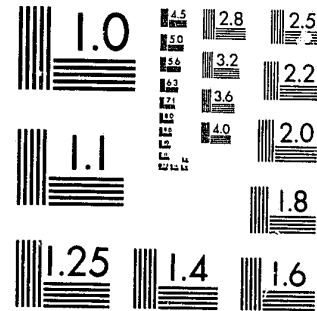


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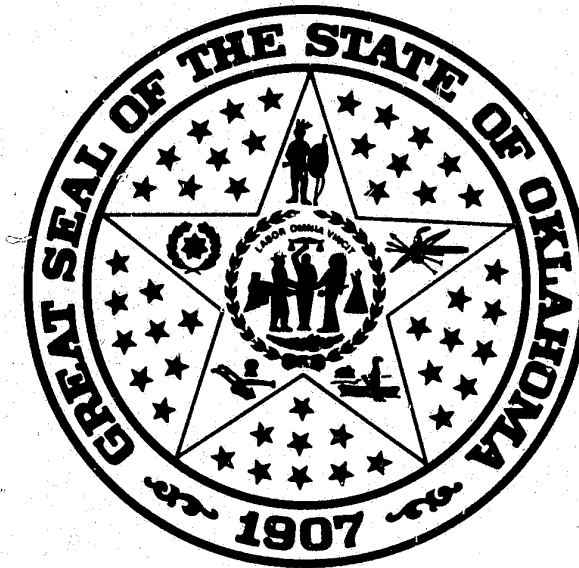
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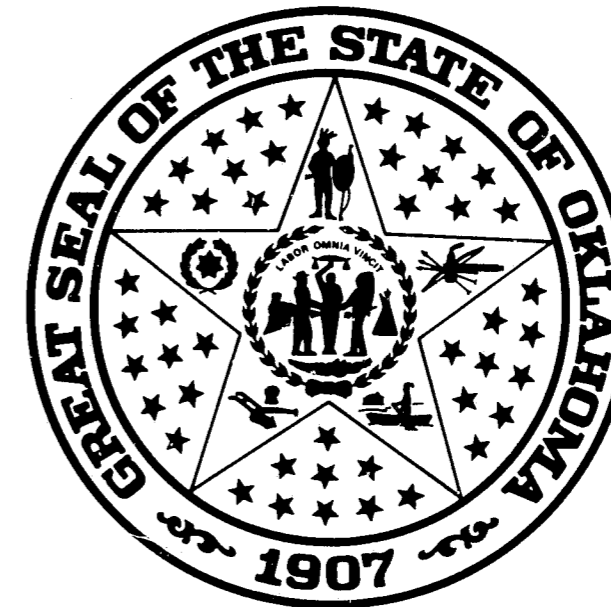


POLICE-CITIZEN RELATIONS IN OKLAHOMA

MAY, 1981

Oklahoma Human Rights Commission
Jim Thorpe Office Building
Oklahoma City, Oklahoma 73105

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ACQUISITIONS

INTRODUCTION

In 1963 the 29th Oklahoma Legislature created the Human Rights Commission and directed it "to work toward removing friction, eliminating discrimination, and promoting unity and understanding among all the people of Oklahoma."¹ To meet this mandate the Commission, in 1974, issued a policy statement on Community and Intergroup Relations. In this statement the Commission pledged to 1) "work to create a heightened awareness of human rights-related needs and problems and the necessity for citizen involvement in their resolution," and 2) "aid groups of Native American Indians, Blacks, Mexican-Americans and other minority group citizens in establishing meaningful dialogue and cooperation with local officials and governmental bodies."² Given this statutory mandate, this project assesses the general nature of the problem of police-citizen relations in the state and presents possible means of addressing this problem.

For the past ten years, and recently at an increasing rate, Oklahoma citizens have been complaining of abuse by law enforcement officers. The criminal justice system is perceived by many as being either incapable or unwilling to investigate abuse complaints adequately and impartially. While redress of grievances by citizens against police officers is theoretically available under federal law, a satisfactory resolution of many of these grievances has not materialized.

Further, neither state nor municipal avenues of redress have allayed the concerns of citizens. Municipal grievance procedures are non-uniform and vary significantly from jurisdiction to jurisdiction. Moreover, there is little public knowledge of the inner workings of the complaint process. As a result, the Oklahoma Human Rights Commission has received complaints and requests for assistance from aggrieved individuals and community groups.

Problems in police-citizen relations have been a continuing concern of the Oklahoma Human Rights Commission. The Commission has, to the limited extent permitted by 74 O.S. 953 (e), evaluated some of the specific complaints and referred citizens to appropriate state and federal agencies. The Oklahoma Human Rights Commission has also examined this problem as it affects intergroup and race relations. Specifically, in the April 26, 1977 Hearing on Indian Civil Rights Issues in Northwestern Oklahoma and in the study Race Relations in Oklahoma: October, 1979, both minority and majority Oklahoma citizen respondents stressed police-citizen relations as an area of grave concern. In the April 26, 1977 hearing, Native American respondents testified that they felt that there was a double-standard justice system that included police harassment of Native Americans and unequal protection under the law.³ Results from the 1979 Race Relations study indicated that Native Americans, Blacks, Hispanics and Whites considered the criminal justice system to be a human rights-related problem. Areas of concern expressed by the respondents included the disproportionate arrest rate of Native Americans for alcohol-related offenses, the excessive length of the com-

plaint process, the failure of police to adequately investigate and publicly expose crimes against minorities, the lack of minority representation in the higher ranks of the police force, and the need for bilingual capability on the part of police officers in appropriate communities.⁴

Recent events in the state of Oklahoma have also indicated that the problem of police-citizen relations persists. These events reflect the multi-faceted nature of this problem and are outlined in the following categories: violent intergroup conflict, such as the civil disturbance in Idabel; the questionable use of deadly force by police officers, such as in Oklahoma City, Muskogee, and Tulsa; the questionable use of deadly force by citizens, as in Oklahoma City; alleged police brutality and harassment, as in Weleetka, Edmond, Watonga, Guthrie and Lawton; allegations of police abuse and subsequent intimidation of a complainant, as in Cleveland; civil judgments against police officers/municipalities for violations of civil rights, as in Bryan County and Edmond; lack of public confidence in investigations of crimes against minorities, as in Enid; alleged police misconduct and involvement in illegal activities, as in several communities across the state. Moreover, there have been several police officers killed in the line of duty by citizens. Most of the above events have received extensive coverage by the electronic and print media in the state. The problem has also elicited a cover story in the June, 1980 issue of the Oklahoma Monthly magazine, numerous editorials, and considerable attention as a topic of concern in broadcast

forums.

The national media have also focused increasing attention on the problem of police-citizen relations. Such popular television programs as "Lou Grant," "The White Shadow," "Hill Street Blues," and "Barney Miller" have dealt with sensitive issues such as police misconduct and the use of excessive force. "The Killing of Randy Webster," a made-for-television movie, documented among other things the complexity of the process of seeking redress of grievances against police officers. "Fort Apache: The Bronx," a current box-office attraction, deals with much of the above subject matter. The topic of police stress has been considered on talk shows such as "Donahue" and has spawned the creation of the quarterly publication Police Stress. Further, the March 23, 1981 issues of both Time and Newsweek have presented as cover stories the subject of the rise of violent crime in our society.

The rise of violent crime and the social and political factors in the society that have precipitated its emergence as an issue serve as a backdrop for a consideration of contemporary police-citizen relations. Among those factors that have combined to create the current climate are the economic reality of inflation, high unemployment, and projected cutbacks in social programs; a revolving-door criminal justice system that is perceived by many as failing to protect citizens from violent crime and as affording the accused more rights than the victim; the growth and increased visibility of extremist groups and the resulting polarization and confrontation between differing groups; and the pro-

liferation of community self-protection groups whose activities border on vigilantism. These factors and the "pressure-cooker" atmosphere they create impact heavily upon the quality of police-citizen relations. In the midst of this climate of turmoil, a delicate balance must be struck between citizen pressure for strong measures to combat crime on one hand and the preservation of civil rights on the other.

The individual police officer often finds him/herself in the middle, a victim in the maintenance of this precarious balance. No examination of the problem of police-citizen relations can ignore the stress experienced by police officers or the mutual distrust of citizens and police. As Chicago Deputy Chief Raymond Clark states regarding the latter part of the problem, "If people shun us, dislike us or mistrust us, there's no way we can do the job right."⁵

Concerned about the various aspects of the problem described above, the Oklahoma Human Rights Commission, in late 1980, adopted this project. The Community Relations Department was given the following general areas to serve as an outline for the examination of the status of police-citizen relations in Oklahoma: (1) To what extent and in what ways do Oklahomans perceive a problem in the area of police-citizen relations? (2) Are present laws adequate to ensure the protection of life and the preservation of civil rights? (3) How can alleged police crimes be investigated and evaluated in a manner that is impartial? (4) What mechanisms can communities activate to improve police-citizen relations?

To meet the mandated objectives of the Oklahoma Human Rights Commission and to follow the above guidelines, the Community Relations Department, which consists of three Community Relations Specialists, examined the historical role of the Oklahoma Human Rights Commission; defined areas of police-citizen relations in which recent, identifiable problems exist; monitored local and national media treatment of police-citizen relations problems; conducted in-person interviews, where possible, with involved citizen group leaders and law enforcement officials; researched available sources of information on the subject of police-citizen relations, including federal studies and publications, current journals and magazines, and newspaper accounts of conflicts or litigation; and conducted research into the legal background and case law regarding the use of excessive force by police and citizens as covered by 21 O.S. 732 and 733, the "fleeing felon" statute.

The following report addresses itself to many of the aforementioned aspects of the problem of police-citizen relations in the state. Most important, the report recommends that the state legislature pass legislation and that municipalities adopt policies to address certain aspects of the problem. In addition, it is hoped that the document, while not the definitive, comprehensive analysis of a complex social problem, serves as a catalyst for further discussion and provides a foundation upon which interested groups and appropriate agencies may build to achieve the critical goal of improved relations between police and the citizens they serve and protect.

PROBLEMS OF POLICE-CITIZEN RELATIONS

In order to obtain a sense of the mood and perceptions of Oklahomans regarding the problems in police-citizen relations, the Community Relations Staff targeted citizen group leaders, community representatives, and criminal justice system professionals from across the state. For the most part, these respondents were eager to participate and share their perceptions. Some police professionals declined to participate on the basis of departmental policy guidelines. The interviews were consistent in that they followed a general outline, with the interviewer and respondent having the flexibility to concentrate on areas of special interest. (see Appendix A)

This section deals with the responses to the request for identification of problems in the area of police-citizen relations in Oklahoma. Some research material has been juxtaposed to place comments or issues into a general perspective. Many respondents expressed concern about the same problem areas. The areas of excessive force and citizen redress of grievances will be dealt with in more detail in subsequent sections; however, the topics will be handled here briefly as identified sources of concern.

The problem areas fall into three general categories: 1) excessive force; 2) grievance procedures; and 3) human relations factors, which describe perceived problems ranging from the broad topic of cultural

awareness to the specific issue of Indian Trust Land jurisdiction.

"People are afraid of the police." That comment, simply stated by Lanny Endicott, Chair of Tulsa's Human Rights Commission, is suggestive of the larger problem of the use of excessive force and, in some instances, deadly force on the part of police officers. This perception is representative of the views of many Oklahoma citizens and was mentioned as a major problem by most respondent citizens.

When a police officer uses excessive force, according to Opio Toure, Oklahoma City attorney, "he/she crosses the line from being an enforcer of the law to breaking the law." In Toure's opinion, the law should reflect the concept of "reasonable force," meaning "only that force which is reasonably required to make an arrest." He adds, "Once a person has cuffs on, you need not beat that person. Police officers in Oklahoma do that every day. Once a person is lying on the ground, you need not shoot that person."

While excessive force in the form of brutality is perceived as a problem, the increasing incidence of the questionable use of deadly force by police officers against citizens has placed the latter area at the top of the list of citizen concerns. Mike Turpen, Muskogee County District Attorney, cites the unprecedented fact that during a period of nine months, three Black males were killed in separate incidents by White police officers in Muskogee. In one of these killings, the police

used deadly force against a citizen who was fleeing apprehension in a manner that was neither violent nor life-threatening to the officers. With regard to the use of deadly force against so-called "fleeing felons," Turpen is of the opinion that this grant of power given to police officers, particularly with regard to property crimes, is "too broad" and ultimately is "unfair" to the officer who takes a life. This act, which is sanctioned by law and reinforced by training, nevertheless leaves the officer ill-equipped to cope with the criticisms of bad judgment and fanaticism that inevitably ensue.

The perspective of David Breed, head of Western Neighbors, Inc., a community organization in Tulsa, is representative of the view of some respondents that human life should be valued over property. Breed states that he is

...bothered by the amount of force associated too often with property crimes. There is no good reason for using a .357 magnum pistol when someone is running away from a property crime in which it is clear that no one has been injured and no weapons are being used. My mind turns to jelly when I hear that property criminals are shot in the back. Deadly force is not an appropriate means of 'catching' someone. My prejudice is that police should be trained to run faster!

Comments such as this are indicative of citizen perceptions that excessive and deadly force are serious problems; however, the complexity of this issue warrants further examination, which is included in a subsequent section of this report.

Respondents who commented on excessive or deadly force connected this problem to the procedural difficulties facing a citizen seeking redress of grievances against misconduct by police officers. These comments were accompanied by suggestions of both increased administrative review and control of police-involved offenses, and citizen review of serious police misconduct. Police professionals cited preference for the former, while citizen respondents stressed the mistrust by the public of the workings of inner-departmental review and cited a desire for community input into the investigation of questionable police practices. This issue of review of misconduct is a "red flag" in the relations between citizens and police. It is here that the problem of polarization created by "mutual mistrust" and misunderstanding, as mentioned by LaDonna Harris, Director of Americans for Indian Opportunity, comes into play. Moreover, this is the dividing line in the perceptions of police professionals and citizens.

Law enforcement officials are generally opposed to the establishment of citizen review boards and perceive them to be unworkable and unnecessary. The rationale of this opposition ranged from the fear of "hand-cuffing" the police and the destruction of morale, to the lack of citizen understanding of police training and the problems involved with being a police officer. Concerning citizen review boards, Charles Owen, President of the Oklahoma Chapter of the Fraternal Order of Police, says, "It may give the citizen a false hope of security. We oppose them (citizen review boards). We don't like them because we know that they

are not going to service the public in the end." He continues, "I know the kind of investigation that goes on and it is much more impressive to be handled by one of your own than to have a civilian try to tell you what their opinion is, because of the fact that they don't know your training. They don't know what your problem is."

Citizens, on the other hand, generally responded that they were apprehensive about the lack of "accountability" of law enforcement to the public. Several persons used the phrase "the fox guarding the henhouse" to describe police evaluation of alleged police misconduct. Millie Giago, Director of the Oklahoma City Native American Center, restates that concern: "In no way can the police department police itself. It's just like a mother thinking her kids aren't doing something wrong. They just don't see where they're doing anything wrong at all." Mike Turpen feels that even though a police internal affairs investigation process might be legitimate and effective, he nevertheless concedes that the procedure is "a house investigating itself" which "doesn't have the appearance of objectivity."

It is apparent from the above comments that the issue of citizen redress of grievances is fraught with controversy. The problem of redress and viable alternatives to the dichotomy that now exists between citizens and police are examined in more detail in a later section of

this report. It is hoped that the alternatives recommended in the section will address the concerns of the public without undermining the ability of law enforcement officers to function effectively.

HUMAN RELATIONS PROBLEMS

An examination of the problem of police-citizen relations reveals numerous aspects of the problem that do not neatly fit into the categories of excessive force and citizen redress. For the purposes of this discussion, these aspects will be grouped under the label "Human Relations Problems."

It is important to note that what follows is perceptual in nature. Since behavior is often more rooted in the perceptions of reality than in reality itself, any serious effort to improve the quality of police-citizen relations must include an examination of these perceptions. Moreover, the section includes a consideration of the positive efforts undertaken by Oklahoma citizens to transcend the traditional barriers between police officers and citizens. These programs form the basis for the recommendations that conclude the section.

Citizen Perceptions of Police

Leonard Benton, President of the Oklahoma City Urban League, views the sphere of police-citizen relations in the historical context of the

role of police in the preservation of the socio-economic status quo. He comments:

I think that the callousness which exists is borne out of, not years, but centuries, in terms of the traditional role of law enforcement officers, especially in relationship to minority communities. And I think that the role they have traditionally played has been one of protecting the property; and that is economic in nature. Their support comes from the merchants, from the property owners, from homeowners, from those persons in society having an economic stake in society, and that the emphasis has been on the protection of that property. And they receive their support, they receive their salaries from those who have the ability to pay the higher portion of taxes which goes to support law enforcement officials, so they, (the role of) law enforcement is that they are serving their masters as such. The people who find themselves oppressed, certainly blacks, other minorities and poor people, that they do not see them as; law enforcement officials, historically, do not see themselves as being servants of that constituency; and that they (minorities) are the problems. And to a certain degree, they are the problems, because they can have very little appreciation for property when they own no property. That continues to exist now, and I think that law enforcement officials, and the problems we have in terms of attitudes and in terms of practices, in terms of use of deadly force, in terms of poor police-community relations. They're all borne in the system of economic deprivation and oppression that exists, and I don't think that they can be taken out of that system.

Reinforcing Benton's perspective is the following description of the influential role the elite play with regard to police-citizen relations in a small-town environment. In her comments Phyllis Brown, a former employee of the Guthrie Police Department, refers to the relationship she has with Evelyn Nephew, the head of the Guthrie NAACP, and

the coalition they have developed to challenge the existing power structure in their community:

Evelyn and I were the first two Black and White people that stood up together in this town and tried to do anything. And we felt like it should be a community effort to try to bring a grand jury to see into a lot of the improprieties, because it not only affected the Black people, it affected the White people. And we have a situation here where if we have a wino, that's well known as a wino, he'll get busted up until the fifth of the month, then after that he won't get busted anymore, cause everybody knows he's broke. But whenever the people come in from the country club on Saturday night, no one gets busted. You know, we've got a situation where the elite are the elite. And that's probably a very typical small-town situation, but that's the name of the game. What we have here is just a real strong power structure, and we've got about 30 people that run this town. And they run the police department. They run everybody.

The system described above by both Benton and Brown forms a backdrop for a consideration of the attitudes that citizens voice concerning police officers. There is a universality of negative perceptions about police that sets the stage for negative interaction. Many citizens anticipate that any contact they have with police will be negative in nature. This is created in part by the citizen's primary experience, whether that be receiving their first ticket, being asked what they're doing out late at night, or being asked, "Do your parents know where you are?" These experiences create the mind-set that the police are a control factor, an agent of harassment. This, combined with "horror stories" passed by word of mouth, press accounts of brutality incidents, and televised confrontations with police, is sufficient to reinforce

those primary negative experiences.

The negative mind-set described above on the part of the citizen is exacerbated by the additional perception that, as described by Mike Turpen, police are "apart from rather than a part of" the community. This is amplified by the absence of positive contacts with police officers due to the limitations imposed by the workload of police, the fact that most officers do not live in the community in which they work, and the fact that officers spend much of their time in squad cars and exit them only in situations that are perceived by citizens as negative.

Another major area of citizen perceptions of police, which is particularly held by members of minority communities, is that involving racist attitudes and a lack of cultural sensitivity. Leonard Benton argues that the basic problem is "that because of historical conflicts and attitudes which have existed between law enforcement officials and especially minority communities, there still are a great number of officers who have attitudes which are racist in nature, borne out of a system of discrimination and segregation." Lawton Police Chief Robert Gillian lends an element of support to Benton's statement by admitting that although "there is no place in the police department for outward racism, you can't look inside the mind of an individual officer and determine how prejudiced he is."⁶

Complaints of racist attitudes are manifested by the use of racial

and sexual epithets towards members of minority communities. The field experience of the Oklahoma Human Rights Commission substantiates that such terms or labels as "Chief," "Tonto" or "Princess," "Nigger" or "Coon," and "Beaner" are still being used by law enforcement officials. These epithets go hand in hand with traditional racial or cultural stereotypes such as all Indians are "drunks," all Blacks are "pimps or hookers," all Hispanics are "lazy," and all youths with non-traditional or "mod" appearances are "punks on dope." An example of the repercussions of the police holding racist viewpoints is the controversy that surrounded complaints by Black Lawton citizens over a "Hunting Regulations" flyer allegedly handed around the Lawton Police Department. This overtly racist literature set bag limits for Blacks and stipulated regulations that were all keyed to blatant racial stereotypes. (see Appendix B)

While the persistence of these misconceptions is unfortunate, and although some overt racism and bigotry may exist in individuals, most of the negative perceptions by citizens in this area fall into the category of cultural insensitivity on the part of a majority of officers. Cultural sensitivity includes the awareness of the multiplicity of meanings of common phrases or non-verbal behavior, the understanding of the cultural or religious implications of physical appearance, the ability to understand the cultural dialect of citizens, and the cultural differences in the perception of and reaction to physical contact. The importance of recognizing cultural pluralism and learning to deal effec-

tively with differences is stressed by Dr. Samuel Chapman, who teaches Police Administration at the University of Oklahoma, when he notes: "There is more than one community in town. There are many communities."

