

# WESLEY M. OLIVER

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## EDUCATION

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- J.S.D. Yale Law School, 2009  
Dissertation: *The Nineteenth and Early Twentieth Century Origins of Criminal Procedure: A View from the New York Police Department*. Committee: Robert W. Gordon, Kate Stith, Bruce Ackerman, William J. Stuntz
- LL.M. Yale Law School, 2004
- J.D. University of Virginia School of Law, 1996 (ranked in top 15%)
- B.A. University of Virginia, 1992, History and Government Majors, *Phi Beta Kappa*

## ACADEMIC APPOINTMENTS

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- 2015 – present Professor of Law, Associate Dean for Faculty Research and Scholarship, Criminal Justice Program Director, Duquesne University School of Law  
2015 Recipient, Dr. John and Liz Murray Excellence in Scholarship Award
- 2012 – 2015 Associate Professor of Law and Criminal Justice Program Director, Duquesne University School of Law
- 2006 – 2012 Associate Professor of Law and Associate Director, Law and Government Institute, Widener University School of Law
- 2010 – 2011 Visiting Associate Professor of Law, University of Tennessee College of Law (Fall)
- 2004 – 2006 Climenko Fellow and Lecturer on Law, Harvard Law School
- 2001 – 2002 Visiting Associate Professor of Law, University of Maine School of Law  
Concurrent appointment: McGill University Faculty of Law, Fulbright Lecturer (Spring)
- 1999 – 2001 Forrester Teaching Fellow, Tulane Law School

## PUBLICATIONS

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### BOOKS

- Prohibition and the Lingering Mis-Regulation of Police* (Vanderbilt Univ. Press) (*under contract and anticipated* 2016)
- Contextual Criminal Procedure* (with Thomas M. Hardiman and Melanie Reid) (in progress).
- Pennsylvania Law Encyclopedia, Volumes 17 & 18* (Criminal Law) (LexisNexis 2016).
- Experiencing Criminal Law* (West 2015) (co-authored with Gabriel J. Chin).
- Evidence: Common Law and Federal Rules of Evidence* (Seventh ed., LexisNexis 2015) (with Paul Rice, Dale B. Durrer, and Kirsha Weyandt Trychta).
- Tennessee Criminal Law: Cases and Materials* (West 2011) (co-authored with Douglas A. Blaze).

### ARTICLES AND ESSAYS

*Are Anchors Always Bad?: Sentencing After Booker and Kimbrough* (with Thomas M. Hardiman) (in progress)

*Bill Cosby, the Lustful Disposition Exception, and the Doctrine of Chances*, 93 Washington Univ. Law Review 1131 (2016).

*Jerry Sandusky, George Zimmerman, and the Ethics of Counsel's Use of the Media*, 68 Oklahoma Law Review 297 (2016) (with Rebecca Silinski).

*Choice of Counsel and the Appearance of Equal Justice Under Law*, 109 Northwestern Univ. Law Review 1117 (2015).

*Prohibition's Lingerin Shadow: The Under-Regulation of Official Uses of Force*, 80 Missouri Law Review 1037 (2015)

*Charles Lindbergh, Caryl Chessman, and the Exception Proving the (Potentially Waning) Rule of Broad Prosecutorial Discretion*, 20 Berkeley Journal of Criminal Law 1 (2015).

*Prohibition, Stare Decisis, and the Lagging Ability of Science to Influence Criminal Procedure*, 105 Journal of Criminal Law and Criminology \_\_\_\_ (forthcoming 2015).

*Standards of Legitimacy in Criminal Negotiations*, 20 Harvard Negotiation Law Review 61 (2015) (with Rishi Batra).

*Limiting Criminal Law's 'In for a Penny, In for a Pound' Doctrine*, 103 Georgetown Law Journal Online 8 (2014) (cited by *Commonwealth v. Knox*, 105 A.3d 1194 (Pa. 2014)).

