2015

# Amnesty International Report on Police Use of Force

Wesley M. Oliver


**Amnesty International Report on Police Use of Force**

**Wesley Oliver**
JULY 2, 2015 08:00:51 AM
Edited by:

JURIST Guest Columnist **Wesley Oliver** of **Duquesne University School of Law** discusses the Amnesty International Report condemning US for police use of force...

**Amnesty International** last week harshly **criticized** the US for not providing standards strictly limiting the use of lethal force by police to those occasions when no other options are available and such force is essential to save lives.

The organization observed that the UN has promulgated standards for the use of deadly force by officers that, on their face, seem not only reasonable, but superior to the laws of many states. As the June 19 Amnesty **report [PDF]** described the UN standard, "intentional lethal use of firearms may only be made when strictly unavoidable to protect life," that force must be "necessary and appropriate to achieve the objective," and any kind of force may be used "only when there are no other means available that are likely to achieve the same legitimate objectives." The Amnesty report quite correctly observed that many states, by contrast, are far less restrictive of the use of lethal force by police officers.

Amnesty's statutory comparison is certainly valid, but it is not clear that adoption of that standard by American states would change the way police officers use deadly force.

The real problem with American law on police force is not the legal standard for its justifiable use, it is the vantage point courts take when they consider the actions of officers. Courts for perfectly understandably reasons are deferential to the instantaneous decisions officers must make when confronted with life-threatening situations. Even if every American jurisdiction embraced the UN standard for deadly force, an officer faced with a split-second choice between using a taser and a revolver to save his own life would hardly be responsible if he made the more lethal choice, even if the taser would have sufficed in hindsight.

Deadly encounters with police, however, do not usually begin at the moment when the officer has but a second to make such decisions, though courts typically consider only the last seconds before a trigger is pulled in determining whether the officer's action was reasonable. Courts do not generally consider whether the officer failed to take steps to de-escalate the situation prior to the firing of the fatal shot.

No doubt the UN standard lauded by Amnesty International provides a preferable pre-requisite to lethal force than the statutory scheme in, say, **Delaware**, Title 11 Section 467 provides that an officer may use lethal force to suppress a riot, which seems to give an officer *carte blanche* to kill. In making such comparisons though Amnesty has set up something of a straw man—it neither considers the judicial construction of such statutes, nor does it describe the liability of state officers to federal civil rights laws, civil and criminal. The statutes on the state books simply do not tell the whole story.

But there is a bigger problem with the Amnesty report. The frame of reference American courts take when looking at police killings is far more problematic than the legal standard courts use to evaluate the facts in that frame. If reasonableness is evaluated seconds or milliseconds before the killing, not only will officers generally be exonerated but the law will not fashion rules for de-escalating violence.

University of South Carolina Law Professor **Seth Stoughton**, a former police officer himself, has recently written a **series** of very insightful articles on how courts have failed to incentivize police to de-escalate a situation before it becomes one in which an officer has to make a fateful decision to take a life.

For good or ill as Stoughton describes, police academies typically teach officers using judicial opinions. Courts essentially announce the standards police follow on the streets. As courts evaluate the reasonableness of an officer's actions by looking only at the moments before the citizen was killed, they do nothing to assess the job the officer did to prevent the situation from turning into a life and death struggle. Officers are then left with little guidance as to when lethal force is permitted – or when and how to prevent encounters from requiring such force. Even with the standards that exist in American law today, if courts considered the reasonableness of the officer's actions from the moment the citizen was first encountered, a body of law might develop—and hence programs to train officers—on how to keep police encounters from turning deadly.

In other contexts the law certainly has contributed to the way police are trained and conduct themselves on the street. Consider searches and seizures. Officers are fairly certain when a search is legitimate because the law gives them very solid guidance on this issue.

With reasonable clarity an officer knows when he can search a trunk but is largely left to decide for himself when it is appropriate to take a life. The answer lies in the remedy for each violation. When a trunk is improperly searched any incriminating evidence is excluded in a defendant's criminal trial. A conviction is potentially lost especially in a drug case, and future officers may or may not be more leery of searching trunks. Their behavior may well be unchanged because if the evidence is suppressed, the officer has only lost evidence he would not have had without the search.

If an officer is sanctioned civilly for improperly using force, a jury will get to assign damages, which could be substantial, or if the defendant is criminally convicted, he faces substantial jail time and the collateral consequences of a conviction. Each of these sanctions could make officers substantially less willing to place themselves in positions where they may find lethal force essential. Not surprisingly then courts have made it difficult to find officers civilly or criminally liable for the use of lethal force.