The whole question of minority citizens perceiving treatment by the police to be motivated or intensified by racial factors is mirrored by the feelings of those in lower economic strata who perceive that they receive undue attention from officers. This perceived aspect of "powerful vs powerless" extends to the homophobic and jingoistic phenomena borne out in interviews with citizens and in comments made by Lanny Endicott and Opio Toure. Endicott points to a 1976 study on sexual preference prepared by the Tulsa Department of Human Rights, which indicated that poor relations with police was named the top problem by 500 Tulsa gay respondents. Opio Toure relates that foreign nationals have experienced harrassment at peaceful and legal demonstrations of a political nature.

Respondents mentioned the absence of effective affirmative action to be a leading indicator of racist or discriminatory attitudes on the part of police departments. All citizen respondents cited the hiring of more women and minorities to be a desirable goal in improving police-citizen relations. Some citizens, however, recognized the difficulties faced by those police departments which, while attempting to recruit minorities and women, are at the same time requiring higher educational standards than in the past. David Breed views this problem as a "con-

flict between two desirable goals," upgrading the quality of all officers on the one hand and recruiting personnel from non-traditional groups on the other. The difficulty of competing with the salaries offered by private industry to individuals of these groups was also mentioned as a factor inhibiting effective affirmative action.

While most law enforcement officials are committed in principle to affirmative action, they recognize that the "old guard" peer pressure that often still exists makes it difficult for women and minorities to perform effectively. State FOP leader Charles Owen describes the introduction of females into the field of police work:

I think a lot of people (police) have never related to when we brought women into the police service, there was no counseling or anything whatsoever. It's a brand new deal. I've not only seen, I think, the lives of good female recruits ruined because of the inability to service them in some manner in the way of counseling or ability to react. Our people, in what was solely a male-dominated program, which it still is, we did not counsel our men on how to handle this thing.

Attempts on the part of police departments to achieve affirmative action goals have also been hampered by the perpetuation of the "macho" male image of the police officer. Detroit officer Katherine Perkins addresses this syndrome and adds her perceptions of what women can contribute to police work:

They had this attitude, 'You want to be here? Well, you can do it without my help!' The men seemed to be so psyched out on this six-foot/ two-hundred-twenty pound image of what a cop

should be. It was ridiculous. Any fool can shoot a gun. What you really need is intelligence and sensitivity--that's what women bring to the job. 7

In addition to the psychological factors that stem from the traditional male image, the specifics of height and weight requirements for police officers are also rooted in that image, which impacts negatively on the recruitment of females and males of certain ethnic groups. Lee Reynolds, Director of the Law Enforcement Minority Persons Project, National Urban League, describes this phenomenon:

...police officers must be 5 foot 9 when the statistics show that even having a height requirement of 5 foot 8, you are eliminating 90 percent of the female applicants, because the average female is far below 5 foot 8. And also you are eliminating 44 percent of all males. 8

Another primary concern of citizens about police-citizen relations is the issue of selective enforcement. Minority respondents cite such practices as the "overkill" of sending more units than necessary to an incident in a minority neighborhood. Revlon Belle, Director of Operation Uplift in Enid, says, "Sometimes I think they send more people than is necessary to take care of the job." This only reinforces the perception minority citizens have that police are only there to control them. Belle goes on to say, "I think they need to explain these types of procedures or techniques to the public so that when people pass by and see these kinds of things, they know exactly what's going on."

Minority citizens were also critical of what they perceived as police selective enforcement based on racial stereotypes. Both Millie Giago of the Native American Center and Pam Chibitty, Director of the Native American Coalition in Tulsa, decried the practice of police cars waiting outside pow-wows and other social functions. Giago states: "If we have any kind of doings, social, where there's going to be drinking and stuff, we can always count on the police being there before the evening is over." Oklahoma Human Rights Commission field experience illustrates the negative apprehension on the part of minorities which is attached to this practice. For example, it is the perception of Choctaw citizens in Battiast that a 1979 highway patrol license check roadblock was part of a conspiracy to deprive them of the chance to vote in a hotly-contested school board election.

Other examples of selective enforcement were mentioned by citizen respondents. They cited the confusion created by the "Littlechief" decision that established only federal and tribal jurisdiction on Indian Trust Lands. Some political subdivisions have been accused of not providing police or fire protection to Indian families because of the duality of the jurisdictional question. Robert Trepp, a representative of the Creek Nation Legal Department, states:

Another problem that I see is the double standard the police have. Because they kind of hide behind this Indian Country thing every chance they get... When an Indian family has a complaint and needs protection -- 'Oh, that's Indian Country, we can't help

you!' But when one of the same family members is accused of something, they're right out there picking them up and taking them to jail.

Another example of selective enforcement cited by Blacks, Hispanics and military personnel is the "Mother's Day" syndrome, wherein certain targeted citizen groups or areas are perceived as being overpoliced, usually on pay day. One form of this phenomenon is the perceived use of public drunk fines to fill a city's coffers. Public drunk arrests are made on the judgment of the arresting officer and no tests for intoxication are required. Oklahoma Human Rights Commission research has indicated that in one western Oklahoma community, not one White person was arrested for public drunk in four years.

A Tulsa respondent, Lanny Endicott, describes the alleged harassment of citizens at establishments frequented by gays in Tulsa. A few years ago, this fostered a climate of anger and resentment that resulted in a near-riot situation in which police cars were overturned by citizens. In a related incident, thirteen gays were arrested for jaywalking after responding to an officer in a paddy wagon who beckoned them to cross the street.

The common denominator in all of the above examples of citizen perceptions is a lack of trust of the police officer specifically and the law enforcement process generally. For minority groups in particular, this lack of trust is traditional and is often rooted in fear and

suspicion of the authority represented by the police. Pam Chibitty, for example, attributes the low level of trust held by the Native American community to

...the historically poor relationship Indians have had with the government. The federal government broke innumerable treaties and later sent Indian children to boarding schools, where they were stripped of their culture and language. The police just represent another branch of that authority which can't be trusted.

Beyond the symbolic power of law enforcement, however, lies a distrust of police practices which are rooted in a tradition of experience for many citizens. David Breed cites an example of a Black church in Tulsa which conducted training sessions for its congregation on how to get arrested and survive. Further, in conjunction with the Presbyterian Urban Ministry Council of Tulsa, Breed also conducted an informal experiment with church groups to explore the possible discrepancy between White middle-class and Black congregations with regard to their trust in the law enforcement process. The remarkable results indicated that the White middle-class respondents overwhelmingly assumed that if their child was arrested, he/she was probably guilty as charged; the Black respondents, on the other hand, assumed that the validity of the arrest was suspect and felt strongly that their child was innocent until proven guilty. Such a discrepancy in perspective can be partially explained by the following, all-too-typical example related by Revlon Belle:

One cop once pulled me over and I had my wife and kids in the car and he was coming up on the passenger side of the car and he was playing with his gun. My kid now hates the police just because of that, so there's one more person he just made an enemy with.

Police Perceptions of Police-Citizen Relations

The role of police officers as perceived by citizens and by the officers themselves forms the basis for any consideration that might lead to constructive change in the relationship between these two groups. What follows is an examination of the perspectives of police professionals concerning the roots of poor police-community relations; the ambiguity of enforcement; the expectations the public places upon officers; and the origins of the "Us vs Them" attitude that pervades the discussion of police work.

The expectations the citizenry places upon the police are often burdensome and unrealistic. The no-win situation that faces police administrators is complicated by too large a geographic area to police, too few funds to adequately staff and train departments, little public support or knowledge of police functions, a multiplicity of laws and paperwork, and increasing obligations on service delivery. Oklahoma City Police Chief Tom Heggy comments on the ambiguity inherent in the legal mandate given police:

People, particularly in Oklahoma, aren't sure what they want the police to do. See, you can't agree on

liquor-by-the-drink, on how you want marijuana handled, you can't agree totally on what a crime is, not really, and we've got this larceny law that says anything over \$20 is a felony. It should probably be over \$50 or \$100... I would like to see the police mission in this country completely redefined by law. I think we need the citizens to tell the legislature out here, 'Hey, we want the police to do this and this, and we don't want them to do this,' and get us out of it.

The integration of the police mission with the wishes and desires of the populace is a critical factor in law enforcement. Unfortunately, the social disintegration prevalent in our society has led to neighbors not knowing neighbors and the cop on the beat being unfamiliar with his/her social charges and constituency. This is made more difficult with the accelerated growth and increasing urbanization of Oklahoma. Norman Police Chief Don Holyfield states, "We have 194 square miles and 65,000 people (in Norman). We can't be everywhere at once." Muskogee District Attorney Mike Turpen describes the problem of community disintegration:

Citizens are frustrated because their expectations are too high. Law enforcement used to be people taking care of themselves. Now citizens have forfeited the streets to the criminal element. We've got to get back to a sense of community with people taking care of each other. If neighbors aren't helping neighbors, you can have a cop on every corner and there will still be crime in the middle of the block. There's no sense of community between neighbors and police. It's snowballing in a real negative direction.

These expectations are heightened by the media popularization of the cultural image of the Super-cop, an omnipotent, tough, efficient,

and compassionate officer who never fails to solve a crime in short order. Charles Owen echoes this major concern about citizens'

...inability to understand that we are not TV cops. We do not have the scientific things that Dick Tracy's got. We cannot solve a case in 30 minutes like 'Adam 12.' And you'd be surprised, in the community they think, 'Gosh, we saw that on television, they (the police) can surely do that out there.' Well, they're not bound by the Rights of Miranda and decisions of the court, and we are.

These expectations of the police point to their internal conflict between the designated role of crime fighter and the implicit role of problem solver. Contrary to popular belief, much of police work involves addressing the manifestations of social problems. Chief Heggy addresses these issues in the following:

I think the other thing that the citizen doesn't realize is that we're handling an average of 2700 domestic calls a month in Oklahoma City. They jumped a thousand in the last year, and that takes a lot of police time. They're asking the police to do what a minister or psychologist or somebody can't do. They're asking the police to handle all the social problems in the country, and I'm talking about, overall now, and police aren't equipped to handle social problems. Our training is supposedly for crime investigation and we spend 86% of our time on social problems. I'm talking about lost kids, domestics, neighborhood squabbles, and everything else. We have a lot of training in that area, but we're not trained to give our total time to that...The officers are well educated, but there's no direction from the state on exactly what the police role should be. So for everything that comes up, everybody says, 'Well, let the police do it.' And it's really a problem.

In a letter to the editor in Psychology Today, April, 1981, David

L. Sandy of Belle Vernon, Pennsylvania writes:

As a police officer, I wonder why the police are not considered as a helping profession. Poverty, crime, drug-addiction, juvenile delinquency, mental illness, alcoholism, and child abuse are all problems that must be faced by the helping professions, but only in police work does one have the opportunity to face them all. 9

Many police resent the imposition of social duties for which they are, in some cases, ill-equipped to deal effectively. In a police-community relations workshop held in October, 1980, by the Southwest Center for Human Relations Studies, 93 Oklahoma City patrol officers considered this function of social responsibility. Their consensus is the following:

Domestic situations are often one of the most difficult and unpleasant jobs patrol officers are called on to handle, and for which they feel the least competence. Many do not perceive they have any other role in these situations other than to restore peace and prevent injury. They are not crisis intervenors, mediators, counselors, and should not be expected to behave like social workers, marriage counselors, youth workers. 10

Within this context of role conflict and unrealistic public expectations, the police officer is in the position of receiving negativism from the citizenry and criticism from virtually every direction. The psychological polarization that gradually develops in the officer is often reflected in the coping strategy of an "Us vs Them" mentality.

The June, 1980 Oklahoma Monthly article, "The Thin Blue Line," offers an excellent synopsis of the ingredients of this attitude:

Only one type of Them used to face police-- criminals. Now it extends to their own police department with the 'bosses,' to the general public that demands perfection, and to the criminal justice system that seems to have taken on a personality when cops discuss its persecution of them. No longer is the physical danger of the job the most stressful for them; it's the psychological duress building day after day caused by turning emotions on and off, of seeing first hand the criminal's victims, of trying to follow regulations of the bosses and still hold the respect of their peers, of endless paperwork on arrests where the suspect is on the streets before the paperwork is finished. In any human being, this bottled-up stress will find an outlet. One-half of all cops have marital problems, and police have two times the normal divorce rate. A third have health problems, particularly ulcers. A third have drinking problems. A fifth have problem children. They have three times the suicide rate. 11

The most obvious manifestation of this "Us vs Them" attitude is that which is faced by police officers in fighting serious, often violent, crime. Particularly during this time of increasing violent crime, the necessity of a get-tough policy, as articulated by Chief Gerald Loudermilk of Terre Haute, Indiana, has clear implications for the police officer:

If it boils down that it's us against them, I want it to be us...You've got to meet force with force. Our robberies are up and one of those robbers is going to kill somebody. If the burglar is breaking into a

house, as far as I'm concerned, he's paid for. I'll take the consequences. 12

Another major factor that impacts upon the attitude of the individual officer is labor-management conflict within the department. Robert D. Gordon of the International Conference of Police Associations describes this phenomenon, of which the public is largely unaware:

You must keep in mind what brought about unions of policemen in this country, and what has brought about the request for a (police) Bill of Rights, because our rights have been violated from the day I went on the police department where the chief was God-almighty. He hired, he fired, he transferred, he dismissed. If he didn't like the way you looked, you were out of a job. 13

Police also feel threatened by what they perceive as the arbitrary imposition of internal discipline, as Lloyd C. Sealy, Professor of Criminal Justice, City University of New York, says in the following:

The multitude of departmental regulations and the nature of the police job assure rule violations. Pragmatically, this results in police management frequently ignoring breaches and invoking sanctions at its convenience. The sometimes arbitrary and capricious application of discipline results in a perception by police personnel that sanctions are invoked when the agency wants to get off the hook and needs someone to take the rap. The ambivalence which police have of the purpose of discipline influences their attitude toward police management, as well as toward the public. 14

The relationship of police with the public in general also adds to the psychological duress experienced on a day-to-day basis by police

officers. This is described by Gary P. Hayes, Executive Director, Police Executive Research Forum:

The view of the community is not an enemy, but you place yourself in the role of a police officer, every person is a potential problem for him, or a potential, I don't want to say 'enemy,' but trouble he has to deal with, a person. So that develops a certain outlook, not one in which everybody is viewed as an enemy, but in a context, potentially, people could all be problems to them on an individual basis. Anyone walking along the street could turn out to be a robber or some other problem they have to deal with. 15

The feeling of being apprehensive in dealing with the public is compounded by the mutual apprehension felt by citizens toward police, as described by respondent Revlon Belle:

It is a stressful job, and let's face it--you have a job where no one likes you, simply because of the uniform you wear. And the fact is that he is this person who could easily control whether I live or die at any moment, so people don't like you. And they voice that sometimes. And the people that do like you, you'll have to be very careful when you're around them because there will come a time, maybe one day, when they're cruising through the city or something, and they run into a bad cop, and all of a sudden you're one too.

The police officer is also the personification of the criminal justice system. Citizens view the police as having more responsibility than they actually have for the climate of crime in our society. The resentment for the failings of a large, cumbersome, and sometimes in-

effective criminal justice system is individualized and focused on the officer. The frustration of being a cog in the wheel is expressed by Charles Owen:

We are just simply one scale of the criminal justice system, we're the enforcement portion, but then there's the court. Then you have your probation and parole and you have the whole scale of people and we're as exasperated as everybody is. If we catch a guy and he's back in the neighborhood the next day, that's not necessarily our fault. We may have done our job, we may have done our part of what the system requires us to do, but then the courts may not have done their part.

An additional facet of the criminal justice system that affects the attitude of the police officer is the identification with victims of crime, and with the victim's outrage with a system that appears to give them fewer rights than the perpetrator. This view has become very prevalent in Oklahoma and is influencing and precipitating a major effort to adopt legislation to protect the rights of victims. Mike Turpen, President of the Oklahoma District Attorney's Association, heads the movement to adopt the Victim-Witness Bill of Rights as a response to what Turpen terms, "the Criminal Injustice System." Copies of Turpen's proposals are included in Appendix C.

The ultimate manifestation of an "Us vs Them" attitude is the internalization of all of the external stress discussed above. The increasing isolation of the officer maximizes the importance of having fellow officers as a support group. This peer relationship is of crit-

ical importance because "Us vs Them" is preferable to "Me vs Them." Revlon Belle, a former police officer, places this in perspective:

You might have a buddy and you and your buddy are probably all each other's got. So you tend to be, well I don't know, it's almost like a man and wife, I guess you might say. You just get so used to each other and you got a ring on each other. If you've got a problem, if you can't get along with your buddy, and you don't have a place to take it to, like a preacher, you take it home with you or on the streets with you, which you definitely don't want to do.

The topic of police stress is fundamentally important to understanding the problem in the relations between citizens and police. This problem is further explored in a later section.

Positive Programs

Much of the Human Relations portion of this section deals with the serious and often unavoidable nature of the conflict between citizens and police. Some Oklahoma citizens and organizations have taken creative, positive steps to attempt to reconcile the mutual misunderstanding and mistrust between these two groups.

Among these are the Police-Community Relations Workshops conducted and sponsored by the Southwest Center for Human Relations Studies of the University of Oklahoma. In a recent workshop involving 93 Oklahoma City patrol officers, attempts were made to identify ways by which officers could improve community relations. One of the suggestions for improving the workshop substance and procedure, in the opinion of the participating

officers, was to include command personnel, media, and citizens in future conferences. They also recommended that positive police-community relations efforts on the part of officers be considered in the making of promotions; that patrol officers be encouraged to meet with citizen and neighborhood organizations on duty; that officers be helped in handling frustration and stress; that responsibilities in domestic situations be "spelled out more clearly;" and that efforts be made to "re-orient society to the rights of police, the rights of society, (and) the rights of victims." A complete summation of the October, 1980 workshop is included in Appendix D.

The Southwest Center has also participated in cultural awareness and sensitivity training of recruits in police academies. Leonard Benton sees the development of such programs as a viable beginning:

I understand that for several years they've had human and community relations kinds of sensitivity training for rookie classes and new recruits; that they have had courses, classes, and visitations arranged for the new recruits, in terms of developing sensitivity to the black community and other minority communities, and I guess what would be kind of a sociological make-up of communities. I think that's moving in the right direction.

Since cultural factors are normally "not a variable in the delivery of human services," according to Pam Chibitty, such training will hopefully begin to make officers aware of the cultural diversity present in the community.

One major aspect of cultural diversity is language. Rosa King, Director of the Hispanic Cultural Center in Oklahoma City, has worked very closely with the Oklahoma City Police Department in teaching officers to speak "street" Spanish. Aside from aiding in the transcendence of cultural barriers, language programs of this type serve the necessary functions of helping law enforcement officers to perform their duties more effectively, and of ensuring the rights of non-English-speaking citizens.

In Enid, ministers and police organized a program in which ministers accompany officers on patrol. An extension of this concept is being pursued in Tulsa by the Tulsa Metropolitan Ministry. In that program, approximately 30-40 clergy are on call one day per month to accompany police in an effort to prevent violent confrontations. This counseling/conciliation function has been a significant factor in effective crisis intervention and a defusing force in domestic and other potentially violent situations.

A common criticism that law enforcement officials have of citizens is that they are often ignorant of police policies, practices, and procedures. In order to make the public more aware of the functions of the police force, steps are being taken to inform citizens about what police do. In Enid, a program has been implemented to make police officers available to speak with citizen groups about the role of police officers.

In Muskogee, a police-community relations representative presents programs to local schools, civic and church groups concerning not only the police role, but also information about crime prevention.

Much has been said by citizens and police about the need for one-on-one contact of a positive nature. They point to the reinstatement of the "cop on the beat" concept. Professor Sam Chapman calls this "that wonderful marriage of shoe (boot) leather and cement." He stresses that the use of foot patrols is expensive; however, he illustrates that with the use of portable radios, this can be accomplished by motorized personnel who temporarily leave their vehicle. Oklahoma City, Norman, and Muskogee are utilizing this method of "getting back out to the community." The value of the beat patrol and its personalization of the uniformed officer is pointed to by Rosa King:

It's so nice to see the beat officer out here in the neighborhood who comes over and says, 'Hi, I'm so and so and I'm the guy who works out here in this neighborhood and you can call on me, and this is what I do.' I was here and my staff just came over and said, 'Do you know what? The beat officer just came over and introduced himself.' When we first moved in, that was the biggest thing to my employees, so you can imagine what would happen if we had this guy, let's say out here in the barrio. People would love it. But I know that the mechanics of getting that person there, that's another story. Where's the money going to come from?