*Domestic Violence, Gun Possession, and the Importance of Context*, 90 Indiana Law Journal Supplement 36 (2014).

*The Indirect Effects of Lafler and Frye*, 51 Duquesne Law Review 633 (2013).

*Toward a Common Law of Plea Bargaining*, 102 Kentucky Law Journal 1 (2012-2013).

*Western Union, the American Federation of Labor, Google, and the Changing Face of Corporate Privacy Advocates*, 80 Mississippi Law Journal 971 (2012).

*Material Witness Detentions After Al-Kidd*, 100 Kentucky Law Journal 293 (2011-2012).

*The Present and Future of Plea Bargaining: A Look at Missouri v. Frye and Lafler v. Cooper*, 2011-2012 Cato Supreme Court Review 257.

*The Modern History of Probable Cause*, 78 Tennessee Law Review 377 (2011).

*America's First Wiretapping Controversy in Context and as Context*, 34 Hamline Law Review 205 (2011).

*The Neglected History of Criminal Procedure, 1850-1940*, 62 Rutgers Law Review 447 (2010) (cited by *Lopez v. City of Lawrence, Mass.*, 823 F.3d 102 (1st Cir. 2016)).

*Portland, Prohibition, and Probable Cause: Maine's Role in Shaping Modern Criminal Procedure*, 23 Maine Bar Journal 211 (Fall 2008).

*Magistrates' Examinations, Police Interrogations, and Miranda-Like Rules in the Nineteenth Century*, 81 Tulane Law Review 777 (2007).

*Dred Scott and the Political Question Doctrine*, 16 Widener Law Journal 13 (2007).

*The Rise and Fall of Material Witness Detentions in Nineteenth Century New York*, 1 NYU Journal of Law and Liberty 727 (2005) (cited by *In re Marshall*, 805 N.W.2d 145 (Iowa 2011); *al-Kidd v. Ashcroft*, 580 F.3d 949 (9th Cir. 2009)).

*Toward a Better Balance of the Costs and Benefits of the Exclusionary Rule*, 9 Buffalo Criminal Law Review 201 (2005) (cited by *State v. Subdiaz-Osario*, 849 N.W.2d 748 (Wis. 2014)).

*A Round Peg in a Square Hole: Federal Forfeiture of State Professional Licenses*, 28 American Journal of Criminal Law 179 (2001).

*With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane Law Review 1409 (2000) (cited by *State v. Jenkins*, 3 A.3d 806 (Conn. 2010); *State v. Akuba*, 686 N.W.2d 406 (S.D. 2004); *State v. Carty*, 790 A.2d 903 (N.J. 2002); *People v. Robinson*, 767 N.E.2d 147 (N.Y. 2001)).

## ADMINISTRATIVE POSITIONS

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Associate Dean for Faculty Scholarship, June 2015-present

- Organized faculty workshops and guest speakers.
- Assisted colleagues with development of scholarly writing and publication process.
- Managed budget for visiting speakers, scholarly travel, and research grants.
- Assisted colleagues in attracting media attention for their scholarly works.

Executive Committee, Faculty Senate, Duquesne University, Fall 2014-present

University Rank and Tenure Committee, Duquesne University, Fall 2015-present

Director, Criminal Justice Program, Duquesne University School of Law, Fall 2012-present

