't know what is in their mind.

Rep. Klemin: For instance, I have an RV. I'm concerned when I'm traveling across country, that you stop at some of these rest areas and I've heard of people breaking into your RV and running off with it with you inside of it. Would this extend also to that situation.

Darrin Dohns: I would say that the laws will work fine here, if you are in the restroom and someone is stealing your RV, unless you're in SD, you can't shoot at them if they are driving away. Under this law, basically if you're under attack, you can defend yourself and your RV. But you aren't allowing people to run after them and shoot them in the back. There hasn't really been a problem with this. I refer back to the concealed carry debate, where they said that this stuff was going to happen. If you talk to most of the instructors, they go through it over and over. They tell you when someone breaks in, you're supposed to tell them to get out of here. You are to do everything that you reasonably can; however, you can't always do that. If they are standing in front of you with a gun, you're not going to have a discussion with them and sometimes you need to act quickly. The bottom line is, whether it is a gun, baseball bat,

knife, people act responsibly. CO has a law which has been in effect since 1985 and there have only been five cases where this has applied. CO has more crime than ND and has only occurred five times. It just goes to show that people aren't just shooting people for no reason. If someone breaks into your home, your business, your vehicle, then this should be on the books to provide them with a defense.

Rep. Klemin: This is more like protecting the good guy for a change, instead of the bad guy.

Darrin Dohns: That's absolutely correct.

Rep. Griffin: There has been a lot of discussion about protecting yourself, your home, your business, do you believe under current ND law that you are justified using deadly force under the current statute.

Darrin Dohns: Under the current statute.

Rep. Griffin: Do you believe there is a duty to retreat from your home or workplace.

Darrin Dohns: The statute is very clear, there is a duty to retreat.

Rep. Griffin: Under subsection c, 12.1-05-07 says a person in possession or control of a dwelling or work place is licensed or privileged to be there they can use that force and protect that dwelling or workplace.

Darrin Dohns: But there is also a section in there that says you have to do everything in your power to resolve it, by making them leave.

Rep. Griffin: Could you point that out.

Darrin Dohns: I read the statute last night and I don't have it in front of me. Your question is if you are the person in the home and you're asking me if they have a duty to retreat. My understanding by this is that yes you do. If you have to take an action first, then if that action fails, then you don't.

Rep. Griffin: What portion of the statute is that it says you have to take an action first.

Darrin Dohns: It says the use of deadly force is not justified if it can be avoided. The very first sentence. So to avoid the defensive use, any prosecutor should say well you should run out the back door. So that, to me, is a duty to retreat.

Rep. Klemin: I think Rep. Griffin was referring to page 2, subsection c and it talks about when a person is in possession of a dwelling, place of work. But there it also says if the force is necessary to...so you have to make a decision there, is this force necessary or not. Would you comment on that.

Darrin Dohns: I read all of this language as it might not be saying the exact words, duty to retreat, but certainly all the language implies that if it's necessary. That means you have to decide whether it's necessary, if at all possible. The language is definitely a subtle implication that there is a duty to retreat.

Rep. Klemin: Not so subtle, because if you read from 2b, it's pretty expressed that you have to avoid it, by retreat or other conduct, I think when you read all of these sections together, that's what it's saying.

Rep. Dahl: That language implies that you have a duty to retreat.

Rep. Onstad: You referred to a case in Mandan. That person was charged because he shot someone. Then in reviewing the evidence they dismissed it because they figured it was self-defense. That's the way the current statute works. If this is adopted, how would that change.

Darrin Dohns: I think that it wouldn't change in terms of the normal review process. However, you probably wouldn't have a lot of prosecutors trying to still stick them with a felony assault charge. In other words, they would look at it, there wouldn't be ambiguity like there is now. They could possibly be charged with that. The review process is still there, it clarifies it and a lot of these cases where they want to charge people, that would probably disappear.

Rep. Onstad: You keep referring to a lot of these cases. Can you cite a current case.