King states that domestic violence and alcohol-related incidents are the most common problems in the Hispanic community. Ann Lowrance,

Director of the Norman Women's Resource Center, relates the fact that response calls to domestic violence consistently rank within the top three causal factors of officer deaths. She adds that in many cities, domestic disturbances routinely receive an additional or backup unit. In her public presentations, Lowrance attempts to heighten the public's awareness of the dangers inherent in police intervention in these matters, the abuse they often encounter, and the "amazing psychological swings" experienced by police.

In her training sessions with police concerning domestic violence and sexual assault, Lowrance provides police officers with "hands on" information, which not only aids in the investigation of such crimes, but also provides the officer with a common-sense and compassionate way of handling the emotional needs of the victim. She also teaches rage-reduction techniques, which provide the officer with life-saving skills in any case in which anger is an issue. Lowrance strongly emphasizes the need for law enforcement agencies either to affiliate themselves with appropriate service centers, such as a Battered Women's Shelter or a Mental Health Center, or to hire civilians with expertise in the crimes of domestic violence and sexual assault. Further, given the American Humane Society data that 12% of all children are sexually abused, Lowrance has developed a pilot program in conjunction with the Norman Police Department and the courts to discuss the topic of the sexual abuse of children of middle-school age with the PTA.

It should be noted that the positive programs listed above are present in larger communities with networks of social services and, most important, with sizeable, organized community groups. The problem of police-citizen relations, however, is not simply an urban one, since rural communities, although limited in fiscal or human resources, are also in need of improved police-citizen relations. Any attempts at blanket solutions to the overall tensions between these groups would undoubtedly falter. It is imperative, nevertheless, that there be an extensive examination of the problems discussed above and that creative and positive alternatives be sought to alleviate the existing situation of hostility and fear that pervades the interaction of citizens, communities, and police.

RECOMMENDATIONS

The Oklahoma Human Rights Commission urges communities to seriously consider the following recommendations to improve the status of police-citizen relations:

- 1) Evaluate the possibilities for implementation of the positive programs mentioned above, based on their applicability to local needs;
- 2) Develop programs which bring together law enforcement officials from all levels and citizen groups in a dialogue for the purpose of identifying problems, understanding the role of police, impacting upon the priorities of enforcement in the community, and evaluating the quality of service delivery systems;
- 3) Imbue police officers with a spirit of service. Continually stress the contemporary police motto: "To serve and to protect," which should extend to the use of common courtesy in any interchange between police and citizens;
- 4) Create in police departments an effective police-community liaison function, which is responsible for more than a "public relations" function;
- 5) Establish personnel mechanisms to reward individual officers for positive police-community relations efforts;
- 6) Conduct training to increase the effectiveness of police officers in dealing with cultural, linguistic, and behavioral differences, to include efforts to discourage the use of derogatory epithets toward citizens;

- 7) Accelerate efforts to heighten public awareness of cooperative neighborhood-oriented crime prevention programs such as Neighborhood Watch, and complement these with programs that employ high visibility and personal contact of police officers, such as "street-beat" patrols where possible;
- 8) Develop ways in which police departments can utilize the informal power of peer pressure among officers to reinforce the goal of positive police-citizen relations;
- 9) Conduct an effective affirmative action program, which includes the aggressive recruitment of minorities and women and the upgrading of the quality of in-service training;
- 10) Utilize the resources of the community to augment the ability of law enforcement agencies to mediate and conciliate confrontations and to refer citizens to relevant social service agencies.

EXCESSIVE FORCE

The use of excessive force is defined in the Problem section by Opio Toure of the Oklahoma Alliance Against Racist and Political Repression as any force that exceeds reasonable force, that is, "only that force that is reasonably required to make an arrest." Police officers who utilize excessive force "cross the line from being an enforcer of the law to breaking the law."

Excessive force, however, is clearly not the only manner by which police can break the law. Toure divides the problem of police misconduct, or "Police Crimes" in his terminology, into the following eight categories:

1. Physical abuse of people who have committed no crime;
2. Physical abuse of arrestees and prisoners who are awaiting trial;
3. Physical or psychological intimidation of arrestees and prisoners to exact confessions;
4. Verbal abuse and detention of people without proper cause;
5. Illegal searches and seizures;
6. Killing people who have committed no crime;
7. Killing people who are not threatening the lives of others, including those fleeing from apprehension where failure to apprehend poses no serious threat to the lives of others;
8. Engaging in practices to deliberately cover up their own abuses and that of fellow officers.

Incidents that exemplify all of the above categories make police misconduct, according to Toure, "the most serious domestic problem in the

country in terms of civil liberties and human rights."

The use of excessive force in the process of making an arrest is exemplified by the first category listed above, while excessive force that is imposed on individuals already apprehended is included in the second and third categories. Numerous respondents cited police brutality as an ongoing problem in Oklahoma communities. According to these respondents, citizens have been beaten in cars, in individual jail cells, in elevators of law enforcement buildings, and as a result of cursing both male and female officers. Further, some Native American citizens in Tulsa have described the strange coincidence of having their lives and those of their children threatened and their vehicles rammed on the same day on which they had complained about police brutality.

While the use of excessive force against citizens constitutes an egregious violation of public trust on the part of police officers, the illegal use of deadly force quite obviously represents the most extreme example of police misconduct. Police crime of this sort most definitely has a deleterious effect on the quality of police-citizen relations throughout the community. It is also true that certain segments of the community, such as the fastest-growing minority group in the nation, the Mexican-Americans, have borne and continue to bear the brunt of the questionable use of excessive and often deadly force by police officers. The emotional state of the community in response to such practices is described in the following comment by Mark Schact of the Mexican-Ameri-

can Legal Defense and Education Fund:

The Chicano community of the Southwest believes it is being terrorized by the institutions charged with protecting the peace and administering justice. The community is outraged and it is afraid. Its anger stems from a perception that the police, along with prosecutors, juries, judges, act in concert to legitimize the use of violence and intimidation against their communities. And there is fear because to be a Chicano and to be stopped by police is to run the risk of serious injury and even death. 16

The issue of deadly force falls into two of the categories of police misconduct listed above by Opio Toure. It is undeniable that "killing people who have committed no crime" warrants a serious challenge and deserves attention in any consideration of police crime. The focus of the following analysis of deadly force, however, concerns a more controversial aspect of the phenomenon known as the "fleeing felon" issue. The seventh of Toure's categories, in fact, adequately describes the typical scenario surrounding this crucial question: "Killing people who are not threatening the lives of others, including those fleeing from apprehension where failure to apprehend poses no serious threat to the lives of others."

The serious political and ethical implications of the use of deadly force by police officers are described in the following statement by Homer F. Broome of the Law Enforcement Assistance Administration:

The issue of the abuse of deadly force is critical because it has the potential for triggering a violent

national explosion. It is, in all probability, the most serious act in which a law enforcement officer will engage, and has the most far-reaching consequences for all of the parties involved. It is therefore imperative not only that law enforcement officers act within the boundaries of legal guidelines, ethics, good judgment, and accepted practices, but also that they be prepared by training, leadership, and direction to act wisely whenever using deadly force in the course of their duties. It is in the public interest that law enforcement officers be guided by a policy which people believe to be fair and appropriate and which creates public confidence in law enforcement agencies and its individual officers. 17

Drew S. Days III, former Assistant Attorney General, believes that there is a "lack of confidence, particularly among ethnic minorities, in the most visible representative of our legal system, the officer on the beat."¹⁸ Vernon Jordan, President of the National Urban League, elaborates on the possibilities of reactive violence:

...we know from the experience of the 1960's most civil disturbances began with a confrontation between citizens and police officers...if the 1980's see a repetition of civil disorder, then it is as sure as the day is long that some sort of confrontation with the police will be the spark that sets it off. And the issue of deadly force is so deeply felt within minority communities that every such incident holds the possibility of wider, more serious repercussions. 19

Beyond the possibility for accelerated violent conflict, there is growing concern about the increase in statistics for incidents of the use of excessive force and, more specifically, deadly force by police officers. Additionally, there is great concern about the use of deadly force by citizens. This special problem will also be addressed in

subsequent paragraphs concerning fleeing felons. Vernon Jordan strongly addresses the seriousness of the problem of deadly force:

While we meet here, some police officer somewhere in America is shooting a civilian. And if today's case is typical, that civilian will be a Black or Hispanic person. If that incident follows the averages, it is likely the victim is a young person. It is likely that the incident involved a non-felony offense. It is possible the victim was unarmed. It is possible that the shooting could have been avoided. And it is certain that no punitive action will be taken against the policeman doing the shooting. 20

America's law enforcement officers killed 3,082 civilians during the period from 1968 to 1976. Since 1976, they have killed an average of one person per day, fifty percent of those killed being non-White. Blacks comprise fourteen percent of the U.S. population, yet they represent half the number of citizens killed by police.²¹ "Although a sizeable number of killings by police officers may be justifiable and necessary," states Peggy Triplett of the National Institute of Law Enforcement and Criminal Justice, "a report in which 1500 incidents between 1960 and 1970 were examined has suggested that one-fifth of the homicides studied were questionable, two-fifths were unjustifiable, and two-fifths justifiable."²² Further, the 1978 FBI Uniform Crime Report states that more than 56,000 officers were assaulted and 93 were killed in one year. "Every officer knows these figures; the inherent danger of policing and its effect on officers is crucial to understand the role of the police," according to James P. Damos of the International Association of Chiefs of Police.²³

The June, 1980 edition of Oklahoma Monthly cited the high number of Oklahoma City citizens killed at the hands of police:

During 1979 there were 106 homicides in Oklahoma City. Seven of those were committed by cops; all were ruled justifiable homicide by the district attorney and never taken to trial. During a ten-month period, from June, 1979 to April, 1980, eight persons were killed by Oklahoma City cops. Four of those carried no gun at the time and one had a pellet gun. 24

To be sure, police officers are placed in tense, hazardous situations in which split-second decisions must sometimes be made. Many of these involve the use of deadly force against citizens. James Damos describes the frequency with which officers use discretion concerning deadly force:

Various studies have shown that, depending on the city in which he works and the nature of his duty, a police officer will use deadly force once or twice in a 25-year career...However, it must be pointed out that while the use of deadly force is rare for the individual, decisions not to use deadly force are also everyday events for every police officer (emphasis added). 25

The importance of discretion on the part of an officer in larger Oklahoma cities is emphasized in the Oklahoma Monthly article:

Each night in a city the size of Oklahoma City or Tulsa a police officer is in a situation where deadly force can be used. 'Every night we could kill someone legally. But you just don't,' the same officer said. Police are afraid that any attempt to rewrite the law will result in too many detailed circumstances that tie their hands. 26

The issues of police use of discretion, departmental guidelines for the use of deadly force, state law regulating this force, and citizen review of the consequences of the use of deadly force are the center of the tensions that divide citizens and police. In his address to the Judiciary Committee of the Kansas Senate, Lee Henson of the Community Relations Service notes the suspicion with which minorities in particular view the issue of discretion:

Put another way, minorities, for a number of historic reasons, may have difficulty in accepting the proposition that the authority of police to take a human life ought to be made a matter of broad individual officer discretion. Historically, minorities have not tended to benefit from the exercise of such discretion at the hands of law enforcement officers and agencies. 27

It is important to note that in Oklahoma the deadly force issue does not impact solely upon minorities; nevertheless, it is the minority community that has, with reasonable cause, the deepest, most bitter feelings about the police use of deadly force.

Oklahoma law officers are authorized by law to use the amount of force necessary, but not more than necessary, to effect an arrest and take a person into custody. After an officer exhausts all reasonable means of effecting an arrest and determines that force is necessary, he/she may use such force with discretion and only to a degree sufficient to overcome the actions initiated by the arrestee.

The use of deadly force falls under the statutory restrictions of justifiable homicide and departmental guidelines that define the limits of officer discretion. The policy guidelines vary from jurisdiction to jurisdiction. A public officer is exculpated by 26 O.S. 732 from the commission of a homicide in one of the following circumstances:

1. In obedience to any judgment of a competent court; or
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or
3. When necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

All of the above are tempered by the restrictions imposed by individual departmental regulations. Tulsa, for instance, has established a departmental policy that "an officer shall never fire at a juvenile offender except in defense of his own life or the life of another (emphasis added). However, the continuing danger to the public shall be considered in judging the application of the policy."²⁸ The policy emphasized above is the FBI rule that permits agents to shoot only in self-defense or in defense of others. Many jurisdictions, including the city of Norman, apply the FBI rule to juvenile and adult offenders alike. Lee Henson claims that "available studies of the results of such actions (FBI rule) tend to show that the actions reduce the number of shootings, ease police-minority tensions, and do not result in an increase in crime."²⁹

Most law enforcement agencies have departmental policies that restrict the unholstering or discharging of firearms other than at an approved target range, and require automatic review of incidents involving the discharge of firearms or the use of deadly force. In larger departments, officers who discharge their weapons must submit a report to the chief, through his/her division commander, regarding the incident. Some departments require this report to be filed prior to the end of the officer's tour of duty.

The policies regarding the use of firearms are generally structured with the intent to protect the public. For instance, some larger metropolitan departments prohibit firing at or from moving motor vehicles. This is primarily an urban restriction. The rationale is that if an officer shoots the driver of a vehicle, a situation results in which a dangerous vehicle is careening down a street. If an officer misses, there is the possibility that the round could strike an innocent bystander. Tulsa prohibits firing at stolen motor vehicles in the absence of other known felony offenses committed by the occupants.

The weaponry authorized for use by police officers also has a significant impact upon the issue of deadly force. Officers in Oklahoma are armed with revolvers of varying caliber with six-inch barrels. The .357 Smith and Wesson is considered by many to be the standard weapon for police work. During the interviews conducted by the Oklahoma Human

Rights Commission, citizens mentioned fear of the police use of "dum-dum" or hollow-point bullets. Opio Toure claims that Midwest City is the only Oklahoma municipality that has a policy prohibiting the use of these bullets, which have been outlawed by the Geneva Convention for use in warfare.

Dr. Samuel Chapman, who teaches Police Administration at the University of Oklahoma, feels that the issue of weaponry is the key to reducing the possible fatal consequences brought about by the use of force. It is his recommendation that departments concentrate on the provision of intermediate weaponry to assist officers in the making of arrests. Chapman recommends that nightsticks be used as an intermediate weapon between the fists of an officer and the firearm of an officer. Many shooting incidents have resulted from the inappropriate use of a service revolver as a club. He also points out the undesirability of the use of a flashlight as a bludgeon, something for which it is not designed. He further states that the nightstick should be with the officer at all times. The nightstick or "billy club" has fallen into disuse, Chapman says, because officers find it uncomfortable to wear on a belt. Moreover, he views the nightstick as preferable to the use of chemical mace because of the accuracy of application, since mace can incapacitate an officer or bystander as well as an offender. The judicious, discretionary use of the nightstick would reduce the number of incidents in which officers feel the firearm is their only recourse.

The following analysis from Oklahoma Monthly places the use of deadly force in perspective:

Anytime an armed suspect is involved, or an officer is placed in a life-threatening situation, no one would prevent him from using deadly force when necessary. But when it comes to killing a person who has committed a property crime, who is fleeing from and not toward the officer, then it should be another matter. And police officers know this and are using discretion (emphasis added). 30

It must be strongly stated, however, that reliance on the often arbitrary and capricious use of discretion on the part of an officer under duress places the citizen in an extremely vulnerable position. In short, a so-called "fleeing felon" can be legally killed if the officer simply chooses not to use discretion. Further, the broadness of Oklahoma law regarding the use of deadly force to apprehend felons is alarming when consideration is given to the number and types of crimes that are statutory felonies in this state. These include: theft of more than twenty dollars; perjury; indecent exposure; embezzlement; and second degree burglary, such as breaking into a parking meter or a vending machine.

Oklahoma's statute concerning justifiable homicide is rooted in English common law, wherein most crimes were felonies and all felonies were punishable by death. The state statute was written in 1910 and remains unamended by legislative action. The Oklahoma Monthly article points out that in 1910, Oklahoma "was still operating under the fron-

tier philosophy of law," under which "a policeman who shot and killed someone involved in a felony was viewed as only saving time and expense carrying out what would be the person's fate anyway."³¹ Common law drew the line between felonies and misdemeanors on the use of deadly force. In "Shooting the Fleeing Felon: State of the Law," Stephen Day explains that this distinction was based on the theory that "in the case of a felony, society's interest in the apprehension of the offender was deemed great enough to justify taking his life. A misdemeanor, on the other hand, was not considered serious enough to justify the taking of life."³²

Today, however, few felonies are punishable by death. Day points out, "Indeed, in many states there is no capital punishment at all. Thus, today the shooting of a fleeing felon amounts to the imposition of a death penalty for conduct which in many cases would result in no more than a suspended sentence if the suspect were brought to trial."³³ This combination of "overkill" in terms of the punishment not fitting the crime and the denial of due process inherent in the theory of "expediting" the process of punishment are two factors which combine to make many citizens use the term "outrageous" to describe the Oklahoma fleeing felon rule.

In addition to the comments of David Breed and Mike Turpen, which are included in the Problem section of this report, other respondents expressed their dismay with perspectives that can be grouped in the two

categories above. With regard to the category of the punishment of deadly force not fitting the crime committed, Opio Toure related an incident that occurred in Oklahoma City a few years ago in which a young man in a car was leaving the scene of an alleged break-in. While walking beside the slow-moving car, the police officer involved was talking with the individual and eventually ordered him to stop. When the youth failed to respond, the officer chose to shoot the individual in the head rather than "pull the kid out of the door, or shoot the tires out." Toure feels that the killing described above is "definitely wrong" and explains his rationale in the following statement:

I'm familiar with the death penalty and you don't get death for unarmed burglary unless someone has been hurt. You don't get the death penalty for that, but he got the death penalty for that. Even if he was guilty, and we're not saying he was, but even if he was guilty, he got the death penalty for that illegally. And a police officer is the only person who can execute someone right on the spot. So when a police officer has it in his or her mind that the person right there was involved in a crime --I (the police officer) didn't see them involved in a crime, but they're running in the general area--so I'm going to tell them to stop and if they don't stop, I'm going to kill them. I'm not going to shoot to disarm them, I'm not going to shoot a warning shot, I shoot to kill that person. So that person is dead. That person may or may not have been guilty of the crime, and even if they were guilty of the usual felony, they wouldn't have got the death penalty. They didn't turn around and shoot at the officer, they didn't have a gun in their hand.

Implicit in Toure's remarks is the second category of criticism voiced by respondents, namely the denial of due process for the in-

dividual and the perceptual nature of the police officer's judgment. The lack of trust in the assumptions made necessarily by the officer in such circumstances is expressed by David Breed, who states, "The judgment of the officer is critical. In effect, the (fleeing felon) statute licenses an officer to kill without really knowing the situation. I don't trust people with that kind of power." In terms of the denial of due process, and the threat to the constitutional rights of citizens, Vernon Jordan effectively reiterates the perspective of many, including Pam Chibitty, when he states, "...when a civilian is killed by a policeman, that officer has taken upon himself the roles of prosecutor, judge, jury and executioner. That is not the policeman's job. It is not what he has been trained for. It is not consistent with a democratic society."³⁴

While many citizen respondents strongly criticized the fleeing felon statute for the above reasons, none denied that in certain cases a police officer has no choice but to fire his/her weapon to save their own life or that of a bystander. The tragedy is that in "the overwhelming number of such incidents, the grossly disproportionate use of force could be avoided," states Vernon Jordan.³⁵

Among the numerous cases mentioned by respondents, a classic example of the killing of a citizen by police which could have been avoided was the 1978 case of Lee Lewis, Jr., a 19-year-old Black man from Muskogee who was stopped for questioning in relation to a domestic conflict with his girlfriend. A routine identification check revealed that a felony

warrant was out for his arrest. Lewis allegedly had failed to make restitution as part of his probation of a two-year deferred sentence on a \$290.00 burglary of a tire store. The two police officers informed Lewis of their intent to arrest him, but when they persisted, Lewis balked and took off running. After firing two warning shots, the officers leveled their weapons and fired, killing Lewis.³⁶

The emotion-packed trial resulted in the rendering of a not guilty verdict against the two officers charged with second-degree manslaughter. Mike Turpen, Muskogee County District Attorney, who disqualified himself from the case to allow the state Attorney General's office to prosecute, described the result as exemplary of "bad judgment and morally wrong, but legally right. The law is legal, not logical." To alleviate that discrepancy and to discourage the use of deadly force in cases where it could be avoided, Turpen advocates that the state law should be more narrowly defined, and that local policies be adopted which comply with same.