- Organized and secured funding for day-long event: *Two Conversations with George Zimmerman's Lawyer: Race, the Media, and the Trayvon Martin Case*. As part of this event Mark O'Mara guest lectured my criminal law class on the law of self defense and did two public interviews for the public, for which CLE credit was provided. The first, on the Zimmerman case and racial issues in the criminal justice system, was conducted by Montré Carodine of the University of Alabama. The second interview, conducted by Third Circuit Judge Thomas Hardiman, considered the appropriate use of the media by counsel. Sponsors included the Pittsburgh Black Media Federation, the Pennsylvania News Media Association, the Pennsylvania Association of Criminal Defense Lawyers, and the Miller Law Firm.
- Organized event on Law, Justice, and Journalism with Mark Curriden, author of *Contempt of Court: A Turn of the Century Lynching that Led to a Hundred Years of Federalism*. Curriden described the value of intersections between law and journalism in a public presentation and then spoke with the Fact Investigation class about developing strategies for investigating and telling stories.
- Developed, organized, and secured funding for national conference on plea bargaining including written and live commentary by Judge Frank Easterbrook (7th Cir.), Judge Louis Sands (M.D. Ga.) Albert Alschuler (Univ. of Chicago), Ron Wright (Wake Forest), Richard Lippke (Indiana), Stephanos Bibas (Penn), David Abrams (Penn), Nancy King (Vanderbilt), Susan Klein (Texas), Jack Chin (UC Davis), Russell Covey (Ga. St.), and Bruce Green (Fordham).
- Formed partnership with *Pittsburgh Post Gazette*, Cyril Wecht Institute, and meta-data firm Crivella West to provide funding and staffing for newly created Fact Investigation Course which produced multi-day pieces on aspects of the criminal justice system appearing in the *Post Gazette*, the first of which considered how federal prosecutors responded to the mortgage fraud crisis:

<http://www.post-gazette.com/business/2014/05/25/Mortgage-fraud-assault-a-Pyrrhic-victory/stories/201405250140>

<http://www.post-gazette.com/local/region/2014/05/26/Cooperation-in-mortgage-probe-rewarded/stories/201405260073>

The second dealt with health care fraud enforcement:

<http://www.post-gazette.com/business/healthcare-business/2015/09/27/Health-care-fraud-enforcement-ramping-up-in-Western-Pennsylvania/stories/201509270073>

- Created, produced, hosted, and raised outside funds for television program, *Crime and Punishment*, which continues to air monthly statewide on the Pennsylvania Cable Network.

Associate Director, Institute for Law and Government, Widener University School of Law, 2007-2012

- Created and secured funding for creation of John Gedid Lecture Series in honor of school's founding dean. Lecturers in the series have included: Melissa Waters (Washington U.), Ken Mack (Harvard), Heather Gerken (Yale), Melissa Jacoby (UNC), Chris Robertson (Arizona), and Orin Kerr (GW).
- Developed, organized, and secured funding for alternative energy law conference that featured television-media-friendly exhibits including hydrogen powered SUV and algae-powered Harley Davidson. Speaker from sponsor General Motors provided rides to participants in hydrogen powered vehicles.
- Created partnership with Pennsylvania Cable Network for the production of *In Session with the Widener Law and Government Institute*.

## **COURSES TAUGHT**

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### *Criminal Law Courses:*

Corporate, Political, and White Collar Crime (Widener)  
Criminal Law (Harvard, Widener, Tennessee, Duquesne)  
Criminal Procedure I (Maine, Widener, Duquesne)  
Criminal Procedure II (Widener, Tennessee, Duquesne)  
Federal Criminal Law (Maine, Duquesne)  
Forfeiture (Tulane)  
History of American Criminal Procedure (Harvard)  
North American Criminal Procedure (McGill)

### *Other Courses:*

Business Organizations (Widener)  
Constitutional History (Widener)  
Constitutional Law (Widener)  
Evidence (Maine, Widener, Duquesne)  
Fact Investigation (Duquesne)  
Legal Writing (Tulane, Harvard)  
Professional Responsibility (Duquesne)  
Remedies (Widener)

## **MEDIA COMMENTARY**

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Provided on-air commentary on criminal justice stories for ABC World News, ABC's Good Morning America, CBS This Morning, CBS Evening News, CBS News 48 Hours, NBC's TODAY Show, and NBC Nightly News as well as local affiliates of each network in Philadelphia, Pittsburgh, and Harrisburg.