The suppression remedy is, of course, not available for claims of excessive force unless somehow the excessive force produced incriminating evidence, a possibility difficult to construct even for a law school hypothetical. How did American law come to construct a remedy that does a better job protecting our trunks from prying eyes than our bodies from shooting officers?

The **answer [PDF]** lies in history—the Era of Prohibition. During the Roaring '20s, the fear of police was focused on lawful and particularly unlawful searches for alcohol in businesses and private homes. The exclusionary rule, mere glimpses of which had been seen prior to Prohibition, became the rule of law in nearly half of American jurisdictions. With the Supreme Court's decision in **Mapp v. Ohio** in 1961, the exclusionary rule—the rule that came into its own because of Prohibition—became the primary mechanism of regulating police, even though by the 1950s, police brutality, not police searches were the public's primary concern.

For a variety of reasons, many recognized in the Mapp decision itself, an ordinary scheme of civil damages had proven inadequate to deter police misconduct. But in adopting a remedy that only excluded evidence connected to illegal practices, the court did nothing to address excessive force, or even simple harassment by police, something the court would acknowledge in **Terry v. Ohio**.

The Prohibition Era remedy for deterring police misconduct—one that was well suited to address illegal seizures of alcohol—was not one that was well suited to address society's concerns about police in 1961, when the Supreme Court imposed the rule on all state courts. The Court's choice of remedy provided no mechanism to sanction, or even address, police misconduct unrelated to seizures of evidence.. Allowing judges to enjoin **Fourth Amendment** violations, for instance, would have permitted judicial sanctions based on the seriousness of the infraction and regardless of the connection between the illegality and incriminating evidence. Mapp, however, took a very different path. The court's choice allowed a body of law to develop that thoroughly regulated the seizure of reliable evidence, but gave officers little or no more guidance on the appropriateness of deadly force than they had at the dawn of the Republic.

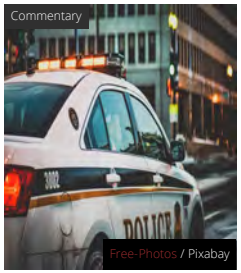
Amnesty International is correct to observe that the UN standards for the use of deadly force appear to be preferable to those contained in the statutes of most American jurisdictions. Far more important, though, is whether a court will look at the entire context of the police-citizen encounter in applying the standard, whatever it is, and the remedy for a violation of the standard. As with all laws it will be the application of the standard that matters more than the standard itself.

*Wesley Oliver is Associate Dean for Faculty Scholarship, Criminal Justice Program Director, and Professor at Duquesne University School of Law.*

**Suggested citation:** Wesley Oliver, *Amnesty International Report on Police Use of Force*, JURIST – Academic Commentary, July 2, 2015, http://jurist.org/forum/2015/07/wesley-oliver-amnesty-report.php

This article was prepared for publication by **Elizabeth Dennis**, an Assistant Editor for JURIST Commentary. Please direct any questions or comments to her at **commentary@jurist.org**.

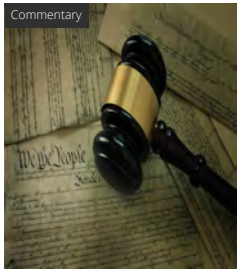
## Commentaries by Wesley Oliver




**Prohibition's Legacy: Judicial Regulation of Searches Not Use of Force**
**Wesley Oliver**
JUNE 8, 2020 04:42:56 PM

Many have noted the role of America's original sin of slavery, and the sad legacy of racism that survived Appomattox, in explaining what appears to be the uniquely abusive treatment of black men by police. Another part of our history though – Prohibition – explains why the law has failed to adequately address our recurring [...]

READ MORE




**Amnesty International Report on Police Use of Force**
**Wesley Oliver**
JULY 2, 2015 08:00:51 AM

JURIST Guest Columnist Wesley Oliver of Duquesne University School of Law discusses the Amnesty International Report condemning US for police use of force... Amnesty International last week harshly criticized the US for not providing standards strictly limiting the use of...

READ MORE


SUBSCRIBE TO JURIST

SUBSCRIBE

LATEST TWEETS

THIS DAY @ LAW

Thurgood Marshall confirmed as US Supreme Court justice

On August 30, 1965, civil rights attorney Thurgood Marshall was confirmed as a Supreme Court justice by the US Senate, becoming the first African-American to be approved for the nation's highest tribunal. Learn more about Thurgood Marshall.