The proliferation of crimes classified as felonies in Oklahoma and elsewhere has made the common law rule inadequate for use in modern law. Recognizing this, many states have adopted individual reform statutes or the Model Penal Code promulgated by the American Law Institute on the use of deadly force. (see Appendix E)

Oklahoma is among a minority of states that still follow the common law rule. As of January, 1980, twelve states have no statute on the subject. Eight states now limit the use of deadly force to cases of "forcible" felonies. For example, a forcible felony in Illinois is defined as: "Treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, and any other felony which involves the use or threat of physical force or violence against an individual." There is some movement to amend the statute in Illinois to exclude burglary, especially in the area of what is classified in Oklahoma as "Burglary II." This crime includes breaking into an automobile, boat, or vending machine.³⁷

The Model Penal Code has been adopted by nine states. In substance, the Model Penal Code would "permit the use of deadly force by a law enforcement officer only when a person's conduct included the use or threatened use of deadly force, or when there is a substantial risk that the person will cause death or serious bodily harm if his apprehension is delayed."³⁸

Much has changed since 21 O.S. 732 and 733 were written in 1910. The value of \$20.00 worth of goods has been diminished by inflation. Meanwhile, society has come to place a higher value on human life. This makes the justified fatal shooting of a citizen for allegedly fleeing from an attempt to steal \$20.01 worth of merchandise even more ludicrous and disturbing.

Any attempts to make Oklahoma law compatible with the views of contemporary society and law would have to include the raising of the dollar amount that constitutes the commission of a felony. Moreover, beyond the reclassification of felonies involving theft, there should be a legislative amendment to make a distinction between nonviolent and violent felonies with regard to the use of deadly force in the apprehension of citizens suspected of felonious crimes. These should be divided between nonviolent and "forcible or atrocious" felonies. Further, the use of deadly force by police officers and citizens should be restricted to the parameters of the Model Penal Code. This closely parallels the FBI shooting rule and, based on available studies, would reduce the number of shootings and resultant fatalities, ease police/minority tensions, and yet not result in an increase in crime.³⁹

The above progressive steps are desirable for several reasons. Among these is the variation in the policies from municipal jurisdiction to jurisdiction regarding the use of firearms by police. These statutory steps would be instrumental in creating uniformity and standardization. Common sense underscores the rationale for discerning the differences in the danger to society of a nonviolent shoplifter of "X" amount of goods and that of a suspected or convicted armed robber, rapist, or murderer. Additionally, the state should assume responsibility for ensuring that suspects are subdued or apprehended in a humane fashion by prohibiting the use of "dum-dum" or hollow point ammunition by law enforcement officers. Further, intermediate weaponry and train-

ing in its use as an alternative to the use of deadly force should be required for officers.

Some variation of the legislative/citizen committee proposed by Senator Al Terrill, for the purpose of examining problems between citizens and police, should be considered. The results of regional hearings would most likely support efforts to change what Terrill calls the "run and shoot" policy in Oklahoma.⁴⁰ Moreover, these hearings could provide substantial, constructive recommendations for improving police-citizen relations in the state and create a vehicle through which aggrieved citizens could voice their fears and concerns. This venting of an accumulation of frustrations, fear, and anger would help to ease the tensions present in some Oklahoma communities.

Reverend John Adams, Director of Law, Justice, and Community Relations for the United Methodist Church, emphasizes the value of human life and the necessity of recognizing its importance in improving police-citizen relations: "All human life is sacred. When a commitment to this basic premise is shared by the police and the community, there will be less danger to both the police officer and to the community, and there will be better protection for all."⁴¹

No examination of deadly force and its application to justifiable homicide in Oklahoma can ignore the ambiguity and inherent danger of the

broad interpretation, the possibility of administrative error, and the lack of judicial review of 21 O.S. 733, which applies to the killing of fleeing felons by a private citizen in a situation in which any type of felony has been committed.

The absence of legislative adoption of "forcible felony" restrictions and the current broad interpretation of the statute have combined to create an uneasy climate. In a letter to University of Texas Law Professor Joseph Witherspoon, George Cerny of the Community Relations Service, U.S. Department of Justice, describes the climate in Oklahoma as one of "tension and conflict." (see Appendix F)

Bob Gann, Director of the Oklahoma Indian Affairs Commission, expresses concern about the impact of the judicial interpretation of this statute: "The issues involved in any homicide leave no room for administrative error, and where necessary, judicial standards should be established to eliminate such possibility. This is desirable...in the light of grave implications for the public welfare."⁴²

Gann's concern is founded in a situation involving the February, 1979 death of Thomas Foley, a Choctaw Nation juvenile citizen. This shooting prompted the preparation of an excellent legal memorandum by Oklahoma Indian Affairs Commission staff attorney Susan Work. This memorandum was submitted to then Oklahoma County District Attorney Andy Coats in an attempt to persuade him to reconsider his decision not to

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file charges against the citizen who shot and fatally wounded young Foley. Coats' administrative decision was based on the theory that the citizen could, if taken to court, successfully raise the defense of justifiable homicide, as defined by 21 O.S. 733 (3). (see Appendix G)

21 O.S. 733 reads as follows:

Justifiable homicide by any person

Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him, or upon or in any dwelling house in which such person is; or,
2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished; or,
3. When necessarily committed in attempting by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

The facts of the Thomas Foley case, briefly stated, are as follows. A private citizen, awakened at night by a noise coming from outside his trailer, dressed, loaded a derringer and went outside. There he allegedly saw Foley inside his car. He then held the gun on Foley and walked him toward the street. When a white car with a C-B antenna went by, Foley began to run. The citizen shouted "come back or I'll shoot" and then shot. Due to the District Attorney's decision not to prosecute, the

citizen was never taken into custody.

This incident caused a great deal of anger in the Oklahoma City Native American community, which viewed the shooting as manslaughter at the very least. Indian leaders accused Coats of "playing politics" with the case to aid his future campaign for the U.S. Senate. The situation was made more tense by the imposition of the label "Tonto" to Thomas Foley by Baptist Hospital, rather than the customary "John Doe" commonly applied to victims with no identification.

The Oklahoma County District Attorney's office declined to prosecute on the grounds that it was evident on the face of the statute that 21 O.S. 733 (3) authorizes the killing of a fleeing felon by a private citizen in a situation in which any type of felony has been committed. It should be noted that under this interpretation of the statute, persons committing nonviolent felonies such as writing a hot check may be legally killed by private citizens should the offender attempt to flee the scene of the crime.

This broad interpretation has three major flaws. First, the homicide must have been "necessarily committed" and the private citizen attempting to arrest a felon under subsection 733 (3) must have used "lawful ways and means" for the homicide to be justifiable. However, under Oklahoma law, the use of excessive force by a citizen arresting a felon is unnecessary and unlawful. Second, under the prevailing con-

temporary view which emphasizes the value of human life, a private citizen should not be authorized to use deadly force in arresting a person who is fleeing following the commission of a nonviolent felony. Third, according to Work, "The purpose of the entire statute (733), when read as a whole, is to protect the person rather than to prevent any type of felony or to punish for any type of felony."⁴³

Oklahoma statutes expressly authorize police officers to use "all necessary means" to effect an arrest. There is but one instance, however, in which a citizen is authorized by statute to use the same degree of force to apprehend a felon as a law enforcement officer. 22 O.S. 36 grants a citizen assisting an officer who has requested assistance or who is in imminent danger the same criminal immunity as the officer for any act committed during assistance. Work qualifies this grant of power in the following: "However, this does not mean that the citizen has the absolute right to kill in this situation, because the police officer does not even have that right."⁴⁴

It cannot be denied that the practice of Oklahoma citizens using deadly force has serious moral, legal, and practical implications. Under the present circumstances, the danger to the public welfare is immense. The national climate is one of increasing violent crime and citizens have expressed doubt in the ability of police to protect them from violent crime. More and more citizens are seeking "self-help" protection in the form of handguns. 42% of Newsweek poll respondents

indicated they had "not very much" confidence in police. 59% expressed a lack of confidence in the courts' ability to convict and sentence criminals.⁴⁵ The increasing mood of vigilantism, the availability of 50 million handguns nationwide, and the pronounced public lack of confidence and dissatisfaction with the system of due process sets the stage for conflicts in which the legal system may be bypassed. Given this volatile climate, there should be little elasticity in the authorization of citizens to use deadly force on one another. The present statutory allowance for such incidents in Oklahoma is alarming and dangerous.

The possibilities for fatal consequences in allowing citizens virtual carte blanche in the use of deadly force to apprehend alleged felons cannot be ignored. While police officers have extensive training in the use of firearms, citizens do not. As Work points out, "Unlike police officers, private citizens are not trained to be hesitant to use a firearm and are more likely to act on impulse than upon a rational consideration of the safety of persons in the area and of the potential beneficial or detrimental consequences of the use of a gun."⁴⁶ Moreover, there are no departmental regulations for citizens. There are only statutory restrictions and common sense, all of which melt away in the heat of conflict.

Section 733 (3) has never been interpreted by the Oklahoma courts, and the likelihood of the courts doing so is remote as long as the statute is used solely in an administrative manner by state prosecutors.

There are numerous interpretations of 733 (1) and (2), however, and those place a high emphasis on the value of human life. The right of self-defense is solely and emphatically a law of necessity; it does not imply the right of attack. Jenkins v. State, 161 P. 2d 90 (OK. Cr. 1945)

The Oklahoma Court of Criminal Appeals has interpreted 21 O.S. 733 (1) and (2) and has drawn a distinction between the threatened commission of violent felonies and the threatened commission of nonviolent felonies in Mammano v. State, 333 P. 2d 602 (OK. Cr. 1958). In Mammano, the court held that killing to prevent a felony is not justifiable pursuant to these subsections if the felony is a secret one or unaccompanied by force, or if it does not involve the security of the person or home, or where the commission of the felony is problematical or remote. Work concludes, "If killing to prevent a non-forcible type of felony which does not involve danger to the person or home is not justifiable, pursuant to subsections 733 (1) and (2), it is unreasonable to assume that subsection 733 (3) justifies the homicide of a person who has committed this type of felony, and is simply attempting to escape."⁴⁷

The Oklahoma Human Rights Commission shares the opinion of the Legal Department of the Oklahoma Indian Affairs Commission in its conclusion that subsection 733 (3) does not automatically authorize the killing of a felon who is fleeing from the commission of any felony. The Oklahoma Human Rights Commission further concurs that a private

citizen is restricted in the degree of force he/she may use; the force used must not be excessive in the light of the surrounding circumstances. Common law views and judicial interpretations of 733 (1) and (2) indicate that the use of deadly force against a fleeing felon who has not committed a forcible crime which threatens death or great bodily harm to the slayer or others is excessive, unlawful, and outside the ambit of subsection 733 (3).

Although the Oklahoma Human Rights and Indian Affairs Commissions concur in this narrower interpretation of 21 O.S. 733 (3), that concurrence does not have the force of law. Therefore, it is evident that in the absence of judicial review, there is a pressing need for legislative consideration or redefinition of subsection 733. In the interim, the Oklahoma Attorney General should examine the ambiguity of 733 (3) and render an opinion that would, if in concurrence with our shared interpretation, protect the public welfare and serve as direction for state prosecutors until such time as judicial review occurs.

It is also evident that Oklahoma statutory felonies are numerous and that few have penalties of life imprisonment or death. It is timely and logical to reappraise not only the monetary classifications that dictate felonies by theft, but to make distinctions between minor or nonviolent felonies and major or violent felonies. In addition, statutory efforts should be made to restrict both police and citizens in the

use of deadly force. This legislation should restrict the use of deadly force against felony suspects to only those situations in which the felony is a "forcible and atrocious" one which threatens death or great bodily harm. These recommendations are consistent with the view that the rule of law, by which reasonable people choose orderly justice and due process over mob rule and "frontier" justice, is paramount in our society.

CITIZEN REDRESS OF GRIEVANCES

The questionable use of excessive and often deadly force by police officers against Oklahoma citizens, an issue which is discussed in the previous section, has generated a fervent desire on the part of some citizens to seek effective redress against those law enforcement officials whom they feel have violated their rights. An analysis of the grievance procedure that is currently available to citizens in most jurisdictions in the state follows. Such an approach leads to a discussion of the larger issues mentioned by citizens in the Problem section, to include a consideration of methods to ensure the accountability of the police to the public.

Basically, the system for the control of police misconduct falls into two categories: those preventative or policy-oriented, and those punitive and applied after the fact. Citizens and police seldom disagree on the need for some sort of control over police misconduct; the controversy ensues when the question arises as to whether control should be internal or external.

An appraisal of the existing avenues of redress for citizens against police should include a synopsis of the process of the citizen's complaint, beginning with the incident and following the grievance procedure step by step through the local, state, federal and civil procedures. The process is often overwhelming and is accurately dealt

with in the TV movie "The Killing of Randy Webster." The film narrates the frustration of a White, upper-middle class father of a victim of police deadly force, in a situation in which a "throw-down" or a weapon plant was used to justify the killing. This realistic portrayal is particularly compelling when one considers the frustration that must be experienced by complainants who may not possess the same personal or financial power as Mr. Webster.

To illustrate the avenues of redress available to citizens, it might be instructive to assume that a hypothetical incident has occurred. The citizen's perception is that he/she was abused by a police officer. Perhaps the citizen feels that excessive force was used and that he/she was injured as a result of the police officer's use of more than reasonable force. The citizen is angry and aggrieved enough to complain verbally to police officials and the response to the citizen is "file a formal complaint." According to some Oklahoma citizen respondents, their complaints are met by such comments from police as "you had better be ready to take a lie detector test" or "you know if you're lying, you'll get sued for everything you've got." Complaints, citizens feel, are not welcomed.

The above experience often prompts citizens to seek more responsive or sympathetic ears for their complaints. Citizens may turn to a minister, a friend, a letter to the editor, or a social service agency. Many who feel their rights have been violated call a local or state

agency for help. The Oklahoma Human Rights Commission has received such requests for assistance.

The citizen is often advised by these agencies to call and request information on the local complaint process from the police department, city officials, or the District Attorney. In larger communities, this would probably involve filing a notarized statement with the City Commission, the Chief of Police or directly with Internal Affairs. In smaller communities, the citizen is usually referred to either the District Attorney or the FBI.

Next, the citizen in larger communities may be required to undergo a polygraph test, which is administered either by a member of that police department or, by request, by an operator from another jurisdiction or private agency. In most jurisdictions utilizing polygraphs, the citizen must pass the polygraph before an officer is required to submit to an examination. The results of the examination are then referred to either the Police Chief, Internal Affairs or a review body. Rarely is the citizen given access to the test results without initiating legal action, for the materials produced are considered as evidence and as internal documents. The use of a polygraph examination is generally not applied to all complaints, but is employed in situations in which there are no witnesses or in which accusations are of a very serious nature and could lead to the termination and/or the charging of the officer.

In larger departments the complaint is then referred for investigation in accordance with the policy of the individual department or the Police Chief. The exact procedures vary from department to department; however, they do have general similarities. Usually, the complaint is investigated and reviewed by an Internal Affairs department, a department head or, as in Norman, by an officer twice removed by rank from the officer accused of misconduct. The review is then sent with recommendations to the Chief. If the officer is reprimanded or suspended, he/she may appeal to an internal review board. These boards vary in size and membership, but, using Norman as an example, usually have representation from every rank, including that of the accused officer. The Chief chairs the review of the investigation, but is not a voting member. The board may call any witness, but the officer is not permitted legal counsel, a hotly-contested matter in the relations between the rank and file and management. However, the officer can be assisted by a fellow officer. The complainant is generally not allowed to view the testimony of any witnesses. If the officer is found guilty of misconduct, the board recommends action to the Chief, who can then accept, amend, remand or reject the reprimand. Some larger jurisdictions provide the officer with a "merit" or civil service commission as an added level of appeal.

Smaller jurisdictions may not have such a procedure and the citizen must take his/her grievance to the City Council or Mayor. Often a Police Chief requests the FBI to investigate the complaint in order to absolve the local authorities of responsibility. In these cases, how-

ever, there is little or no punitive action taken unless the FBI findings in fact indicate a violation of federal law, in which case the complaint is referred to the United States Attorney.

Regardless of the outcome of the internal procedure, the citizen, if he/she feels the incident involved criminal action, may choose to make a complaint to the local District Attorney. Sometimes, simultaneous complaints are filed with Internal Affairs and the District Attorney's office, but most District Attorneys await the outcome of the internal procedure before taking action. This occurs for several reasons, among them the fact that few District Attorneys have their own investigative units and must rely upon the evidence provided by the local police departments. The District Attorney can decide either to file charges on the basis of available information or to take the complaint before a grand jury. The difference between administrative action on the part of the police department and legal action taken against a violation of criminal statutes must be understood. The District Attorney files only when there are indications that state law has been violated and when it appears likely that the evidence is sufficient to obtain a conviction.

It is interesting to note that Oklahoma is unique in that when a grand jury is called by the District Attorney or by citizen petition, the scope of the investigation is not limited to one topic or incident. This is decried by many in the legal community as a "fishing expedi-

tion." Recent grand juries in Oklahoma have heard testimony regarding police misconduct and corruption.

A complaining citizen may also seek redress for possible violations of federal law. This can be done concurrently with other actions or as a recourse to unsuccessful actions. The complaint can be made to the United States Department of Justice or to the FBI. The common procedure is that the U.S. Attorney refers the complaint to the Civil Rights Division of the Justice Department, which in turn instructs the FBI to investigate. The findings of the investigation are then evaluated by the Civil Rights Division and/or the U.S. Attorney, both of whom can file charges, find no cause for action, or refer the case to a federal grand jury. It is customary for the Department of Justice to review the state law regarding the complaint and the state action.

The remaining avenue of redress available to the aggrieved citizen is that of civil action against the officer and/or other officials who may be liable for the actions of the officer. This method of redress can function on a state or federal level.

The criticisms that citizens and citizen advocates make regarding the procedures described above include the variation in the complaint procedures between jurisdictions, the often mystifying maze of the bureaucratic process, the psychological intimidation of the citizen feeling in a "one-down" position vis-a-vis the police, and the resolute commitment necessary for the citizen to seek redress and prevail.

Other psychological factors that impact negatively upon the citizen occur during the early stages of the grievance process. During the intake phase, the citizen often finds him/herself in an adversary position in "enemy territory." Additionally, the citizen fears reprisal from the police, such as retributive acts of violence or the threat of a countersuit. Further, the possibility of the citizen being subjected to a polygraph examination, the results of which are based on emotional stress, exacerbates an already stressful situation for a person who perceives him/herself as a victim. The above factors, coupled with the unfamiliarity with the process, tend to discourage citizens from fully exercising their right to redress and reinforces the citizen's preconceived notion that "you can't fight City Hall." Charles Owen, State Fraternal Order of Police President, acknowledges the above situation with the following comment: "They think they're going to get brother-in-lawed...I'm filing a complaint against a policeman, but who am I talking to but a policeman."

Citizen perceptions form the basis for a lack of faith in the internal review process. Respondents question the viability of polygraph examinations because the citizen usually does not have access to the results and because the results are inadmissible in Oklahoma courts. Further, a citizen feels isolated as a "civilian" in a paramilitary organization that includes the jargon of procedures and an organizational structure with which he/she may be unfamiliar and uncomfortable. This anxiety may be heightened by the exclusion of the citizen from all

stages of the administrative review process, with the exception of the initial complaint or sworn statement and whatever personal testimony may be requested by the reviewing body.

Citizens, then, have expressed alienation generated by the quasi-adversary nature of the internal procedure, in which not only do officers sit in judgment of one of their own, but the investigative evidence and case presentation are made by representatives of the same closed group. Moreover, as a general rule, the citizen is not provided access to the transcripts of the proceedings and is not permitted to cross-examine the witnesses or the officer.