Darrin Dohns: I would say that case is proof that the current system doesn't work. It's ambiguous. The county prosecutor wanted to charge them. Now what if the judge were in the same mindset as the prosecutor. That's why I referred to CO. Folks said we don't need it here. Along comes this case, one prosecutor, one judge. The law's ambiguous and they get charged. We are fortunate that the prosecutor and the judge disagreed in that case. Just the fact that they are disagreeing proves that the law is ambiguous.

Rep. Onstad: So if you go back to the original question, if this was in place, the person in Mandan wouldn't have been charged immediately, or he could have been charged later one.

Darrin Dohns: I would say that he wouldn't have been charged, probably not even arrested because in that case there were several witnesses, that said these guys had assaulted some people at a party, they assaulted him, he acted in self-defense. I think when police came, and law enforcement reviewed the history of the case, he probably wouldn't even have been arrested.

Rep. Onstad: He probably wouldn't or he probably could have. My question is, it always comes down to discretion of probably.

Darrin Dohns: That's what my argument is. We have these protections in case law and if they make sense in case law, why not codify it. That's the simple question that I am putting before the committee. If these have been found in case law, why not put them in statute. To me, statute is law. Yes, there is probably always going to be probably. Our judicial system from top to bottom isn't definitive, and that's a good thing because there should be some review. We're just simply stating that, in this legislation, that there are some presumptions that the presumption goes back to what Rep. Klemin is saying, all of a sudden now they have to prove that you acted irresponsibly and not that you have to prove that you were acting in self-defense. They have to prove that you weren't.

Rep. Onstad: Someone breaks into your home, what do you consider within reason.

Darrin Dohns: If someone breaks into my home, you can defend yourself. They are there to do you no good. They are breaking into your home.

Rep. Onstad: So the question is what is within reason to defend yourself. If they break into your home, does that give you a reason to shoot the person. What part of the defense or what can the person do. He broke into your home and he's running out again, what's within reason. I think he can do whatever he wants.

Darrin Dohns: You switched the scenario on me because in this portion you said he's running away. If he breaks into your home and runs away, no you can't shoot him. If he breaks into your home, you pull a gun, he's standing there, you have a gun, you're threatening him, and he's still standing there, I'm pretty sure that he means you harm. I would say that you would be absolutely justified in defending yourself.

Rep. Onstad: You're home and you have a gun on him, he doesn't have a gun on him, what's within reason. I'm afraid he might come after me. He made no attempt to come after me, it's between you and him.

Darrin Dohns: This goes to prove exactly what I'm saying. A guy breaks into your home, you have or have not a gun, and the guy is standing there in your home, he broke into your home, how do you know he doesn't have a gun. What if he's got one tucked in the back. What if he's got a knife. Law enforcement will tell you that if a guy is within 20 yards of you, he can stab you in a matter of seconds. When law enforcement are faced with these situations, they're told don't take any chances. This is your life, you are protecting your life. He broke into your home. He could have a gun, he could have a knife, he could certainly kill you. If a guy has broken into your home, he there's to do no good. You should be able to defend yourself. Now if you tell him to leave, and he goes out of the front door, you shouldn't be able

to shoot him. If you cock a shotgun, and he doesn't think you are there, and he hears a shotgun being cocked, and he runs out the door, you can't shoot him. Because we've seen this law in effect in several states, in all sorts of different scenarios like you are mentioning that have come up. We just haven't seen homeowners acting irresponsibly and shooting people in the back as they are running away. If they do, they are going to be charged, under current law and they would be charged under this.

Rep. Onstad: If an intruder breaks into your home, and you're there, he has a gun, and there are no other witnesses there, just me and him. I shoot you and then I say, hey he was coming after me, what's reasonable here. It's my word against the dead guy that I just shot.

Darrin Dohns: I think if you ask any North Dakotan if there is a guy laying in a living room with a gun, he broke into your home...

Rep. Onstad: I didn't say he had a gun, he was threatening me...

Darrin Dohns: I mean we can keep going over derivations and scenarios all day. The bottom line is law enforcement is going to review the situation. If someone breaks into your home, whether they have a gun or not, you don't always know that, what if it's in the middle of the night. He's standing there with his gun and do you shoot him or not. Why did the person break into your home. There are 10-15 questions that the homeowner has to ask himself. This law says that somebody shouldn't break into your home. If somebody breaks into your home, they are there to do you no good.