ICTY announces genocide charges against Slobodan Milosevic

On August 30, 2001, the International Criminal Tribunal for the former Yugoslavia (ICTY) informed former Yugoslav President Slobodan Milosevic that he would be charged with genocide in addition to other war crimes. The charges stemmed from Milosevic's role in the Balkan civil wars of the 1990's in which Milosevic, as President of Serbia and Yugoslavia, attempted to use force to prevent the ethnic dissolution of the Yugoslav Federation.
Learn more about the trial of Slobodan Milosevic and the charges filed against him from the BBC.

More This Day @ Law...

# Faculty

## Learn from the Experts

**At Duquesne Law, we provide our faculty with a rich environment for teaching, research, scholarship, and service. You will benefit from their expertise from day one.**

## Full-Time Faculty

### Steven Baicker-McKee

**Joseph A. Katarincic Chair of Legal Process and Civil Procedure and Associate Professor of Law**

Phone: 412.396.2258
baickermckees@duq.edu

### April M. Barton

**Dean and Professor of Law**

Phone: 412.396.6281
LawDean@duq.edu

### Tom Corbett

**Distinguished Executive in Residence**

Phone: 412.396.6302
corbettt@duq.edu

### Richard Gaffney Jr.

**Director of Advanced Analytics and Assistant Professor of Legal Skills**

Phone: 412.396.6298
gaffneyr@duq.edu

## Aman Gebru

**Assistant Professor of Law**

Phone: 412.396.6307
gebrua@duq.edu

## Ken Gormley

**Duquesne University President and Professor of Law**

Phone: 412.396.6061
president@duq.edu

## Richard Heppner

**Assistant Professor of Law**

Phone: 412.396.6289
heppnerr@duq.edu

## Maryann Herman

**Director of Academic Excellence and Assistant Professor of Legal Skills**

Phone: 412.396.4617
hermanm1@duq.edu

## Wilson R. Huhn

**Professor of Law**

Phone: 412.396.6187
huhnw@duq.edu

## Jalila Jefferson-Bullock

**Associate Professor of Law**

Phone: 412.396.6287
jeffersonbulloj@duq.edu

## Rona Kaufman

**Associate Professor of Law**

Phone: 412.396.1416
kitchenr@duq.edu

## Ella Kwisnek

**Associate Dean of Students and Assistant Professor of Legal Research and Writing**

Phone: 412.396.1474
kwisnek@duq.edu

## Bruce Ledewitz

**Adrian Van Kaam Endowed Chair in Scholarly Excellence and Professor of Law**

Phone: 412.396.5011
ledewitz@duq.edu

## Jan Levine

**Director of Legal Research and Writing and Professor of Law**

Phone: 412.396.1048
levinej@duq.edu

## Ashley M. London

**Director of Bar Studies and Assistant Professor of Legal Skills**

Phone: 412.396.6303
londona@duq.edu

## Emile Loza de Siles

**Assistant Professor of Law**

Phone: 412.396.6423
lozae@duq.edu

## Marissa Meredith

**Assistant Professor of Law**

Phone: 412.396.6185
meredithm1@duq.edu

## Joseph Sabino Mistick

**Associate Professor of Law**

Phone: 412.396.5253
mistick@duq.edu

## Jane Moriarty

**Carol Los Mansmann Chair in Faculty Scholarship and Professor of Law**

Phone: 412.396.4469
moriartyj@duq.edu

## Dana Neacsu

**DCLI & ACLL Director and Associate Professor of Legal Research Skills**

Phone: 412.396.6300
neacsue@duq.edu

## Katherine Norton

**Director of Clinical and International Programs and Assistant Professor of Law**

Phone: 412.396.1688
nortonk1@duq.edu

## Wesley M. Oliver

**Director of the Criminal Justice Program and Professor of Law**

Phone: 412.396.5846
oliverw@duq.edu

## Seth C. Oranburg

**Associate Professor of Law**

Phone: 412.396.6342
oranburgs@duq.edu

## Grace Wankiiri Orsatti

**Director of the Externship Program, Pro Bono Program**

**and Assistant Professor of Clinical Legal Education**

Phone: 412.396.1214
orsattig@duq.edu

## John Rago

**Associate Professor of Law**

Phone: 412.396.1039
ragoj@duq.edu

## Ann Schiavone

**Associate Dean for Faculty Scholarship and Associate Professor of Law**

Phone: 412.396.2117