Provided commentary used in print articles in the *New York Times*, *Wall Street Journal*, *Washington Post*, *USA Today*, *Sports Illustrated*, *San Francisco Chronicle*, *Houston Chronicle*, *Chicago Sun-Times*, *Dallas Morning News*, *Atlanta Journal Constitution*, *Austin American Statesman*, *Philadelphia Inquirer*, *Miami Herald*, *Seattle Times*, *New Orleans Times Picayune*, *Pittsburgh Post-Gazette*, *The Tennessean*, and *Stars and Stripes*.

NBC News Legal Analyst for the Trial of Jerry Sandusky

Provided dozens of taped appearances for TODAY and NBC Nightly News.  
Live on-air commentary for MSNBC.

Written commentary for msnbc.com and NBCNews.com.

Live and taped commentary for the News Channel providing content to NBC affiliates.

Pennsylvania Cable Network, Host and Producer, January 2010 - present

2010 – 2012 Created, Produced, and Hosted Student-Researched Legal Roundtable Show Aired Statewide, *In Session with the Widener Law and Government Institute*.

2012 – 2014 Created, Produced, and Hosted Show Aired State-wide Discussing Contemporary Criminal Justice Issues, *Crime and Punishment*.

## OP-EDS AND JOURNALISTIC ARTICLES

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### NATIONAL

*Amnesty International Report on Police Use of Force*, Jurist.org, July 2, 2015.

*Prosecutors Reeled in Little Fish with Help of Big Ones in Mortgage Fraud Push*, Forbes.com, May 28, 2014.

*Chalk One Up for Reason and Logic at Sandusky Sentencing*, NBCNews.com, October 9, 2012.

*What to Expect at Jerry Sandusky's Sentencing*, NBCNews.com, October 8, 2012.

*Ex-Penn State Officials' Perjury Case Renews Sandusky Case Questions*, NBCNews.com, August 15, 2012.

*In Loughner Case, A Cost-Benefit Analysis to the Death Penalty*, NBCNews.com, August 6, 2012.

*In Aurora Massacre, Trial May Not Shed Much Light on Motive*, NBCNews.com, July 24, 2012.

*Paterno Could Have Been Indicted If He'd Lived*, NBCNews.com, July 12, 2012.

*Number of Victims Persuaded Jury in 'He Said He Said' Case*, msnbc.com, June 23, 2012.

*Sandusky's Lawyer Jeopardized His Client's Interests*, msnbc.com, June 22, 2012.

*Sandusky's Lawyer Made Strong Comeback in Closing Argument*, msnbc.com, June 21, 2012.

*Faltering Defense Hurt Jerry Sandusky*, msnbc.com, June 20, 2012.

*Prosecution Presented Strong Case Against Jerry Sandusky*, msnbc.com, June 14, 2012.

*Sandusky Lawyer Flummoxed by Witness Memory Lapse*, msnbc.com, June 13, 2012.

*Sandusky Defense Fails to Dent McQueary's Damning Testimony*, msnbc.com, June 12, 2012.

*Plea Deal a Long Shot in Sandusky Sex Abuse Case*, msnbc.com, June 9, 2012.

*Ashcroft v. al-Kidd and Material Witness Detentions*, Huffington Post, November 8, 2010.

### LOCAL

*Why I Was a Campaign Volunteer*, (Harrisburg) Patriot News, January 7, 2008.

*How Iowa Does It*, (Harrisburg) Patriot News, December 30, 2008.

*Iowans Are Really Engaged in the Caucus Process*, (Harrisburg) Patriot News, December 23, 2007.

*Recordings Can Protect Those Secretly Taped*, (Harrisburg) Patriot News, June 17, 2007.

*Rulings Lose Sight of Innocent*, (Harrisburg) Patriot News, June 3, 2007.

## PRESENTATIONS

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### NATIONAL

"The Rapidly Expanding Good Faith Exception," Maine Association of Criminal Defense Lawyers Annual Meeting, June 20, 2015.

Moderator, Third Circuit Update, Pittsburgh, PA, April 25, 2015.