Rep. Onstad: I would agree with that. But you made a statement that it is still going to be presumed, law enforcement is still going to review the issue. We have a law in place that seems to work and in the Mandan case, why is it necessary that we have to change it.

Darrin Dohns: I guess we're disagreeing on what works and what doesn't work. I would say that the current system maybe isn't working because the county prosecutor wanted to charge

this guy and that's because the law is ambiguous. That's my whole argument. There seems to be a discrepancy between the case law and statute. This is simply to put those two in cohesion.

Rep. Delmore: You talked a lot about cars and homes and so on. As I read the top of page 2, an individual does not have the duty to retreat if the individual is in a place where that individual has a right to be. It could be a park, street, as long as I have the right to be there, if I feel scared, I have a weapon, and I think someone is after me, I can turn around and take care of the situation.

Darrin Dohns: That's correct.

Rep. Delmore: Breaking into the house is one thing, but I'm talking about being on the public street. Maybe I'm a nervous person anyway. I have a concealed weapons permit, and my weapon on me.

Darrin Dohns: We are talking about other places. For example, you are out in the woods camping, and you're in your tent, and somebody comes into your camp site and they are drunk, they've got a gun and they're threatening you and your family, that would be a case where it would be applicable where you can defend yourself.

Rep. Delmore: If I'm walking down the street, and I feel that way, and react that way, what if I shoot somebody else as well. Looking at public safety that comes with this too. There are reasons that we pass laws preventing people from bringing guns into schools; things like that for public protection. This just scares me that it opens some things up to that level.

Darrin Dohns: I'm looking at instances of responsibility and the implication is that people aren't walking around with six shooters on their hip down the street and just firing into crowds. We have the concealed carry permit process. The reason that people are walking around, driving around and have firearms, is in case there is a threat. If there is a threat to their life,

somebody sticks a knife to their throat and you are in the parking lot of the bank, or by the ATM in the middle of the night, you certainly should be able to protect and defend yourself. If someone is running away and you're firing into a crowd at the Wal-Mart, I guarantee you that you're going to be convicted. This law gives you no immunity from that.

Rep. Griffin: In Rep. Onstad's example, where you talk about someone breaking into the house, do you believe under current law that he would be justified in using self-defense if somebody broke into your house.

Darrin Dohns: Under current law, I would say that you probably would be vindicated under case law, however, it would depend on the prosecutor, and under the statute, it just isn't clear. I mean it says right in here, that there's a duty to retreat. So if the prosecutor feels that you could have retreated under the statute, they can still charge you.

Chairman DeKrey: Thank you. Further testimony in support of HB 1319. Testimony in opposition.

Ladd Erickson, McLean States Attorney: (see attached testimony). This is a complex matter. Any previous testimony that a defendant has some sort of duty to come into court and prove that they were acting in self-defense or had some other defense isn't correct. If you go through our jury instructions, you will see what they are told. If someone pulls a gun on you, you pull out a gun and shoot them and it turned out to be a plastic gun that was pulled on you, you have a defense under those circumstances under ND law. I'll be frank with the committee. What concerns me about this bill, is that it's not being driven by problems in ND. It's being driven by a national political agenda to go around to states, enact laws to go back to members to say that we're doing things with the money you give us. It seems to me, that when ND has, year in and year out, one of the lowest violent crime rate in the country, that the NRA should be taking our laws, the laws this committee enacts and going to other states with them and