schiavonea@duq.edu

## Tiffany Sizemore

**Associate Professor of Clinical Legal Education**

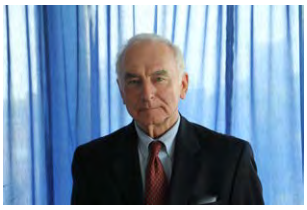
Phone: 412.396.5694
sizemoret@duq.edu

## Tara Willke

**Associate Dean for Academic Affairs and Associate Professor of Law**

Phone: 412.396.4637
willket@duq.edu

# Emeritus Faculty



## Robert Barker

**Professor Emeritus**

Phone: 412.396.6301
barker@duq.edu

## Martha Jordan

**Professor Emerita**

jordan@duq.edu

## Maureen Lally-Green

**Professor Emerita**

Phone: 412.396.6285
lallygreen@duq.edu

## Frank Yining Liu

**Professor Emeritus**

liu@duq.edu

## Nancy Perkins

**Professor Emerita**

perkins@duq.edu

# Distinguished Lecturers

## David Jamison

**Distinguished Lecturer of Law**

jamisond@duq.edu

## Law



**School of Law**
Hanley Hall
600 Forbes Avenue
Pittsburgh, PA 15282
Email: lawschool@duq.edu
Phone: 412.396.6300

Apply Now
Request Information
Schedule a Visit
Virtual Tour
Support Duquesne Law

VISIT→
DIRECTIONS→
CAMPUS MAP→

DORI


600 FORBES AVENUE, PITTSBURGH, PA 15282
412.396.6000 ▪ admissions@duq.edu

LEGAL | TITLE IX | SITE MAP

# A Catholic University in the Spiritan Tradition


CONGRATULATIONS!
110TH
ENTERING CLASS
1911-2021


BAR
STUDIES


CLINICS &
EXTERNSHIPS


FINANCIAL
AID &
SCHOLARSHIPS


## Consumer Information (ABA Required Disclosures)

**Featured News**

**Dean April Barton welcomes 110th entering class**

Dean April Barton welcomed the 110th entering class to our School of Law on Tuesday, August 17, 2021. She introduced the class to the leadership team and gave advice in navigating the educational journey of law school.

**Alumnus, namesake of Judicial Center named top lawyer in Pennsylvania**

Tom Kline L'78 has been named a *Pennsylvania Super Lawyer* for the eighteenth consecutive year and received the distinction as being named the number one lawyer in the state of Pennsylvania.

**Oranburg to explore virtual worlds with Hayek Fund for Scholars Award**

Seth Oranburg, assistant professor of law, received the Hayek Fund for Scholars Award from George Mason University's Institute for Humane Studies (IHS). The funds he received from the award were used to purchase virtual reality equipment and to hire a research assistant, second-year law student Tom Schierberl. Together, the two are going to explore virtual reality worlds in context of the law.

**School of Law welcomes new director of law library services**

Duquesne University's School of Law is pleased to welcome Dana Neacsu as the new director of law library services and associate professor of legal research skills. She will lead the School of Law's Center for Legal Information and the Allegheny County Law Library.

**COVID-19 Update**

We are proud of how our community has worked together to provide a safe learning environment for everyone during the COVID-19 pandemic. We remain committed to the well-being of our students, faculty, and staff while also embracing our University's return to normal operations.

.

Read more news

Tweets by DuquesneLaw

**School of Law**

**Law**

- About
- Academics
- Achievements and Rankings
- Admissions
- Advocacy Programs
- Bar Studies
- Faculty
- Career Services
- Alumni
- Clinics and Externships
- Continuing Legal Education (CLE)
- Student Life
- Diversity
- Pennsylvania Innocence Project

- Paralegal Institute
- Center for Legal Information (Law Library)
- PA Constitution
- Thomas R. Kline Center for Judicial Education
- News
- Events

**School of Law**
Hanley Hall
600 Forbes Avenue
Pittsburgh, PA 15282
Email: lawschool@duq.edu
Phone: 412.396.6300

- Apply Now
- Request Information
- Schedule a Visit
- Virtual Tour
- Support Duquesne Law

VISIT→

DIRECTIONS→

CAMPUS MAP→

DORI


600 FORBES AVENUE, PITTSBURGH, PA 15282
412.396.6000 ▪ admissions@duq.edu



A Catholic University in the Spiritan Tradition