The citizen may experience similar frustrations in attempting to file criminal charges against an officer via the office of the District Attorney. The District Attorney, as noted above, may refer the facts to a grand jury for an indictment. David Breed of Tulsa states that "the prosecutor wants to keep police as friends, for they provide the grist for his profession." Professor Lawrence Sherman, consultant to the Police Foundation, elaborates:

The District Attorney depends institutionally on police manpower resources for conducting the investigations that make the District Attorney appear in the headlines as a crime fighter, and as the Knapp Commission in New York pointed out, District Attorneys are generally reluctant to do anything that will alienate the Police Department from supporting the District Attorneys. So we find that even outrageous horror stories of police violence are either not referred to the grand jury by the

prosecutor, or when they are referred to the grand jury, the grand jury is used simply as a covering device, saying that the grand jury, which was clearly under the control of the prosecutor, found that there was no basis for an indictment. 48

The situation described by Professor Sherman and the related pressures on prosecutors is underscored by the allegations of Oklahoma City Fraternal Order of Police President Ray Clark, who states that "the feeling among all levels of the City Police Department is that (Oklahoma City D.A.) Macy's actions (prosecuting Trooper Pischel of the Oklahoma Highway Patrol and Officer John Clark) 'are anti-police.' He prosecutes officers and not criminals."⁴⁹ Macy, who like several other District Attorneys in Oklahoma is a former police officer, responds that law enforcement is "probably the highest calling there is. My very closest friends are all in law enforcement."⁵⁰

The office of the State Attorney General has had limited involvement in the processing of criminal complaints by citizens against police. Upon the request of Muskogee District Attorney Mike Turpen, however, the Attorney General's office did conduct the prosecution of the two Muskogee officers accused in the shooting of Lee Lewis, Jr. This occurred subsequent to Turpen's self-disqualification in the case. In a survey conducted by Professor Sherman, state attorney generals polled in every state expressed little interest in assuming jurisdiction for the prosecution of police officers for homicides. Sherman encourages state governments to become involved in setting standards for police depart-

ments, doing inspections, and issuing reports critical of police misconduct.⁵¹

Sherman asserts that the problems inherent in state participation in citizen grievance procedures are also present in the federal system. U.S. Attorneys, according to Sherman, "have the same problem of coming out of a local community and having a great deal of allegiance to local institutions, not wanting to rock the boat by taking action against police misconduct." He also states that "even when they obtain convictions, they face the problem of locally grown judges who, as in the Joe Campos Torres case in Houston recently, provide wrist-slap sentences even when the crimes involved are very serious...."⁵² Moreover, the U.S. Attorney's office relies for investigative services upon the FBI, which is organized geographically with agents working on a day-to-day basis with local police agencies. It is also important to note that the Bureau's success in other areas relies heavily on local cooperation.

Drew S. Days III, formerly with the Civil Rights Division, U.S. Department of Justice, stresses that "in less serious cases, prompt disciplinary action by a police department taken against an offending officer would adequately satisfy the punitive interest of justice." He relates the dilemma federal prosecutors face in attempting to obtain convictions of homicides by police officers:

A disturbing aspect of these death cases, as they are known, is that they are usually the most difficult cases to prove. Not only is the victim unavailable to explain himself, but state fleeing-felon statutes often provide an umbrella of protection for the officers involved... (emphasis added) We must show not only that the suspect was not a fleeing felon, but that the officer was unreasonable in believing that he was a felony suspect, and after that we must still show that, under all the circumstances, the force used was used willfully with a knowledge that it was unnecessary. 53

The citizen who believes he/she has been subjected to police abuse can seek civil damages in the federal courts under the civil criminal civil rights statutes, 42 U.S. Code, sections 1983 and 1985. These sections are the civil counterparts to sections 241 and 242, which are the criminal statutes enforced by the Department of Justice. The avenue of civil redress is largely unsuccessful due to a multitude of factors. Many citizens abused by police are hampered by a lack of credibility in court, and a citizen must be able to identify the officer or officers in court. Often, the incidents occur at night and the citizen can see neither the officer nor his badge number. The state of Wisconsin now has a statute that requires officers to prominently display their last name and a police number of four or fewer digits at least three inches in height.

The question of credibility has a substantial effect upon the jury. Most jurors want to believe that police are the agents of all that is good. The average officer, who may testify as many as 100 times a year in criminal prosecutions, is very experienced in giving testimony. The

officer is probably relaxed, while the inexperienced citizen may be nervous. The police officer is also in uniform.

Many of the people who should be using the civil suit avenue of redress are not. Amitai Schwartz of the ACLU Foundation of Northern California explains:

I do think the indigents are not using them, but that's precisely why they are the predominant victims of police abuses, because the indigents don't have the resources to take advantage of whatever civil remedies are available; and second, they make good targets for police abuse because they are seldom sympathetic to juries, and they seldom can devote the time and resources which are necessary to pursue litigation against the police. 54

The economically disadvantaged have difficulty in obtaining the legal counsel required to seek damages in civil action. These cases are also very difficult to win. Further, few attorneys will accept these cases on a contingency basis, given the difficulty in proving both guilt and liability and the absence of municipal or jurisdictional liability, which leaves to the plaintiff only an officer's assets in a successful action. All in all, civil litigation is not an effective avenue of redress for the citizen. The 1978 Monell decision by the U.S. Supreme Court, however, has established that the immunity of municipalities in civil rights cases is not absolute. This decision may result in the awarding of "real" punitive damages to successful plaintiffs.

The news media have served to assist in changing police activities in some areas by serving as an external control. Most local advertisers, however, are staunch supporters of the police and often bring pressure to bear upon editorial policy regarding law enforcement. In addition, "police-beat" reporters, who are usually inexperienced, establish rapport with the police in order to function effectively, but in the process often lose the sense of detachment necessary to criticize the police.

The perceptions of Oklahoma citizens regarding the existing modes of redress against police are generally characterized by frustration and dismay. Many of the concerns expressed revolve around the excessive complexity of the procedures, the appearance of a lack of objectivity on the part of the police, the perception that police are "above the law," the fear of retribution, and the lack of effective redress for citizens.

Pam Chibitty of the Native American Coalition of Tulsa relates her frustration with having been sent to four separate places to make a complaint: "It's difficult enough for most Indians to understand the bus schedule in Tulsa, let alone file a police brutality complaint." The sense of frustration expressed above is representative of the futility sensed by many who attempt to fight a system, as Chibitty describes it, of "police officers investigating police officers."

David Proctor, a paralegal with the Creek Nation, comments on the absence of public access to the results of investigations and points to the resulting attitude that deters others from making complaints: "One thing about it is that a lot of people find out that if they do register a complaint against someone now, that's as far as it goes. It gets registered, the police review it, and that's it. It's never reported back to the community what's going on."

Given the perception of many that police are "above the law," Robert Trepp, also with the Creek Nation Legal Department, comments on the need for the equitable application of the law to both police and citizens:

The police are not always right, and when they're wrong, they're just as subject to the law as everybody else is. And that's really all the Indian people are asking for. They're saying, 'aren't there laws? They enforce them against Indians, don't they enforce them against everybody else?'

The fear of retribution for registering complaints against police was stressed by several Native American respondents, among them LaDonna Harris of the Americans for Indian Opportunity. An example comes from the field experience of the Oklahoma Human Rights Commission staff. A Cheyenne citizen desired to make a complaint against an officer in northwestern Oklahoma for allegedly breaking the citizen's jaw with a flashlight during a routine public drunk arrest. The citizen and several witnesses stated that the complainant was struck unnecessarily while his

hands were cuffed behind his back. On the day following the initial complaint to Community Relations personnel, the citizen called to withdraw his complaint. His reason was this: "This is a small town. I drink, sometimes I get drunk. There's only one bar where Indians go. Sooner or later they'll get me. This time my jaw is broke. Next time they might kill me."

Opio Toure comments on the "closed" process inherent in police internal review:

The internal affairs process is solely composed of police officers. There is no citizen input, it's not even a public procedure since deliberations are in secret. There is no citizen access to see or to participate. In essence, there is nothing in Oklahoma in which citizens can participate in policing the police. Police departments are in essence another arm of government over which citizens have no control whatsoever.

Oklahoma police respondents perceive internal review as adequate for the protection of the rights of citizens, but inadequate for the protection of the rights of police officers. This perception of the administrative review process has prompted police union representatives to lobby for a "Police Bill of Rights" in contract negotiations. The Police Bill of Rights is primarily targeted at administrative rather than criminal proceedings. An example of the conflict over administrative review which exists between upper echelon administrators and the rank and file is the following description of the Police Bill of

Rights by Deputy Chief Robert W. Klotz of the Washington, D.C., Metropolitan Police:

...it appears to be somewhat similar to the Boy Scout code of ethics. It wants everybody to be honorable and brave, don't do anything unreasonable, and it appears to be an attempt to ensure that the officer who is being investigated receives a modicum of decency by the people who are conducting the investigation. However, a closer reading of the bill of rights indicates... (that it) is directed in the main at administrative investigations, not only by internal affairs divisions but, because of the broadness of the language, just about any type of minor discipline that an officer may become involved in. 55

The perception of the police officer ensnared in the internal disciplinary process is that he has fewer rights than other citizens. Often an officer is prohibited by departmental regulations from talking to the press about citizen complaints of abuse. The citizen, however, is under no such restraint. The average officer is also resentful of what he/she perceives as "muckraking" or irresponsible reporting by the media.

The Police Bill of Rights has been adopted in Tulsa, and police officers in Tulsa have access to legal counsel in the internal affairs process. Moreover, in the special case in which an officer has used deadly force, he/she is automatically suspended and the procedure moves rapidly forward to adjudicate the criminal case. Some citizens perceive this as a "sham." David Breed of Tulsa describes this process (with regard to a murder) as "a good old boy court proceeding, a cute package that normally takes less than a week. Normally there is no attempt on

the part of the prosecutor to prove wrongdoing." The Oklahoma Monthly article mentions the reason such actions are looked upon favorably by police: "Cops want to be quickly acquitted by the court in order to put their case in jeopardy, meaning they can't be tried again for that case. There is no set time on the statutes of limitation on a murder."⁵⁶

The above comments of Chief Klotz regarding the Police Bill of Rights are indicative of a national feeling on the part of police administrators that the police union movement has weakened the power of the chief and the review board to discipline officers. Civil service commissions, acting on appeal, can reinstate or exonerate officers who have been removed or suspended by internal review. This is exemplified by the recent case involving Oklahoma Highway Patrol Trooper James Pischel, who was reinstated after being terminated for precipitating the accidental death of non-involved citizens in a high-speed chase.

The position of the police chief with regard to the discipline of officers is particularly important because a police administrator determines the character of the department. Gary P. Hayes of the Police Executive Research Forum discusses the problems faced by the chief in his role as disciplinarian:

I sense sometimes across the nation that we are now moving into police leadership by popularity, that the major criterion for keeping a chief is, does he keep the men happy? Are they satisfied with him?

This does not lend itself to the aggressive leadership I believe is necessary to make serious inroads in this area (police misconduct). 57

Harry Stege, Tulsa Police Chief, affirms the importance of strong leadership on the part of the chief to combat police misconduct within the department. He states, "Police misconduct can only be adjudicated by the law enforcement official responsible for the proper operation of that agency." Don Holyfield, Chief of Police in Norman, reiterates: "The key to the whole thing is good strong leadership at the top." This strong leadership is sometimes sporadic due to the short tenure of the position.⁵⁸ The national average for the tenure of police chiefs is 2.4 years, according to Chief Holyfield.

Despite the stated need for strong leadership by police chiefs, limitations are placed upon this administrator's power. Chief Stege, for example, feels that the legal requirements of a disciplinary hearing make it "unfair for a police administrator to have to show justification beyond a preponderance of the evidence" against a subordinate police officer. Moreover, the police feel so strongly about the Police Bill of Rights in Tulsa that it is the perception of Lanny Endicott, Chair of the Tulsa Human Rights Commission, that if the city attempted to do away with the Bill of Rights, officers would strike. He further states that under the Bill of Rights, "the Police Commissioner does not have the power of the FOP."

The growing movement to organize police officers has provided a vehicle for police to combat the "absolute" power of the bosses, to obtain strengthened rights in administrative and legal proceedings, and to discourage the complaints, charges, and litigation of citizens. Basically, the police officer perceives him/herself to be under attack. This is explained by Robert Gordon of the International Conference of Police Associations: "Apparently a large segment of our society is not aware that our nation's law enforcement officers today now view themselves as our nation's newest minority..." Their feelings toward the punishment of officers for complaints levied by citizens and the lack of administrative support are also elaborated upon by Mr. Gordon: "...we give them a weapon. We give them the authority to go out and do the dirty work that society doesn't want to deal with. And when he gets involved (in complaints and charges) ...he is thrown to the wolves. And our union is going to stop it."⁵⁹

One of the legal tools that police officers and the unions are using is the countersuit against complainants. Oklahoma City officers have recently announced that they are building a "war chest" for such a purpose. These countersuits range from the litigation against an individual complainant to, for instance, the \$50,000,000 lawsuit against the San Francisco NAACP for complaints against police abuse. The defense attorney for the NAACP comments:

Now what concerns me about that (suit) is that the police officers in those situations, I feel, are

really misusing the court process in order to intimidate those who complain about police brutality... It is something new, and they ought not do it. It heightens community discord rather than resolve the real problem. 60

The practice of police officers, with the support of the FOP, filing defamation suits against citizens has a chilling effect on other aggrieved citizens who might have grounds to file a complaint. This impacts particularly upon those individuals who traditionally bear the brunt of police misconduct, and whose resources for legal defense are minimal. Further, the petitions filed by police in support of the defamation actions cite their exoneration by internal review. In essence, this uses the courts to legitimize the internal review process into which the citizen has little input.

The current proliferation of countersuits thus inhibits the citizen's willingness to explore the periphery of his/her established rights. In theory, then, there is a grievance procedure for citizens to seek redress against police officers; in practice, however, because of the numerous factors listed above, there does not exist a viable means by which citizens can be assured of an equitable resolution of their grievances. The combination of the citizens' ignorance of their rights and the intransigence of law enforcement officials is ultimately not conducive to healthy police-citizen relations. Oliver Rosengart, author of The Rights of Suspects, describes the implications of the failure of citizens to exercise their rights: "...Americans informed of their

rights will be encouraged to exercise them. Through this exercise, rights are given life. If they are rarely used, they may be forgotten and violations may become routine."⁶¹

The disillusionment and disenfranchisement precipitated by the inadequacy of the established grievance procedure has led many Oklahoma citizens and editorial commentators to question the status quo and to publicly call for more external control of police practices. The popular alternative to internal review is the concept of a citizen review board.

The philosophy of citizen review is based upon the democratic will of the people over those governmental entities that provide public services financed by public funds. The question of accountability was raised by several citizen respondents. David Breed, for example, states in reference to the complaint process that "the public must have the assurance that a thorough investigation will take place and that the determination is made on good, hard evidence." Breed also reflects the views of many citizens concerning the general issue of police accountability with the comment: "I (the citizen) pay their salaries. I should have some say in the way they conduct themselves."

The clamor for citizen review is also rooted in the desire for citizen input into the investigation of complaints of misconduct. This desire stems from the widespread perception that police departments do

not act in good faith in investigating complaints. Several observers also pointed out that even if the police department acts in good faith and investigates complaints in a legitimate and effective manner, there is no way for citizens to observe the good faith. Mike Turpen describes this problem of a "house investigating itself" by concluding that the internal procedure "doesn't have the appearance of objectivity."

In the face of this desire for citizen review, the most common rationale utilized by law enforcement officials to defend the current system is the idea that "only a cop can judge another cop." This perspective, which was proffered by virtually every law enforcement respondent, was described by citizen respondents as a "myth," a "cruel hoax," and a "fallacy." Several citizen respondents believe strongly that the police department is the only institution in society that is not being held accountable to the public. Examples mentioned are local School Boards, who supervise professional school administrators, private social service agencies such as the United Way, who must submit to external audit, and even doctors and lawyers, whose fate in malpractice cases is determined by juries.

Police officers, although pressing for greater personal protection in the administrative process of internal review, support the present internal affairs process and oppose the imposition of citizen review boards. They perceive the police regulations and the social and legal complications of the police job to be too complex to be fully understood

by persons not immersed in the process on a day-to-day basis.

Law enforcement officers quickly point to statistics which indicate that relatively few complaints are being made. They also cite bogus complaints, many of which they feel are precipitated by "ruffled feelings." Tulsa Police Chief Harry Stege believes that the issue of police misconduct has been "grossly overstated."⁶² He cites that out of 20,000 physical arrests and 100,000 traffic tickets yearly and 500-800 daily calls for general police services, the Tulsa Police Department received only 300 complaints of police misconduct in a recent year. Don Holyfield of Norman indicates that, under standards developed by Northwestern University, commendations should run three-to-one to complaints. He is quick to add that in his department the ratio is six-to-one.

Other defenses by the police reinforce the "cop judging cop" philosophy. One of these is the assertion that internal review discipline is stronger than the punishment meted out by citizen review boards. This conflict of police professionalism vs citizen emotionalism is outlined by Charles Owen of the Fraternal Order of Police:

The major crying, for several years, has been, 'Well, let's let civilians review the police. Let's let them review complaints.' OK. Now, on the top, that looks very good, but historically, and it can be proven, where a citizen review board, working on complaints of policemen, are less strict on the occupation that we ourselves are. The reason being, is that when a complaint comes out, and you're there as a citizen, and you sit there, and you say, 'Well, the officer overreacted.' And then you hear

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both sides of the story, you say, 'Hey, wait a minute. That's what any human being would have done. I would have done that. That's not bad. That officer wasn't wrong.' OK, so a civilian review board cuts him loose. The police department, on the other hand, looks at it in a different way. We know how we've trained that man. We've trained him in restraint. We've trained him in this. Has he violated his training? Is it not right? We look at it stronger. We penalize ourselves, because we know what we're taught to do. And therefore, we're going to be harder than a civilian complaint and review board will be.

Police officers also feel that citizens would be outraged if they sat in review of incidents. They feel the citizen should be protected from the harsh realities of the "war zone." The perception is that the "real life" out there should be examined by the experienced, somewhat hardened professional and is not for the weak-stomached or faint-at-heart. Law enforcement officials fear, as in the words of David Breed, that a "police response that is deemed perfectly appropriate by the professional officer might be viewed as inappropriate to the outsider." They also fear the negative effect that the perceptions of the outsider regarding legitimate police activities would have on police-citizen relations.

Another factor of law enforcement opposition to citizen review boards is that the composition of the boards would be determined by political factors. This is stressed by Manfred Kaulaity, Community Liaison for the Intertribal Rights Committee of Anadarko. Kaulaity's concern is that individuals might use the position on a review board to

further their political aspirations. Law enforcement officials share his concern. Mike Turpen, while feeling "real strong about checks and balances," is nevertheless concerned that the review board could be made up of "self-righteous do-gooders." Sam Chapman goes further and calls the citizen review concept, "maxi-politics and mini-action."

The following statements by law enforcement officials summarize the above-stated concerns and the perceptions of police concerning the issue of citizen review boards:

Citizen review boards are not the answer.
--Chief Harry Stege of Tulsa

I'm not going to have a citizen review board, unless mandated by law, then we'll deal with it.
--Chief Tom Heggy of Oklahoma City

I flatly reject the notion of citizen, that is, external review of police. I think it's window-dressing and symbolic.
--Professor Sam Chapman, University of Oklahoma Department of Political Science

I don't think there's any place in this business for citizen review boards. As long as a department can demonstrate that they're doing a good job, fine. If not, fire the chief and get somebody else.
--Chief Don Holyfield of Norman

The idea is ridiculous. Similar interventions have been attempted in the past, and have not worked in any city because the community cannot agree on what it is they want.
--Chief Tom Heggy, Oklahoma City

We oppose them. We don't like them, because we know that they are not going to service the public in the end.
--Charles Owen, Oklahoma President, Fraternal Order of Police

Additionally, some citizens oppose citizen review boards, as evidenced by the following comment, reported in the Oklahoma City Times, which was made before the Oklahoma City Council during the deliberation as to whether the Oklahoma City Human Rights Commission should investigate police misconduct: "The boards were conceived by leftists, communists, and others to disrupt police. If you allow this, you should take their (police) guns and red lights off the cars, too."⁶³

Given the sort of opposition voiced above from law enforcement officials and others, it is not surprising that the success rate of citizen review boards in this country is not high. One major additional reason for their lack of success is that they have largely been programmed to fail. Often the enabling ordinances do not provide these bodies with broad enough powers to do an effective job. Funding for staff and independent investigators is lacking, and support from the legislative body, the personnel function, and civil service is minimal.

Further, citizen review boards are perceived as disrupting the established organizational and managerial functions, or "the chain of command," a factor which renders impotent the administrator responsible for internal disciplinary action. The police chief under such a system

in effect becomes a supervisor instead of an administrator, a foreman instead of a boss. Finally, the function of the citizen review board as a "super investigative agency" is already being performed by existing bodies, including the FBI, the OSBI, federal and state grand juries, District Attorneys, and police Internal Affairs.

The issue of citizen review boards, then, seems to have reached an impasse between the two conflicting goals of the accountability desired by citizens and the confidentiality and administrative control desired by law enforcement personnel. This dichotomy is manifested by an "either-or" mentality on the part of most observers, who fail to explore the "middle ground" between the two extremes. Rather than the actual structure of the grievance procedure, the crux of the issue that divides citizens and police is the credibility of the structure. A consideration of the issue of credibility might generate "middle ground" proposals that could provide a satisfactory resolution to the impasse that exists between law enforcement personnel and citizens.

