

US Media Justify the Killing of an Unarmed Escaped Convict. New York Governor Cuomo Applauds

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After nearly a month on the run after breaking out of a maximum-security prison in Upstate New York, convicted murder David Sweat was [shot](#) on Sunday by a New York State trooper and apprehended.

Two days earlier fellow convicted murderer and escapee Richard Matt was shot dead by a federal agent nearby. While Governor Andrew Cuomo (image below) was quick to label Sergeant Jay Cook, who shot and captured Sweat, a “hero” – a claim that was repeated by [CNN](#), the [Daily News](#), [Time](#) and many other [outlets](#) – there was no serious analysis about whether Cook’s use of lethal force was legally justified.



The Associated Press published “Trooper had law on his side when he shot unarmed escapee” ([6/29/15](#)), which was widely reprinted [nationally](#) and [internationally](#). The article makes the case appear definitively open and shut.

“A state trooper had the law on his side when he shot unarmed prison escapee David Sweat, apparently in the back, as the convicted killer ran toward a forest near the Canadian border,” the AP wrote.

Their source: one legal expert. Maria Haberfeld, head of the law and police science department at John Jay College of Criminal Justice, told the AP:

“You cannot shoot a fleeing felon, but certainly you can shoot the one who poses a real threat. There was no reason to believe this person who had killed a police officer before was not posing a real threat.”

The AP cites the 1986 Supreme Court decision *Tennessee v. Garner* defining the condition that deadly force may only be used if “the officer has probable cause to believe that the

suspect poses a significant threat of death or serious physical injury to the officer or others.” The AP also notes a New York State law permits the use of deadly force against a dangerous convict escaping from a detention facility.

While the AP says that “experts” differentiated the shooting from the case of Walter Scott, who was gunned down in South Carolina after a traffic stop, only the head of the National Association of Police Organizations is quoted to make this point. He said “these prisoners ... they’re not presumed to be an innocent citizen walking down the street.”

The only opinions the AP mentions countering arguments for the legality of shooting Sweat are “some people online” who “questioned the decision to fire.”

It wouldn’t have been hard to at least find sources questioning the legal basis for shooting an unarmed man clearly not posing a immediate threat to the officer or anyone else.

Ten days earlier, Amnesty International released a [report](#) titled “Deadly Force: Police Use of Lethal Force in the United States,” which found that neither U.S. Constitutional law nor a single state law meets international standards concerning the use of force by police officers.

“Amnesty International reviewed US state laws – where they exist – governing the use of lethal force by law enforcement officials and found that they all fail to comply with international law and standards. Many of them do not even meet the less stringent standard set by US constitutional law,” the report says.

So even if it were true that the shooting of David Sweat was legal according to state and/or Constitutional law, it could still be the case that it does not meet the legal justifications of international treaties to which the United States is a party.

According to [Principle 9](#) of the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

This is clearly a much more stringent standard than that established in the Garner case. Not only is an officer required to act in self-defense (or defense of a third person), but there must be an “imminent threat of death or serious injury” and the shooting must be “strictly unavoidable in order to protect life.”

The sequence of events leading to the shooting of Sweat, according to the [New York Times](#), was that after being asked by Sergeant Cook to approach him, “instead Mr. Sweat turned and fled across a field toward the tree line.” Cook “patrolling by himself, gave chase and finally opened fire, striking Mr. Sweat twice in the torso, because he realized the fugitive was going to make it to the woods and possibly disappear.”

While Sweat had been convicted of the murder of a police officer, which would have established the justification to use lethal force against him under New York law, it would be much harder to argue he presented an “imminent threat” as he was unarmed and there was no one else nearby. He had been on the lam for more than three weeks without harming anyone. If he were to have escaped to the woods without being detained, would that have constituted an imminent threat?

There was no mention in the Associated Press article of any investigation into the shooting. As Amnesty noted: “All cases of police use of lethal force must be subject to an independent, impartial and transparent investigation and if the evidence indicates that the killing was unlawful, the police officer responsible should be criminally prosecuted.”

There are enough questions surrounding the shooting of an unarmed man to warrant an investigation, regardless of whether Sweat was a convicted murderer. Instead the officer is quickly called a hero and the media follow suit in their hero worship.

Sweat is reportedly in [serious condition](#) at Albany Medical Center. The media seems willing to ignore his rights because of the horrific crimes he was convicted of. But despite his crimes, he is legally still entitled to the right to life that every person – even the most violent criminal – enjoys.

With the shooting of Sweat coming so soon after the Amnesty report, media organizations could have drawn attention to the higher standard for the use of lethal force by law enforcement officers under international law that the report documents, which quite likely were not met. They could have at least mentioned that relevant international law exists and is something American law enforcement are obligated to follow.

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