"The Law's Inability to Provide Closure in Ferguson," University of Missouri Law Review Symposium, *Policing, Protesting, and Perceptions: A Critical Examination of the Events in Ferguson*, Columbia, MO, February 26, 2015.

- “Prohibition, Stare Decisis, and the Lagging Ability of Science to Influence Criminal Procedure,” Loyola Constitutional Law Colloquium, Chicago, IL, November 7, 2014.
- “Making a Deal in Criminal Cases,” ABA Conference on Alternative Dispute Resolution, Miami, FL, April 4, 2014.
- “The Past and Present Supreme Court Terms,” Defense Lawyers’ Roundtable, Nashville, TN, November 2, 2012.
- How *Lafler* and *Frye* Will Change Plea Bargaining,” Federalist Forum, James E. Rogers College of Law, University of Arizona, October 18, 2012.
- “Western Union, the Teamsters, Google, and the Changing Face of Corporate Privacy Advocates,” National Judicial Conference, University of Mississippi, Oxford, MS, March 10, 2011.
- “Prosecutorial Discretion and Proposed Remedies for Its Abuse,” Tennessee Association of Criminal Defense Lawyers Annual Conference, Nashville, TN, August 28, 2010.
- Commentator on Donald Dripps pending book, *The Nineteenth Century Transformation of Criminal Justice*, Law and Society Conference, Chicago, IL, May 28, 2010.
- “The Nineteenth and Early Twentieth Century Origins of Criminal Procedure,” Central States Law School Association Annual Meeting, Columbus, OH, October 24, 2009.
- “Maine’s Role in Developing Modern Criminal Procedure,” Gignoux Inns of Court, Portland, ME, October 14, 2008.
- “Prohibition, Prostitution, and Probable Cause,” Maine Historical Society, Portland, ME, October 9, 2008.
- “Nineteenth Century Prohibition and the Role of Portland, Maine, in Reshaping the Law of Search and Seizure,” University of Maine School of Law, March 21, 2008.
- “Wiretapping and a Nineteenth Century Conception of a Living Constitution,” J.S.D. and Graduate Fellows Workshop, Yale Law School, October 1, 2007.
- “Telegram Subpoenas and Early American Wiretapping,” Legal History Colloquium, University of Virginia School of Law, September 10, 2007.
- “Nineteenth Century History of *Miranda* Warnings,” Cautions and Confessions: *Miranda* After Forty Years Conference, University of Colorado Law School, October 20, 2006.
- “*Miranda*-Like Warnings in Nineteenth Century New York,” Legal History Colloquium, Harvard Law School, Cambridge, MA, October 9, 2006.
- “Material Witness Detentions in Nineteenth Century New York,” Author Lecture Series, NYU Journal of Law and Liberty, New York University School of Law, September 18, 2006.

## LOCAL

- “Prohibition and the Lingering Mis-Regulation of Police,” at Beyond Baltimore: Bridging Public Safety and Social Justice in the Policing of America’s Streets, Cyril Wecht Institute for Forensic Science, November 12, 2015.
- Panelist, “Grand Juries: How the Reasonableness Standard Protects Police and Preys on Racial Tensions,” Pennsylvania Bar Association Minority Attorney Conference, Pittsburgh, PA, April 9, 2015.
- Panelist, “Civil Rights, Civil Responsibilities: The Community and the Evolving Role of the Police,” Duquesne University, March 25, 2015.
- “Inherent Conflicts of Interest in High Profile Cases,” Allegheny County Academy of Trial Lawyers, October 3, 2013.
- “The Media and High Profile Trials,” Pennsylvania Bar Institute, Pittsburgh, PA, May 8, 2013.
- “Admissibility of Forensic Expert Testimony,” Cyril Wecht Institute for Forensic Science, Pittsburgh, PA, December 14, 2012.