Joseph D. McNamara, Chief of the San Jose Police Department, discusses the importance of credibility to the review process and to incidents that may require review:

One of the striking finds that I've experienced is that the more open and the more credibility the police complaint system has, the fewer complaints that come in from minority citizens and the less likelihood there is that the minority citizen will misperceive or resist the police officer's authority. 64

The importance of cooperation between police and the citizens they serve and protect is crucial in attempts to deter crime and preserve individual rights. Further, as is pointed out in Time magazine, the appeal of community cooperation is potentially widespread: "Ideologically, the beauty of community cooperation is that it satisfies the old liberal urges for community service while answering the new conservative cry to get mad as hell and not take this anymore."⁶⁵

One of the major problems in community cooperation is the creation of dialogue and interaction between the community and the police. Such efforts are historically hampered by the fact that we live in a crisis-motivated society. Citizens rarely attempt to make input and demand accountability until an emotion-charged incident occurs that is sufficient to create public outrage. Howard P. Carrington, Community Relations Service, U.S. Department of Justice, addresses this aspect and its effect on the tenor of police-community relations:

...commendable change has resulted from dialogue and negotiation between police and community leadership. Unfortunately, in many communities negotiation is not successful because it occurs in an atmosphere of acrimony. The community becomes aroused and seeks change only in the wake of a tragic incident, and that sharp edge of concern quickly erodes. At the same time, police agencies, like all institutions, tend to defend and justify their actions and policies most vigorously when under attack. Efforts to arrive at reasonable solutions rarely prosper in such a climate. 66

To offset the creation of adversary relationships between the

community and the police, a vehicle needs to be in place to continue reasonable communication between parties should a conflict occur.

Amitai Schwartz of the ACLU recommends that communities:

...attempt to work through a deliberative process, a process of give and take; that is negotiate with the department, not as a matter of pinpointing blame or assigning fault for past experiences, but as a process of trying to deal with the future and trying to deal with prospective policies. 67

Although citizen review boards have largely been unsuccessful for a myriad of reasons, meaningful, continuous dialogue between police agencies and citizen advisory committees have had marked success in minimizing friction and creating a realistic climate of cooperation. Community relations committees in the city of St. Louis, for example, have been functioning effectively since 1960. Victor G. Strecher, Dean, Institute of Contemporary Corrections and Behavioral Sciences, lauds the philosophy and pragmatic application of the St. Louis model:

...we need citizen input into policy and procedure. The community relations committees of the various police districts of St. Louis have a very long history now. The citizens do go there. They do go there to interact with the police officials. It's not the tea and cookies meetings between the chief and one or two committee leaders where it's impossible to bring it down to the operational level. What they do at those meetings is talk about what's happening in that district with those police officers and those people, and that is a different kind of exchange. 68

The use of citizen advisory committees should attempt to include

the general public in the process of formulating police policy. For example, a recent amendment to the San Francisco City Charter established a public hearing process for the changing of written police policy guidelines or regulations. Public notice is required and the hearings solicit written or oral input into the process of policy promulgation. This aids in establishing credibility in the police functions and makes the community feel a part of the process. Additional factors to be considered in the creation of advisory committees and their accompanying credibility are discussed by Wesley Pomeroy of the Drug Enforcement Administration:

...another requirement in setting up citizen advisory panels or using them is that they are chosen by communities, that they truly represent the people who do represent the people for whom they're speaking, and they should be close enough to them to be accountable to them. Another very important criterion, and one that's almost universally ignored, is that once an advisory panel is set up, that the police administrator pay some attention to them in real ways. They are too often seen as defusing kinds of mechanisms, and they do function that way; but they should have something to say about how police services are delivered to them in their communities. They should really have something to say about how a police department is run. 69

Several Oklahoma citizens also decried the crisis-based nature of the interaction between the community and the police and called for the establishment of such bodies to negotiate responsibly with law enforcement administrators to, in the words of Lanny Endicott, "prevent fires." Endicott, Chair of the Tulsa Human Rights Commission, proposes that a

responsible, officially recognized group serve as a liaison with the police department for the purpose of impacting favorably upon such policy issues as the use of force, the firing of warning shots, the police response to a riot, training, weaponry, selective enforcement, and even the policies regarding the number of officers in a vehicle at night or the sending of backup units.

Such a function, many argue, has the effect of supporting the police and eliminating the counter-productive practice of bringing the police into the community only during the uproar that inevitably follows a crisis. Endicott observes that in most jurisdictions there is at present "no pro-active forethought into bringing about planning to prevent problems...The attitude seems to be 'Let's wait and see what happens this summer.'" While the names proposed for such an organization include "community response group," "community support group," "citizen control board," "community relations group" and "citizen liaison board," all proposals, citing a successful precedent in Oregon, recognize the need for citizens to work with law enforcement officials on policy matters as "crucial" with regard to the entire arena of police-citizen relations.

Further, most citizen respondents, while feeling strongly about the above proposals, concede the historical ineffectiveness of "citizen review boards" and their after-the-fact function of citizen investiga-

tion of police misconduct. Opio Toure, for example, while arguing for an elected citizen body to control the police in a relationship similar to that of a school board and a school district, nevertheless argues that the police "must have the freedom to investigate their own officers, even if they haven't received a complaint." What most citizens desire, however, is some participation in that process, if only to make it more accessible to the public and thereby allay the concerns of the community. David Breed, for example, proposes that to ensure greater credibility a dual investigation be conducted, in which the citizen body, having access to the same evidence as Internal Affairs, reaches an independent judgment. Breed also advocates that in order to give "at least the appearance of greater justice," an "outside" attorney prosecute serious cases of police misconduct.

One method that might heighten the credibility of the criminal prosecution avenue of redress for aggrieved Oklahoma citizens would include the state Attorney General and the Oklahoma State Bureau of Investigation in a more pro-active involvement in the adjudication of serious police misconduct cases. This would undoubtedly increase citizen confidence that an "outside" entity has evaluated a local infraction. Patrick Murphy, President of the Police Foundation, stresses the importance of credible review:

Finally, there should be credible, high-level review concerning serious misconduct cases by police personnel. Now, whether this high-level review is internal or external, it should always be credible;

that is to say, it should be above sustainable attack by a civilian complaint review board, a mayor, a city council, a district attorney, a federal government agency, a human rights commission, or the news media. 70

The Oklahoma Human Rights Commission is of the opinion that the above suggested role of credible, high-level review and prosecution of serious cases of police misconduct should be placed at the highest possible level in the state. It would be preferable to use existing and proven vehicles to fulfill this role. Therefore, it is recommended that the office of the Attorney General and the OSBI meet this need.

The concerns of citizens regarding accountability might be addressed by adopting the police managerial philosophy of accountability at every level. This would include, in theory, making all levels of political subdivisions more sensitive to their accountability for the activities of subordinate functions in police service delivery and their liability for serious malfunctions in the system. This could be achieved, in practice, by statutorily requiring political subdivisions to indemnify the police officer. This has a two-fold effect. It creates liability for the repercussions of police misconduct at every level. Moreover, it enhances the viability of a citizen's use of civil litigation to achieve more than token remuneration for grievous wrongs committed against them by the law enforcement representatives of a political subdivision.

ACLU Attorney Schwartz describes how indemnification would work and

the beneficial effects of accountability at all levels:

...first to require that the employing agency--that is the city or county or State--indemnify the police officer in the event that the officer is sued and the victim wins. In many States if an officer is sued by an individual and loses the lawsuit, he or she pays out of their own pocket. That means that in many cases, even if the individual does win, they never recover any money because the officer doesn't have the money to pay. Many States have gone over to a system of assuming the responsibility for paying out those money damages by requiring that the agency itself represent the police officer or defendant and, secondly, that the agency itself pays. That also has the benefit of ensuring that the local agencies don't just leave it up to the individual to make decisions which may or may not get him in trouble or get him sued, but to take prophylactic measures which prevent as much as possible the agencies from having to pay out money damages when people sue. 71

Collective legal liability thus enhances administrative responsibility for and control over internal practices. Attorney Curry First discusses the removal of absolute immunity and the implications of qualified immunity for municipalities as a result of the U.S. Supreme Court decision in Monell:

Once we start suing not only the individual officer but also their employer, the city, you are going to wake up the city attorney...We are going to wake up the city treasurer who is going to cut a check if the case is lost. You are going to wake up the mayor. You are going to wake up the police chief and top management officials, and you are going to wake up the common council. So the whole idea of bringing the cities into the cases is to bring these other institutions around to the problem of police brutality, to think about it, and, most important, to start taking actions to stop it. 72

Statutory indemnification by the Oklahoma Legislature would achieve the above results and more. It would ease the resentment of officers toward the community, help to mend the "Us vs Them" mind set, reduce the dependence by the officer on solely the support of his/her fellow officers and union, provide legal services for accused officers and stress community support of his/her role in the community. This, in effect, would say to the officer, "We're expecting a great deal of you. We'll train you. We'll give you guidance. If you are accused of wrongdoing for serving us in good faith, we'll stand behind you. You are our community's finest." It is also consistent with the burgeoning movement in this country, which, as described by Leonard Benton, is "the whole citizen participation movement, the idea that a citizen should have a right to be more intimately involved in government, (the concept of) public accountability," a philosophy which underlies much of the thrust of this report.

STRESS

In 1975, the National Institute of Occupational Safety and Health held a conference in Cincinnati, Ohio, which examined the problem of police stress, the causes of stress in law enforcement work, the consequences of that stress and what the remedies might be. Since that time, there has been increasing attention paid nationwide to the psychological factors affecting police work, and the problem has spawned a quarterly journal, Police Stress.

Dr. Terry Eisenberg, a consultant psychologist and former police officer, addresses the effects of psychological stress on law enforcement personnel:

Many agencies today are involved in looking at programs that are designed to ameliorate the consequences of stress. There is a great variety of consequences of stress, which range anywhere from increases, for example, in disability retirements, which has become a very great problem of law enforcement, to excessive citizen complaints, to various psychological and emotional problems that police officers encounter, whether they manifest themselves in alcoholism or divorce or hyper-aggressive street behavior or whatever the case may be. 73

The sources of stress that impact upon police officers are numerous and varied. Dr. Martin Reiser, Director of Behavioral Science Services for the Los Angeles Police Department, has grouped these stresses in the categories of frustration with the criminal justice system, role-related

stress, developmental stress, organizational stress, and marital or family stress.

The stress emanating from the criminal justice system, as described by Dr. Reiser, is closely paralleled by the views of police respondents and by the participants in the Southwest Center for Human Relations workshop for Oklahoma City patrol officers. (see Appendix D) Dr. Reiser cites police perceptions of court decisions (Miranda); delays when called upon to testify; pejorative attitudes of court officers, who sometimes make police feel as though they themselves are on trial; the "revolving door" justice system that returns offenders to the streets; and "the predominance of concern for offenders' rights in today's criminal justice system over the rights of victims in our society..."⁷⁴

Role-related stress certainly includes the very real danger of physical injury, but perhaps even more is the likelihood of "ego-injury on the street." Dr. Reiser discusses the effect of this on the police officer:

He deals with many people who are provocative and hostile merely because he is a police officer. He tends to be immersed in a particular aspect of society which contains and exhibits violence, brutality, and gore, and he is in danger of generalizing from that to viewing society that way as a whole. 75

Police officers also have developmental stress that affects both their performance and citizen perceptions of their behavior. Dr. Reiser elaborates:

During the first 5 or 6 years on the job, very commonly they go through what I call the John Wayne syndrome, which involves aggressive and so-called badge-heavy behavior which in fact serves a survival function for the young officer, enables him to survive those critical early years when he feels vulnerable, when he's not yet competent and professional in his role; and yet to the outside observer, these behaviors are all negative and need to be controlled. 76

In previous sections of this report, attention was given to the isolation of the police officer from the community, the support-group concept that is the bulwark of the police union movement, and the "Us vs Them" philosophy that feeds on the pressure to conform to accepted peer group behavior. The peer pressures are sizeable in a quasi-military organization that, until very recently, has largely been a "White Male Club." These acculturation factors and the fraternal acceptance rituals are described by Reiser:

To be one of the boys, to be accepted, and to be well thought of are all important kinds of variables to young police officers. The hallmarks of maleness in young police officers for a long time have been behaviors related to hard drinking, sexual activities, and the use of muscles as indices of demonstrating adequacy. Proving oneself in this sense, then, leads to a variety of liability-prone behaviors in encounters with citizens and suspects alike. 77

In addition to the stress resulting from peer pressure, the very nature of the police organization is stressful. The hours worked are indicative of the 24-hour responsibility to the public. The organizational structure is one of conflict. In previous sections, mention was made of the tension and pressures associated with the interaction of personnel

and their union and the police administration or management. This is exacerbated by the conflict between the traditional quasi-military structure of police departments and the recent application of advanced management techniques, such as management-by-objectives and group participation.

Marital and family stresses also contribute to the "burden of the badge" on the street. Oklahoma Monthly points out that police have twice the divorce rate of the general public.⁷⁸ Factors that contribute to the marital problems of police center around the number of hours worked, placing the job before family, and the extension of the "male club" concept to the excluding of spouses from social or organizational activities.

Several comments by Oklahoma respondents touched upon the issues mentioned above. Moreover, an additional manifestation of the problem of stress, that of the macho image of police officers, was discussed by many. Police officers whose response to occupational stress is an exaggeration of that macho image are described by Mike Turpen as being "geared weird with a big badge and a heavy gun." Guthrie respondents Phyllis Brown and Evelyn Nephew are even more critical. Brown states that during her employment with the Guthrie Police Department, "paranoia was running rampant. It was the macho thing to be paranoid." Nephew describes the officers' dangerous response to the problem of stress in the following caustic comment: "They shoot. They've got stress. They go out and find somebody and shoot them. That takes the stress away."

Bob Fagan, a Tulsa police officer who is a recovered alcoholic, acknowledges the detrimental impact of the macho image, especially with regard to the peer pressure to be "one of the boys" in the context of the off-duty buddy sessions:

And that's sick...Those buddy sessions turn out to be reinforcement of the image. Choir practice is what I'm talking about. Locker room conversation. We meet at Grumpy's and slosh down two quarts of gin and talk about how absolutely neat it was to pull one over on somebody and how you're only a 'Good Joe' if you can do that and keep your mouth shut.

But while Fagan concedes that the perpetuation of the rigid macho image "can be absolutely fatal to you," he also emphasizes its necessity in police work: "That macho image, moreso than your gun or your nightstick or your flashlight, becomes a part of your survival kit." In the following description of the influence he feels he has had over the attitudes of other officers, he suggests, however, that the macho image should be tempered by compassion, where appropriate:

I have influenced the attitudes of a lot of them, especially over the last five years, because I've trained all of them as they've come through the police academy. I train them on how to deal with people that have problems like alcoholism and drug abuse and things like that. How to be compassionate rather than the old 44 shirt, size four hat and three-foot nightstick approach. You know, there are people that have problems and they need help. That doesn't mean that you need to be hurt. Hey, if the simplest wino in the world turns on me with a knife, he's liable to need some new choppers in the morning, cause I'll deck him in a New York second. They're not paying

me enough to get hurt and they're not paying me enough to get killed. But by the same token they're certainly not paying me to go down there and rough up some old boy that needs help. And that's the gist of the training that I give them.

In the following, Fagan continues to describe the ambivalence of the macho image and his preference for a self-image of compassion. Most importantly, he implies that a healthy attitude for a police officer might be the appropriate application of that tough-compassionate spectrum, depending most critically upon the nature of the situation at hand:

As far as being perceived as a macho individual, I probably am. I really don't like that too much. I would much rather be thought of as fair and compassionate and helpful than any of that other stuff...But when the situation arises that I need to be tough, I can still be tough. But you see that doesn't have anything to do with an image anymore, that has to do with me. Because I had rather be compassionate and helpful, you know, the Boy Scout creed, clean, courteous, kind, all that stuff...I'd rather be that because that's just how I'd rather perceive myself. And I seem to be able to do a lot more good, with the bad guys too, with that attitude than I ever did with 'I'm a tough son of a bitch, and you better know it, slick.'

Tulsa Police Chief Harry Stege affirms Fagan's perspective in his retort against an accusation that the department is filled with "Prima Donnas." While officers certainly need to be authoritative and in control, situational flexibility is the hallmark of an effective police officer, according to the following remarks:

We certainly do have Prima Donnas. If they're not when we recruit them, we train them to be, because

they have to be able to walk in and take command in any situation and they have to be convinced that what they're doing at that particular instant in time is the right thing to do, so they've got to be Prima Donnas. Now if they let their Prima Donna-ism outweigh their common sense, that's wrong. But common sense in this situation may not be the right thing to do in that situation. The guys who get themselves in trouble, I think, are the ones who have one approach to every problem. You can't do that. You've got to be flexible.

While it is thus strongly asserted that flexibility is the most effective way to deal with police stress, it is also undeniably true that the nature of police work creates problems which require help. As Fagan describes, "Even the straightest shooter on the police department is going to come under some kind of criticism and some kind of pressure from those elements (of police work). And it rattles you." In the following description of the typical personality of his fellow officers, Fagan feels that the need for some sort of help is universal:

Most of these guys are very quiet, strong types. Most of these guys are John Waynes, and that's the way they like it. And they really are. They're quiet, they're brave, they're tough, they're smart, they're the cream of the crop. They really are, most of them. And they deserve better than to have to live with all the pressures that that kind of image demands. Now I'm not saying that there aren't a lot of them that will live up to it and live with it and handle it and all that. But I don't know a one of them that doesn't suffer to some degree. And many that suffer more than they should have to, if they were only allowed by themselves and by others to accept the fact that they're human, and that they have problems and that they need help, and that they can get it and do something about it. And I think in the long run what you're talking

about is a better situation for everyone involved, not just the police.

Most respondents agree with Fagan's observation that "anything that creates tension is part of the problem" of police stress. Charles Owen of the Oklahoma Fraternal Order of Police also agrees with the implication in Fagan's above description that often the officer's self-perception, the macho image, is the very thing that precludes the officer from either recognizing or addressing stress-related problems. Owen discusses the need for some kind of release:

Let me tell you what we've got to do first, and particularly in Oklahoma. We've got to educate our policemen that it's not bad to go see somebody. Not everybody has a couch in their room. Just because you walk into the door and shut it and it says counsellor or psychologist, doesn't mean there's something wrong with you...Everybody's got problems. We've got to educate our people. We're having them understand now that stress is more accepted, that for you to go see somebody is not a problem. But still, it's not an accepted thing yet.

In exploring the subject of what programs are currently available, Fagan admits that back when he had a problem, he erroneously assumed that no one in the administration would be of help. While individual officers were understanding and provided him assistance, programs in Tulsa that relate specifically to police officers are still sorely needed, as Fagan states in the following remarks:

As far as what police officers need to do, and all that sort of something, there are a thousand answers. As far as what's available to police officers here,

now, in Tulsa--emphatically, zero, there's nothing. Nothing that's geared and designed just for police officers. Now they can participate in everything else that's available to the general public, if they can overcome that image problem. The fear is that if you chink the armor, the armor goes...Police officers have to come forth.

The fact of the matter is that supervisors within the Tulsa Police Department can order a police officer whose problems are affecting his/her job performance to seek psychiatric help with the city physician, or psychological help with alcohol, drug abuse or other counselors. The Oklahoma City Police Department takes officers out of the field on the advice of a psychologist, encourages officers under stress to see a psychologist voluntarily, conducts a class on stress in their in-service training, makes it mandatory for an officer involved in a shooting to see a psychologist, and employs a full-time chaplain. While it is apparent that the problem of stress is beginning to be addressed, Fagan feels that the need for "maintenance" is crucial:

We just need some bright, concerned, conscientious, compassionate people in the right places with the right ideas to turn things around...If they want quality people to hang in there and keep the "Thin Blue Line" intact, they better start doing some maintenance on it, they better start taking care of it. Our average longevity here is two years, and that's an improvement.

The whole issue of police stress, therefore, is on the cutting edge of contemporary public opinion in terms of both practice and theory. Eric Goodwin, Tulsa Police-Community Liaison Officer, reports that the

Oklahoma Osteopathic Hospital is presently conducting a study on the subject, but the results will not be available for two years. In the following statement, he relates the need for further research efforts in this area:

There's been a lot of studies about excessive force, there's been a lot of studies about brutality. There've been a whole lot of things that are very visible to us that we know are problems. But no one is working on any solutions, or to avert potential problems such as stress and how to cope with it.