having them enact ours, instead of the other way around. This bill creates a number of things that changes the doctrines of ND that for about 130 years, the work by this committee, our Supreme Court developed. This has become a well settled thing in self-defense here. Cases would come about, the Supreme Court would make a ruling, we would come back to the legislature and we'd refine the issue of when that would be self-defense. You have no duty to retreat from a house under ND law. Any testimony that we can get in trouble in our house by defending ourselves, is correct under ND law. The problem I have we have a current policy in ND that use of deadly force is not justified if it can be avoided. We shouldn't shoot people if we can avoid shooting people. That's being deleted here. That seems inherently ridiculous, and that is being replaced with language that the individual does not have a duty, if that individual is in a place where he has a right to be. You have a right to be in the House Judiciary Committee Room, you have a right to be out on the street. We currently have a much better policy than any state that would be looking at this, is that we should try to avoid shooting people if we can do that. The second thing, is the perception that, on page 4, paragraph 3, an individual unlawfully and by force enters or attempts to enter the dwelling, occupied building is presumed to be doing so with the intent to commit a felony crime of violence. We already have language like that in our current law. I will cite a case here, and this doesn't represent all kinds of cases, the Mandan case I think I remember what happened in that case. I met with the NRA lobbyist last week, and asked him why we need to make such a doctrine change in ND. What case in ND has violated the spirit of the law that needs to be clarified. There wasn't any. It was this other state thing, we should look at other states. Other states may self-defense as an affirmative defense where we don't. What appears to happen, is that some search comes up with an article about the Mandan case, which I believe it the one that involved a big ruckus at a party amongst a bunch of people moved back to where the

shooter ended up, at his house. The assailants that had previously been in this fight with, came over to get revenge. He pulls out a gun and starts shooting it around the trailer court. He was charged with reckless endangerment, endangering other people, not justified. Specific intent crime is reckless endangerment. Everybody's drunk and the prosecutor thought he endangered people in the trailer court by pulling the gun out and then charged with disorderly conduct for the actual assault before. The judge disagreed that you endangered other people, it has nothing to do with self-defense or problems with our current law. It's not a good example. The case I'll use, to show you how this will work to the detriment of ND, is a homicide in my county on October 17, 2005. I brought police reports with me. When people cite cases to you, ask them to follow up and get the police reports. They are all public records, so you can get actually what happened in full (reported on a case regarding two brothers). If someone broke into Rep. Klemin's house and self-defense was used, the law enforcement could probably determine that, they're not going to take him into custody, he's a respected in Bismarck and there's no reason, because he's not a flight risk. They might ask him to come and have his blood drawn for toxicology, but it's not necessarily going to be adverse. However, that's not the norm. The norm is that you have to get a handle on this. What has happened, it is usually a 24-36 hours, straight through venture to get to the bottom line of what happened during the shooting. What the NRA proposes is that we handcuff the police in doing that initial investigation. Because you're not going to be able to sort it out until the crime lab gets back to you. I find that inherently flawed because you cannot properly investigate with this type of language. I'm not here to discuss the civil liabilities as a state's attorney, because I don't get into that. It seems to me as a citizen, that is very flawed. These are two different systems. The tort system and the criminal system. There are different standards of proof. The right not to testify in a criminal case vs. the depositions that he had to go through in the civil case. All

those are different types of cases. The bill is meant to take the state's attorney to judgment. The judgment that I can't meet the burden of proof, because I have to prove beyond a reasonable doubt before I charge this in my mind, that there was no self-defense, no excuse, no reason for deadly force. I might think the guy was wrong, but I don't have the evidence to prove it, so I make a call that I'm not filing a charge. That now, somehow has prohibited or significantly hindered some citizens' right to pursue their civil remedies. I think when you start mixing the criminal burdens with the civil burdens you are inherently creating bad policy.

Chairman DeKrey: You are testifying as a single state's attorney or for the State's Attorney Association.

Ladd Erickson: The State's attorney are coming next.

Rep. Klemin: The example where somebody ran someone down and shot them in the back as they were running away, and fired several shots. That wouldn't be permitted under this bill, would it.

Ladd Erickson: Sure it would.

Rep. Klemin: You mean you would be able to run someone down and shoot them as they are running away.

Ladd Erickson: Absolutely, the guy is still claiming self-defense.

Rep. Klemin: Where are we talking about that.

Ladd Erickson: When you start deleting things like you should avoid using justified force, when you start deleting the doctrines, the use of force is not justified if you can leave. Having a false presumption in the law is ridiculous.

Rep. Klemin: False presumption.