- “Conflicts of Interest Between a Lawyer’s Media Profile and His Duty to His Client,” Widener University School of Law, Harrisburg, PA, October 12, 2012.
- “Toward a Common Law of Plea Bargaining,” Pennsylvania Bar Institute, Annual Criminal Law Section Meeting, Harrisburg, PA, May 31, 2012.
- “Plea Bargaining After *Laffler* and *Frye*,” Pennsylvania Superior Court Conference, Harrisburg, PA, April 18, 2012.
- “*Ashcroft v. al-Kidd* and Material Witness Detentions,” William W. Lipsitt American Inns of Court, Harrisburg, PA, May 9, 2011.
- “The History of Modern Criminal Procedure,” Pennsylvania Appellate Courts Conference, Bedford Springs, PA, June 16, 2010.
- “Should the Second Amendment Be Incorporated Against the States?” Federalist Society Debate Against Alan Gura, Widener University School of Law, Harrisburg, PA, March 11, 2010.
- “Blackberries, I-Phones, and the Doctrine of Search Incident to Arrest,” Widener Law Journal Symposium, Widener University School of Law, Harrisburg, PA, February 22, 2009.
- “Should There Be a Limit on Prosecutorial Discretion?” Federalist Society Debate with Dauphin County (Harrisburg) District Attorney Ed Marsico, Widener University School of Law, November 12, 2008.
- “*Dred Scott* and the Political Question Doctrine,” Widener Law Journal Symposium, Widener University School of Law, April 2, 2007.

## LEGAL AND POLITICAL EXPERIENCE

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- 2007 – 2008 Advisor and Iowa Field Organizer, Biden for President 2008
- 2002 – 2003 Associate, Tarlow & Berk, Los Angeles, CA
- 1998 –1999 Member, Edwards, Simmons & Oliver, Nashville, TN
- 1997 – 1998 Associate, Law Offices of Lionel R. Barrett, Jr., Nashville, TN
- 1996 – 1997 Law Clerk, Hon. Joseph B. Jones, Presiding Judge, Tennessee Court of Criminal Appeals

## SIGNIFICANT LITIGATION

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- Ashcroft v. Al-Kidd*, 131 S.Ct. 2074 (2011) (filed brief of Amicus Curiae Wesley MacNeil Oliver in support of petition for writ of certiorari and on the merits supporting Petitioner).
- Atwater v. Lago Vista*, 532 U.S. 318 (2001) (counsel of record for Nat’l Ass’n of Crim. Def. Lawyers) (Fourth Amendment challenge to arrest for failure to wear seat belt).
- Indianapolis v. Edmond*, 531 U.S. 32 (2000) (counsel of record for Nat’l Ass’n of Crim. Def. Lawyers) (Fourth Amendment challenge to drug enforcement roadblock).
- Stoufflet v. United States*, 757 F.3d 1236 (11th Cir. 2014)(counsel for appellant) (challenge to interpretation of procedural default rule in federal post-conviction proceeding).
- State v. Garcia*, 123 S.W.3d 335 (Tenn. 2003) (counsel for Tenn. Ass’n of Crim. Def. Lawyers) (challenge to consent obtained after illegal stop).
- United States v. Freeman*, 209 F.3d 494 (6th Cir. 2001) (counsel for appellant) (challenge to drug interdiction stop).
- Dieter v. United States*, 198 F.3d 1284 (11th Cir. 1999) (counsel for Nat’l Ass’n of Crim. Def. Lawyers) (Tenth Amendment challenge to federal forfeiture of medical license).
- United States v. Olson*, 59 F.Supp.2d 725 (M.D. Tenn. 1999) (counsel for defendant) (challenge to drug interdiction stop).
- Summar v. Bennett*, 157 F.3d 1054 (6th Cir. 1998) (counsel for appellant) (civil rights action for releasing name of confidential informant).
- State v. Leming*, 3 S.W.3d 7 (Tenn. Crim. App. 1998) (counsel for appellant) (evidentiary challenge in murder case).