Another unique manifestation of police stress is culture shock, a problem which is explored in the remainder of this section. Leonard Benton alludes to the problem in his theory that the cross-cultural interaction of a White police officer in a Black community is particularly difficult:

So I would expect that White officers that are in Black communities, that they would probably find themselves in a more stressful situation when you have, here you have a whole lot of Blacks who are gathered around in the situation and you're the only White there, the only one there with a gun; at least the only one authorized to have a gun, but you don't know who else has a gun. So I'm sure that it has an effect, you know, on the stress level.

In the Human Relations section of this report, attention was given to the problems of cultural awareness and insensitivity to cultural pluralism. This included dialect, non-verbal communication and variables in acceptable or condoned behavior in differing cultural or ethnic

communities. It has been established that there are "many communities in town," and that there are numerous subcultures, including a "police occupational subculture," according to Victor Strecher, Dean of the Institute of Contemporary Corrections and Behavioral Sciences, Sam Houston State University.⁷⁹

Dr. Strecher has specialized in the study of "culture shock" and "culture fatigue." Much of this work has been to assist foreign service officers in coping with the definable symptoms of culture shock. The problems associated with police-minority community relations and those of foreign service personnel are remarkably similar. The State Department definition of culture shock is illustrative:

Culture shock is set in motion by the anxiety that results from losing all one's familiar cues. These cues include the thousand and one ways in which we orient ourselves to the situations of daily life, when to shake hands, what to say when we meet people, when and how much to tip, how to make purchases, when to accept and when to refuse invitations, when to take statements seriously and when not to. Cues to behavior, which may be words, gestures, facial expressions, or customs, are acquired in the course of growing up and are as much a part of our culture as the language we speak. All of us depend for our peace of mind and our efficiency on hundreds of cues, most of which we do not carry on a level of conscious awareness. 80

Dr. Strecher has identified four phases of culture shock. The first he calls a "honeymoon period," during which "there is a curiosity about a culture into which a person has been injected because of a working

demand and some anxiety about it." The second phase is characterized by several factors, among them the "growth of hostility, critical attitude, blame for their personal problems upon the inhabitants of the different culture, a seeking out of others who share these same feelings and pressures..." The third phase is "an emergence from culture shock into an attitude of some superiority, some superciliousness about the culture...a change from bitterness, but still a condescension about it." The fourth is a "relative adjustment to it..."⁸¹

Strecher relates the phenomenon of culture shock to law enforcement personnel in the following:

It's stressed that the problems which lead the police officer into culture shock are real and not imagined. There is nothing quite so disruptive as a set of experiences which challenge one's working assumptions about the nature of the world and people living in it, nor does the personal difficulty caused by the initial cultural contact in the officer's adjustment if he weathers the attack of culture shock. 82

The dilemma faced by the predominantly young, White police officers when thrust into cultural settings that are alien to their experiential foundations is one that requires an inordinate amount of energy in order to cope. The officer "must suppress automatic evaluations and judgments, supply new interpretations to seemingly familiar behavior, and demand of himself constant alterations in the style and content of his authority. Whether this process is conscious or unconscious, successful or unsuccessful, it consumes an enormous amount of energy, leaving the individual decidedly and continually fatigued." This comprises the culmination of occupational

stress and cultural shock and is labelled by Dr. Strecher as "culture fatigue."⁸³

Culture fatigue is defined by Strecher as "the physical and emotional exhaustion that almost invariably results from the infinite series of minute adjustments required for long-term survival in a strange culture."⁸⁴ The absence of resources available to officers suffering from culture shock is described by Dean Strecher:

In the average police department, symptoms of culture shock in young police officers appear to be considered a coming of age, a first hard contact with the realities of big-city policing, a contact in which the recruit is learning the proper way to regard the behavior of poor people, Blacks, Hispanics, transplanted rural people.

Emotional support from experienced associates often comes from men who have also experienced culture shock and have now progressed into permanent culture fatigue. This support is less likely to sensitize the recruit as is done in foreign relations work, where they pay a lot of attention to this and guide them through a resolution of this conflict, but rather it's intended to toughen him to the long-run prospects of dealing with lower class behavior and to crystalize this toughness in the young officer. This creates a dilemma for the young officer, because...our feeling of professional adequacy depends on how our colleagues evaluate us, not how anybody else evaluates us. 85

The real-life application of the theories about culture shock and the disillusionment that accompanies occupational stress in street patrol officers is well described in the following quote by Norman Police Chief Don Holyfield. Note how closely his analysis follows the

outline of Dr. Strecher's culture shock phases:

The first two or three years an officer spends in the business is an interesting scenario. A guy graduates from the academy. He's proud of his accomplishment in becoming a police officer. He has a lot of pride and self-esteem.

He comes out of the academy and he's very apprehensive. He's put with a field officer for ten weeks and must demonstrate about 500 areas of proficiency. And all of this is signed off and placed in his personnel file.

Then he goes out on the street. He's developed a certain level of confidence. 'I can handle this job.' Then we put him out by himself and he's got the department operations manual and the ordinance book, and that's all he has to fall back on because he doesn't have any experience.

After six months, he begins to feel comfortable in his role. Then he begins to encounter frustrations. He's had a few court cases. He has seen the system--that there's a helluva difference between theory and practice in the way the system works. He's seen a few domestic situations where a kid's been physically abused. He's seen a fatality accident or two. He's seen an awful lot of injustice. He's been called a few names. He may have been spit on. The lustre has worn off.

He begins to view this whole thing differently. He begins to become a little bitter. He learns there really isn't any justice out there. It all goes down the funnel, and at the bottom is the officer.

Generally, after about three years, he'll say 'OK. I've got a defined role. I do my job. I do it the best way I know how and what happens from there I have no control over.' He either accepts that or he gets out. Three years is kind of the magic time frame for a guy to really come to grips with it all.

It is thus apparent that the job of being a police officer in contemporary society involves pressures that are unique in scope and extraordinary in degree. On a recent "Donahue" show dealing with the topic of police stress, Phyllis Benjamin, head of the Mutual Support System for Law Enforcement Spouses, related the stark contrast experienced by an officer in a typical sequence of incidents:

There's a lot of ambivalence in the job. So one minute they're rescuing a kid from under a truck and the mother says, 'Isn't that wonderful, you saved my kid.' The next minute somebody spits on them, and saliva's dripping down his uniform. And that's the stress that's on the job.

Tulsa Police Officer Bob Fagan perhaps best capsulizes the inherent conflicts of the job in his characterization of the epitome of policedom as "the ability to stand, shaken, and shoot a moving target through tears." His succinct proposal for dealing with police stress mirrors the perspective of a growing number of concerned citizens and police: "I would say that there is definitely a need here for some kind of release. We need help." The form such help would take is limited only by the creativity and imagination generated by concerned municipalities and law enforcement entities throughout the state.

POLICE TRAINING

During the final preparation of this report, it has come to the attention of the Oklahoma Human Rights Commission that a serious threat to the status of police-citizen relations exists. By resolution, the Legislature has temporarily set aside the 300 hours of required training established through administrative procedure by the Law Enforcement Training Council, and has imposed an interim training requirement of 120 hours. This represents an attempt on the part of the Oklahoma Legislature to set training hour requirements in lieu of administrative action by the Training Council.

At present, H. B. 1131, a "house keeping" measure, has passed the House as amended and should be voted on by the Senate by mid-May. This bill would re-establish the training minimum of 300 hours.

Oklahoma requires fewer hours training than other states in the Southwest. Dan Johnson, Assistant Director of the Law Enforcement Training Council, points out that Texas requires 340 hours, Kansas 400 hours, New Mexico 320 hours, Colorado 360 hours, and Arizona 480 hours. For contrast, Johnson notes that Mississippi requires no hours of training, while the smallest state in the union, Rhode Island, mandates 640 hours of training for police officers. Training for police officers is funded by a \$2.00 fee assessment against all fines or bond forfeitures.

These monies therefore preclude the use of revenues from the general fund.

Johnson states that the cutback to 120 hours would have a serious impact on the present 30-day training period by reducing it by one-half. The following are the areas currently comprising the Law Enforcement Training Council's curriculum for police officers. Asterisks indicate those areas that would be retained in a 120 hour-regimen. These four represent the areas of highest vicarious and civil liability.

- *1. Criminal law
- *2. Traffic
3. Patrol
4. Crime Scene
5. First Aid
- *6. Arrest
- *7. Firearms
8. General Information (ethics, human relations, etc.)

The 120-hour training model as a minimum for certification thereby eliminates those training areas that have had the greatest positive impact on the relations between police and citizens. The 120-hour model excludes training in human relations, first aid, public relations, police ethics and crime scene investigation.

This reduction in minimum certification training was originally supported by Don Rider, Executive Director of the Oklahoma Municipal League. Rider indicates that while there is no official Oklahoma Municipal League policy that supports the reduction in police training,

the league traditionally has opposed legislation that mandates without funding. Rider clarifies his position by stating that he is "interested in 300 hours training spread over a two-year period. Once certified, a police officer moves on to another town for more money. The two-year program would alleviate the financial loss to the community." Rider is also concerned about "the one or two cop town that is left without protection while police are in training." He indicates, without specifics, that small communities in Southeastern and Northwestern Oklahoma have expressed concerns over the training mandate.

Chief Norman Coffelt of Ponca City serves as President of the Oklahoma Police Chief's Association. He and other chiefs have met with Rider to share their views and concerns. Coffelt feels strongly that "it is impossible to adequately train an officer in 120 hours." He states: "I don't care if it's a small town or one as large as ours (Ponca City), the people need and are entitled to the same quality of law enforcement personnel. Training is a cheap way of dealing with possible liability."

The question of municipal liability for police actions is discussed earlier in this report; however, minimum training is the crux of the issue of liability. Chief Don Holyfield addresses this issue:

The reduction of the number of hours training for police officer certification is dangerous. It's a civil rights suit going somewhere to happen. I wouldn't put an officer on the street in our community with that little preparation or training.

Phil Stanbeck, an attorney with the Law Enforcement Training Council, views this area of liability as "mushrooming." He states that municipalities would not be in a protected posture if substantial reductions in training occurred.

Greg Shinert, Program Development Specialist with the Southwest Center for Human Relations Studies, comments on the possible reduction in the training of police officers:

Having done police-citizen relations training for 11 years, there is a need. This is very regrettable. Police departments are saying themselves that they need more of this training. This will make the job of the officer on the street even more difficult. In a training session conducted recently by the Southwest Center for Human Relations Studies of 177 Oklahoma City patrol officers, officers stated they felt police needed more Human Relations training in dealing with people and community organizations.

The Native American Center of Oklahoma City has also participated in sensitivity training for police officers. Millie Giago, Executive Director, states: "They don't have enough training now. There are some things like how to deal with mental patients or alcoholics that they haven't begun to cover. We did 6 hours in the Academy and that just skimmed the surface."

The potential problems that accompany a reduction in minimum standards for the training of police officers would, in the opinion of the

Oklahoma Human Rights Commission, have a deleterious effect on the status of police-citizen relations in the state. Every effort should be made to upgrade the training of officers for the protection of both police and citizens. The Oklahoma Human Rights Commission urges the maintenance of 300 hours minimum training for officers and a gradual increase in the standards that govern certification. The Law Enforcement Training Council provides commendable training for officers and the Council's continued cooperative efforts with community groups, educational institutions, state agencies and interested parties will enhance the preparation of individuals for what is one of the most difficult professions in our society.

RECOMMENDATIONS

The Oklahoma Human Rights Commission strongly urges the appropriate state and community bodies to seriously consider the following recommendations to protect the public welfare and to improve the status of police-citizen relations:

- 1) That the Oklahoma Legislature amend the "fleeing felon" statute, 21 O.S. 732 and 733, to include the Model Penal Code definition of "forcible and atrocious" felonies and restrict the use of deadly force accordingly;
- 2) That in the interim the Oklahoma Attorney General examine the ambiguity of 21 O.S. 732 and 733 and render an opinion that would, if in concurrence with the interpretation stated in the body of this report, protect the public welfare and serve as direction for state prosecutors until such time as judicial review occurs;
- 3) That the Office of the Attorney General and the Oklahoma State Bureau of Investigation assume jurisdiction in the investigation and prosecution of serious cases of police misconduct;
- 4) That the Oklahoma Legislature statutorily require and provide for the indemnification of police officers within every political subdivision in the state;
- 5) That the Oklahoma Department of Mental Health examine the problem of police stress and formulate programs to assist police officers and departments in dealing effectively with this problem;

- 6) That Oklahoma communities seriously consider the implementation of the recommendations included in the Human Relations Problems section of this report. Moreover, that communities seriously evaluate the applicability of implementing citizen advisory groups to cooperate with police in the formulation of community policy and to participate in the administrative process of reviewing complaints of police misconduct.
- 7) That the Oklahoma Legislature mandate that the certification of police officers be maintained at a minimum of 300 training hours and that further efforts be made to upgrade this minimum to make it compatible with regional and national standards.

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- ⁷⁸Oklahoma Monthly, June, 1980, p. 39.
- ⁷⁹Police Practices and the Preservation of Civil Rights, p. 92.
- ⁸⁰Ibid., p. 92.
- ⁸¹Ibid., p. 93.
- ⁸²Ibid., p. 93.
- ⁸³Ibid., p. 93.
- ⁸⁴Ibid., p. 93.
- ⁸⁵Ibid., p. 94.

APPENDICES

QUESTIONNAIRE
POLICE-CITIZEN RELATIONS PROJECT 1981

APPENDIX A

I. What are the five problem areas in the field of Police/Citizen Relations?

Prioritize these.

Discuss each.

II. What procedures now exist which enable citizens to seek redress of grievances against police officers?

What are your perceptions of this grievance procedure?

How could it be improved?

III. What do you think about citizen review boards in comparison to the internal affairs review of citizen complaints?

What do you think about the establishment of a statewide hierarchy of citizen review boards?

IV. What is the policy locally for the use of force (deadly force) by police officers?

Is there automatic review in this situation?

What is the standard complement of weapons carried by a police officer (e.g., nightstick, blackjack, etc.)?

What is your opinion of the "fleeing felon statute" as it relates to the use of deadly force? (vs. due process)

Given the fact that _____, _____, and _____ are felonies in this state, what is your opinion of the fleeing felon statute?

V. What procedures do you have available for police officers to deal with stress?

What procedures would you recommend?

APPENDIX B

What it's all about . . .

The derogatory material below was allegedly handed around the Lawton Police Station. It is reprinted here in order to provide background information for the related story.

HUNTING REGULATIONS FOR SW OKLAHOMA

1980-1981 Season

The 1980-1981 big game season will be cancelled due to shortage of big game animals. The following big game animals will not be hunted: Deer, Turkey, Bear, and Wild Boar. However in the place of big game animals, there will be an open season on "Porch Monkeys", also known in SW Okla. as Negro, Nigger, Burrheads, House Apes, Jungle Bunnies, and Saucerlips. The season will be open from May 30, 1980 through April 8, 1981. This season has no relation to the Porch Monkey breeding season which is year round.

It Will Be Unlawful To:

- Hunt in a party of more than 500.
- Use more than 300 bloodhounds.
- Shoot in public establishments. Bullet could ricochet off their heads and hit white persons.
- Shoot any Porch Monkey while in a Cadillac.

TRAPPING REGULATIONS

- Traps must not be within 20 feet of any watermelon patch.
- Traps must not be baited with coon, watermelon, cheap wine, sow belly, or bar-b-que ribs.
- Traps may not weight more than 3 tons.

OTHER RULES AND REGULATIONS

- It shall be unlawful to hunt with auto or other spotlight, due to shrining teeth of Porch Monkey.
- It shall be unlawful to call porch monkey with songs such as "Swanee River", "Mammy's Little Baby Lives Short'n Bread", or any other soul train song.

HOW TO TELL IF PORCH MONKEYS ARE IN AREA

- Watermelon seeds and rinds on ground.
- Smell of coon in the air.
- Cadillacs, especially those with large whitewall tires, mud flaps, four CB antennae, bathroom rugs in back window, and dent in the side door.
- Piles of carp bones around fishing holes.
- Best hunting is close to mailbox around the first of each month.

Bag Limit: Ten Daily, 200 per season.

APPENDIX C



OKLAHOMA DISTRICT ATTORNEYS ASSOCIATION

(405) 521-2348

312 N.E. 28TH STREET SUITE 108 OKLAHOMA CITY, OKLA. 73105

"TO SECURE THE BLESSINGS OF LIBERTY".....

Our Constitution and Bill of Rights were written by the most eminent of our forefathers long ago and it has taken almost 200 years for the pendulum to reach its present position; Has it swung too far in one direction? Survey after survey confirms that Americans feel unsafe in their homes, in the streets, in their businesses, and in their schools; Yet the courts, instead of handcuffing the lawless, persist in handcuffing the law enforcers. Don't the victims have any right or guarantee of protection???

THE VICTIM-WITNESS BILL OF RIGHTS

I. A CRIMINAL SHOULD NOT PROFIT BY HIS ACTS.

Victims should have the right to expect that criminals not profit from their criminal acts. If misdeeds become the subject of books, movies, interviews, etc., any profits gained from these should be subject to recovery by the victim or the State. Profits from "In Cold Blood"... "The Executioner's Song"... etc., have been enormous. Nobody wants to read the story of the victim's family... it isn't glamorous enough. Everyone wants to know how the boy became the man murderer, but nobody wants to know how the woman became the rape victim. RECOMMENDED LEGISLATION: Any profits made by a convicted criminal from such action be placed by the Department of Corrections in an escrow account for the victim or victim's family to recover in civil law suits and the remainder forfeited to the Victim Compensation Fund.

II. THE VICTIM'S RIGHT TO BE INFORMED.

The victim should be advised of any and all progress. After all, it was his life, his property, his family, that was ruined, destroyed, stolen or threatened. RECOMMENDED LEGISLATION: Statute requiring Parole Board to notify victims when their case is going to be reviewed, giving them an opportunity to appear and be heard, and at the very least be notified when the criminal is in fact being released from incarceration.

III. SPEEDY TRIAL.

The right of the law-abiding citizen to have the defendant brought to trial quickly... a speedy trial and a quick judgment. The defense offers rhetoric about this right claimed by the defendant, but seldom does he mean it or want it. Time is his best defense. Therefore, the citizen victim should also have the right to demand an immediate hearing and a quick disposition of his case. RECOMMENDED LEGISLATION: Speedy Trial Act.

IV. SPEEDY APPELLATE REVIEW.

Why must the victim or his family wait for years to hear the answer to a criminal's appeals??? How many courts should get to review the decision of twelve human souls who made a very difficult but necessary decision? How many appeals did the criminal's victim get to avoid death??? RECOMMENDED LEGISLATION: Increase in number of judges on Court of Criminal Appeals so that there will be no backlog of cases.

V. VICTIM COMPENSATION.

Victims have the right to be compensated for all losses suffered at the hands of the lawless. Their medical bills should be taken care of, and their property losses recouped. If they suffer physical, mental or economic problems resulting from crime, they should receive remuneration for those sufferings. There are horrors for which no payment would ever be enough, but the effort should be made to establish programs to guarantee that the system will do at least as much for the victim as it does for an inmate incarcerated for an offense. RECOMMENDED LEGISLATION: Victim Compensation Fund.

VI. VICTIM-WITNESS COORDINATOR.

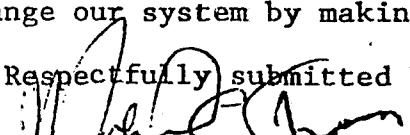
A Victim-Witness Coordinator will assure that victims and witnesses will have these rights: The right to be kept informed of the progress of their case; The right to be notified that a court proceeding will be cancelled, in order to save them an unnecessary trip to court; The right to be informed of all available social services and financial help; The right to be informed of the procedure to follow to receive witness fees; The right to have property recovered by police quickly returned; The right to be safe from being fired as a result of appearing in court; and the family members of all homicide victims shall be afforded all of the above rights. RECOMMENDED LEGISLATION: Adequate funding for every District Attorney's office to provide for a Victim-Witness Coordinator.

VII. VICTIM-WITNESS PROTECTION.

Victims and their families often have to live entire lives scarred with the trauma of rape or murder. The terrifying face of the criminal will loom forever in their consciousness... the experience will remain vivid in their memory long after the last appeal has been exhausted. And yet, the victim must fear something else... retaliation. Because he participates in the system by way of testifying before a court of law, by becoming a witness, he must forever live with the fact that the criminal will be set free to prey upon him or his family again. Recently, for example, three rape victims were murdered in Kansas City before the defendants had been brought to trial. RECOMMENDED LEGISLATION: Stronger statutes that will provide stiffer penalties for those criminals who commit crimes against witnesses... laws that can be used swiftly and effectively in order to afford our witnesses greater protection.

When will we realize that the most important cog in the criminal justice machinery is the victim and witness??? Unless we work to change the system so that it will perform positively for the victims, we can't expect them to cooperate much longer. For far too long the victim has been a lightweight on the scales of justice and we must change our system by making the victim the final word!!!

Respectfully submitted by:


MICHAEL C. TURPEN, PRESIDENT, ODAA

APPENDIX D

PROBLEMS IN POLICE COMMUNITY RELATIONS, AS REVEALED IN EVALUATIONS FROM 93 PATROL OFFICERS IN 3 PCR TRAINING SESSIONS, OKC POLICE DEPARTMENT, OCTOBER 8-15-22, 1980, and/or in SMALL GROUP DISCUSSION WORKSHOPS FOR WHICH OFFICERS ARE SEEKING ANSWERS, SOLUTIONS, or "HOW-TO'S" in RESPONDING, WHICH CAN ENHANCE EFFECTIVENESS OF PCR ON THE STREET.

1. Patrol & Traffic Officers often encounter a negative attitude and/or behavior on first contact with citizens.
-How can Police Officer change this to a positive attitude or behavior so he can do his job, but still enhance good PCR?
2. Patrol and Traffic Officers regularly receive bad media coverage (press & TV), no matter how good a job they are doing. Media seldom present's the Officer's side of the story, or explain why Officers have to do what they do. And, media get in the way, destroy evidence, hinder Officers in performance of their duty.
-How can Police Officers get the media to present a fairer picture, listen to the Officer's side, and not distort Police "image"?
-How can Police Officer gain cooperation of media, so that they do not destroy evidence, get in the way of an investigation, arrest?
3. Patrol and Traffic Officers often have difficulty with AM CARE. They respond to a call too slowly, get officious on scene of accident, try to be doctors, destroy evidence, and often take people to hospital who are dead-or do not need to go to hospital.
-How do Police Officers obtain the cooperation of AM CARE attendants, respond more quickly, be less officious at scene, listen to opinions and requests of Officers, preserve evidence, and not take people to hospital who do not need to go?
4. In working with Community Agencies, especially on the 4 pm-9am shifts, Patrol and Traffic Officers often can't get a response out of a Community Agency. They are closed, and have no emergency lines "hot lines" Often, the agency can't help an Officer, or gives them a run-around, referrals to referrals to referrals--all who can't help.
-How can Police Officers gain greater cooperation and assistance from Community Agencies they do encounter or use? "Hot lines" at night--and a hip pocket card with emergency numbers, services offered, and any conditions they would prevent the agency from quickly assisting an Officer?
5. Patrol and Traffic Officers perceive the general community, and certain specific parts of the community (sp., in high crime Districts) do not understand or appreciate the limited role and function of Police Officers do not want to cooperate, and do not respect job Officers are doing.
-How can Patrol and Traffic Officers help to improve the "image" of the police, do good PR, get citizens to understand and value the limit role and function of the police, cooperate with the police, and respect the job Police Officers are sworn to do?

6. Patrol and Traffic Officers perceive their Command structure not valuing or rewarding Officers for doing good PR or Police Community Relations. Officers are commended, promoted, and praised for numbers on Activity Reports (arrests, traffic tickets written, incidents investigated, problem resolved.) If Officers actually do good PCR, and numbers on Activity Reports go down as a result, Officers can actually be penalized, or not given promotions.

-How can Patrol and Traffic Officers get Command to listen to Officers
-reward them for good PCR, have PCR activities count on Report?

7. Patrol and Traffic Officers would like the opportunity to meet with Neighborhood Associations, community organizations in their Districts, and engage in 1-on-1 relationships on duty--and be encouraged to do so., and rewarded for doing so.

-How can Police Officers be offered the opportunity to engage in 1-on-1 relationships, or even dialoguing with Neighborhood Organizations and community agencies in their Districts, while on duty--and receive commendations for same?

8. Patrol and Traffic Officers in PCR training would like the opportunity to dialogue with media and/or community people in the Training Session.

-How can this be arranged and managed, to be productive, and not just a "bitch" session--or community people chewing out the Officers?

9. Patrol and Traffic Officers sometimes experience their greatest problems in working with JOHN Q. PUBLIC, the average citizen, the middle class--or even the upper class.

-How do Police Officers initiate dialogue and positive PCR with this class, whether in a 1-on-1 situation, or in groups?

10. Patrol and Traffic Officers on duty seldom have time to establish good 1-on-1 relationships, or to engage in positive PCR or PR. They are expected by the Command to do too many things on duty, to answer too many calls, to cover too large a territory, and not to waste time & effort dealing with citizens, doing PR, or trying PCR. The System neither permits nor encourages PCR.

-How does a Police Officer find the time, where does he obtain motivation, and how is he rewarded for establishing good 1-on-1 relationships, doing positive PCR? WHAT IS THERE IN IT FOR HIM?

11. Patrol and Traffic Officers are very frustrated by the Command, by their Supervisors, and by citizens on the street. They have no way to relieve their frustration, handle the stress and tension, yet are expected to be super-human, always cool, calm and collected, always in control of the situation, and always achieve positive results.

-How can Police Officers be helped in handling frustration, stress, tension, the need to always be in control? How can Officers convince Command and citizens they are "human"?

12. Some Patrol and Traffic Officers perceive the major responsibility for positive PCR (& PR) rests with Command and Supervisors, that they do not have this responsibility, and should not be held accountable for enhancing good PCR. The Command should be exposed to PCR Training sessions.

-How to help Police Officers and Command understand that good PCR is a shared responsibility, and that each Officer & Department is accountable

13. Some Patrol and Traffic Officers do not perceive that there is a value for them to engage in PCR, that their jobs are made any easier if they and do not know of any "success stories" wherein positive PCR has significantly improved policing, or helped any Officer.

-How can Police Officers be convinced of the value of good PCR (good that their jobs will be made easier, that positive policing will be advanced, or that Officers themselves will benefit?

14. Domestic situations are often one of the most difficult and unpleasant jobs Patrol Officers are called on to handle, and for which they feel the least competence. Many do not perceive they have any other role in these situations other than to restore peace, prevent injury. They are not crisis intervenors, mediators, counselors, and should not be expected to behave like social workers, marriage counselors, youth workers.

-The Department must spell out more clearly the responsibilities of Patrol Officers in this area, and if Officers are expected to perform in any other capacity than peace officers, they should receive special training on "how-to" handle these situations.

15. Patrol and Traffic Officers in PCR training perceive that nothing can be done-or will be done by Command-to change System, or implement recommendations coming out of these sessions. Or, they perceive that the Command will make more demands on them, but not permit them any more time to do job, or offer any specific training to equip them to do a good job.

-How can more Patrol Officers be permitted to attend more Schools, or Training sessions, on regular duty time, to gain more competence?

-How can Officers learn new expectations, and receive assistance to deal with situations they were not trained for?

16. Patrol and Traffic Officers perceive a real value in having private citizens ride on Patrol for several evening tours of duty, just to learn what Officers face, to better understand problems Officers encounter.

-How can Department be convinced of value of citizens riding on patrol, and make this a standard practice? (with waivers for liability).

-A second alternative: Have Volunteers from community agencies and citizens serve at Police Department, to learn more about police work, and help as resources.

17. Patrol and Traffic Officers do not perceive they have a major responsibility in "service" activities; they are not taught skills to handle service functions, and that the expectations of their Supervisors are that they do their assigned jobs, "by the book", and leave service activities to social workers.

-How can Supervisors be sensitized to service functions of Patrol and Traffic Officers, encouraged to permit Officers to do these tasks, and reward them for service-tasks they do well?

18. Patrol and Traffic Officers perceive a significant break-down in communication between themselves, their Supervisors and Command--and between Patrol Officers and citizens.

-How can better communications be effected between Supervisors and Patrol/Traffic Officers and Command (a real two-way communication)?

-and a two-way communication between Patrol/Traffic Officers & citizens

19. Some Patrol and Traffic Officers perceive a low morale within the Police Department, with little opportunity for advancement, promotions, attendance at Schools, training sessions. "No one is listening, no one cares, nothing will ever get done, no changes in System are possible."

-How to get Command to listen and act?

-How to improve morale?

-How to effect change in System?

20. Patrol and Traffic Officers perceive that citizen complaints are read and considered, and never removed from Personnel files--even when Officers are exonerated. Citizens letters of commendations are not read, are not considered in evaluations for promotions.

-How to better handle citizen complaints, and if Officers are exonerated, removed letters from Personnel files?

-How to insure greater value of letters of commendation, when considering promotions?

21. Some Patrol and Traffic Officers perceive that in cases of alleged police brutality, the Officer must prove he is innocent, and due process is not offered Officers in Internal Review. Their only recourse are legal civil suits against citizens who liable them, or file false charge

-How to help Officers receive financial assistance to file civil suits?

-How to get Police Department to assist them in filing criminal suits?

22. Patrol and Traffic Officers allege that they cannot be convinced, quantitatively, how good PCR helps an Officer on the street. They are not sold on qualitative statistics., or generalized statements.

-Where can Officers go for quantitative statistics?

23. Some Patrol and Traffic Officers perceive that most citizens over-emphasize individual rights, to the neglect of societal rights--and responsibilities are never even considered, the rights of the criminal must be protected at every level and Courts and Parole & Pardon Boards go overboard. Rights of victims, and rights of society are flouted

-How to re-orient society to rights of police, rights of society, rights of victims?

24. Patrol and Traffic Officers perceive that their fitness reports do not take into account positive accomplishments in PCR--no credit is given.

-How to get positive PCR accomplishments integrally incorporated into Officers' fitness reports for promotions?

25. Bad PR (or PCR) is due to bad media coverage, high crime rates, the kind of people police work with, politicians, bad laws, poor law enforcement, easy Courts & Pardon & Parole Board, stress, frustration, too high expectations of police, ill-defined role & function of police, too many duties on individual police officer on the street, non-respect for job.

-How can PCR get a root causes of bad PCR, and encourage good PCR?

-How can Patrol & Traffic Officer make friends with citizens? (this can result in poor policing, being taken advantage of.)

26. Patrol and Traffic Officers are reinforced for negative behavior.

-How can you reinforce them for positive behavior?(Command & citizens?

27. Patrol & Traffic Officers offered several suggestions: but no consensus was obtained, on ways to foster good PCR:

- (a) Develop more 1-on-1 positive contacts with citizens;
- (b) Have citizen evaluation of police conduct (little support)
- (c) Have more citizen involvement in police work
- (d) Have Peer Officers' reviews of police behavior (not much support)
- (e) Have an "independent" Command review of police behavior (a separate Division, responsible directly to Chief, and independent of Supervisors, Division Commanders)
- (f) do a much better job of PR, and working with media; involve them in police work-and/or in training.
- (g) Have some type of "Citizens for Police Improvement" Association, to enhance citizen support and cooperation.

NOTE: The October 22nd. summary session did obtain consensus on three points and Officers asked that Command be informed:

- (1) There is a need for "something" to be done by Department, and by each Officer, to improve PCR for Officers on Patrol (on street)
- (2) There is a critical need to raise the level of awareness of Command and Supervisors for good PCR--and obtain their support for Patrol and Traffic Officers to more actively engage in good PCR.
- (3) The Command and Supervisors must develop and communicate & implement some reward structure for Patrol and Traffic Officers to practice good PCR.

APPENDIX E

Section 3.07 of the Model Penal Code provides, in pertinent part:

Section 3.07. Use of Force in Law Enforcement.

(1) Use of Force Justifiable to Effect an Arrest. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) Limitations on the Use of Force.

(a) The use of force is not justifiable under this section unless:

(i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(ii) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(b) The use of deadly force is not justifiable under this Section unless:

(i) the arrest is for a felony; and

(ii) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and

(iii) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(iv) the actor believes that:

(1) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(2) there is a substantial risk that the person to be arrested will cause death or serious bodily harm

BILLY Q. MCCRAY
SENATOR TWENTY-NINTH DISTRICT
SEDGWICK COUNTY
1532 NORTH ASH
WICHITA, KANSAS 67214



TOPEKA
SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN SUB-COMMITTEE ON CREDIT UNIONS
MEMBER WAYS AND MEANS
EDUCATION
SPECIAL CLAIMS AGAINST THE STATE
COMMERCIAL AND FINANCIAL
INSTITUTIONS
CIVIL COMMISSION

January 30, 1980

FROM: Senator Billy Q. McCray

TO: Judiciary Committee Members

Those states which have adopted reform statutes now equal in number those whose statutes still follow the common law rule according to the author of Note, The Unconstitutional Use of Deadly Force by the Police, 55 Chicago - Kent L. Rev. 539 (1979) the states break down as follows:

Twelve states have no statute on the subject; these are:

1. Maryland
2. Massachusetts
3. Michigan
4. Ohio
5. Virginia
6. West Virginia
7. Wyoming
8. Georgia
9. Louisiana
10. New Jersey
11. South Carolina
12. Vermont

Eight states now limit the privilege to use deadly force to cases of "forcible felonies"; these are:

1. Delaware
2. Illinois
3. Montana
4. New York
5. North Dakota
6. Oregon
7. Pennsylvania
8. Utah

The Model Penal Code proposal has been adopted by nine states; these are:

1. Alabama
2. Colorado

Judiciary Committee Members
January 30, 1980
Page 2

6. Nebraska
7. North Carolina
8. Texas
9. Hawaii

Arizona has also adopted a reform statute, one of its own creation.

There are, on the otherhand, twenty states with statutes which still follow the common law rule. They are:

1. Alaska
2. Arkansas
- *3. California
4. Connecticut
5. Florida
6. Idaho
7. Indiana
8. Kansas
9. Minnesota
10. Mississippi
11. Missouri
12. Nevada
13. New Hampshire
14. New Mexico
15. Oklahoma
16. Rhode Island
17. South Dakota
18. Tennessee
19. Washington
20. Wisconsin

*The California courts have read the California statute in a restricted way; as so construed it actually falls under the reform statutes and those following the old common law.

APPENDIX F



U.S. DEPARTMENT OF JUSTICE
COMMUNITY RELATIONS SERVICE
SOUTHWEST REGIONAL OFFICE
1100 COMMERCE STREET
DALLAS, TEXAS 75242

March 25, 1980

Professor Joseph Witherspoon
Law School
University of Texas
Austin, Texas 78712

Dear Professor Witherspoon:

Tension and conflict has occurred in Oklahoma because they have a law which permits a citizen to use deadly force in order to apprehend a fleeing felon.

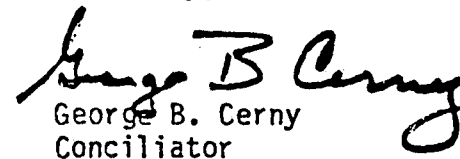
A number of states have similar laws and each time a death is justified there is considerable protest.

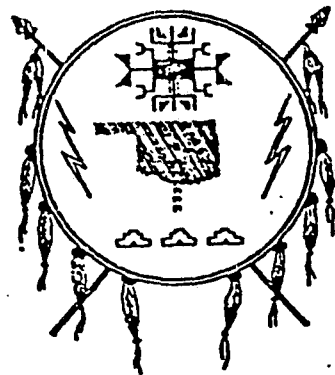
Enclosed are copies of the correspondence between the Oklahoma Indian Affairs Commission and the District Attorney of Oklahoma City which explains two interpretations of the law with regard to the death of an Indian teenager, Thomas Foley. The Civil Rights Section of the U.S. Department of Justice has decided not to prosecute, but we haven't seen their opinion.

Your name was suggested as a resource when I met with the Governor's Aide for Law Enforcement in Oklahoma, the Director of the Oklahoma Indian Affairs Commission and the Director of the Oklahoma Commission on Human Rights. They are searching for a solution to a problem which has caused conflict, deaths, and riots. They are also aware that public opinion apparently is in favor of the rights of a law enforcement official or a citizen to use deadly force to apprehend a fleeing felon. Whatever you can do to give these officials assistance will be greatly appreciated.

If you have any questions you may call me collect at (214) 767-0826.

Sincerely,


George B. Cerny
Conciliator



STATE OF OKLAHOMA APPENDIX G
OKLAHOMA INDIAN AFFAIRS COMMISSION
4010 N. Lincoln Boulevard
Oklahoma City, Oklahoma 73105
Phone 405-521-3828

MEMORANDUM

TO: Roy Robert Gann, Director
FROM: Susan Work, Staff Attorney, Legal Division
DATE: July 3, 1979
RE: The Inapplicability of the Defense of Justifiable Homicide
 in the Shooting Death of Thomas Foley

I. Introduction

On February 18, 1979, Thomas Foley, Jr., a seventeen year old Choctaw/Creek Indian, was shot in the back of the head by an Oklahoma City resident, Charles Allen Wilson, in the vicinity of 6125 Northwest 10th Street. He was taken to Baptist Medical Center and remained in the intensive care unit until his death on February 20, 1979.¹

The police investigated the shooting shortly after its occurrence, but did not take Charles Wilson into custody, being advised by Assistant Oklahoma County District Attorney Jim McKinney that charges would not be filed. Later, on March 21, Oklahoma County District Attorney Andrew Coates decided to reconsider the decision not to prosecute, but confirmed the decision on March 28.

The decision not to prosecute was based on the belief that if taken to court, Charles Wilson could successfully raise the defense of justifiable homicide as defined by 21 O.S. § 733(3):

¹For a full review of the facts see May 31, 1979 O.I.A.C.

Homicide is justified...3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

According to the District Attorney's office, since Foley had allegedly burglarized Wilson's car, he was a felon and Wilson was justified in shooting him when he fled.

The District Attorney's office stressed that it was clear from the face of the statute that it authorized the killing, either intentional or unintentional, of a fleeing felon by a private citizen where any type of felony had been committed. According to the District Attorney's interpretation of the statute, persons committing nonviolent felonies such as perjury, passing a hot check, or indecent exposure may be killed by private citizens should they attempt to flee the scene of the crime.

However, this broad interpretation of the statute is not required by law, or even supported by law. First, the definition of justifiable homicide cited by the District Attorney requires that the homicide must have been "necessarily" committed, and that the private citizen attempting to arrest a felon must have used "lawful ways and means" in order for the homicide of the felon to be justifiable. Under Oklahoma law, the use of excessive force by a private citizen arresting a felon is unnecessary and unlawful. Secondly, this definition must be interpreted in light of changing common law views. When this was done by the California courts in a case involving an identical definition of justifiable homicide, the resulting conclusion was that the definition does not authorize a private citizen to use deadly force in effecting the arrest of a person fleeing following the commission of a nonviolent felony. Thirdly, the purpose of the entire statute, when read as a whole, is to protect the person rather than to prevent any type of felony or to punish for any type of felony.

II. Statutory Construction of Oklahoma's Justifiable Homicide Law.

A. Analysis of 21 O.S. § 733(3) in Context of Police Arrests and Citizen's Arrests: "Lawful Ways and Means Requirement"

Oklahoma law recognized two categories of arrests: Police arrests are governed by 22 O.S. § 192-200, and citizen's arrests are governed by 22 O.S. § 202-208. Oklahoma law likewise recognizes two categories of justifiable homicide: Homicides by police officers are governed by 21 O.S. § 732, and homicides by "any person" are governed by 21 O.S. § 733. A comparison of these statutes results in the conclusion that the extent of force which may be used by private citizens to effect an arrest is more limited than that of police officers, and that a police officer may be justified in committing a homicide in a given situation, while a private citizen would not be justified in committing a homicide in the same situation.

A public officer is exculpated by 21 O.S. § 732 from the commission of a homicide committed in one of the following circumstances:

1. In obedience to any judgment of a competent court; or
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or
3. When necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice. [Emphasis added]

"Any person" is exculpated from the commission of a homicide by 21 O.S. § 733 when it is committed in the following situations:

1. When resisting any attempt to murder such person, or to commit any felony upon him, or upon or in any dwelling house in which such person is; or,
2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished; or
3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace. [Emphasis added]

The most significant difference in the provisions of the two statutes governing homicides committed in effecting arrests is the requirement in § 733(3) that a private citizen use "lawful ways and means" in attempting to apprehend a felon and the absence of such a requirement for police officers in § 732(3). This is due to the fact that while police officers are expressly authorized by statute, 22 O.S. § 193, to use "all necessary means" to effect an arrest, the statutes governing citizen's arrests, 22 O.S. §§ 202-208, do not define the amount of force which may be used by a citizen. Instead, the permissible amount of force used by private citizens attempting to apprehend a felon must be "lawful" with reference to the common law and to any other statute defining the amount of force which may be used in a given situation by a private citizen.

There is only one instance in which a private citizen is impliedly authorized by statute to use the same degree of force as a policeman in apprehending a felon. See 22 O.S. § 36. This statute grants a private citizen assisting an officer who has requested assistance or who is in imminent danger the same criminal immunity as the officer for any act committed during assistance. Thus a private citizen who uses "all necessary means" to effect an arrest in the circumstances described in § 36 is using "lawful means" within the purview of 21 O.S. § 733. However, this does not mean that the citizen has the absolute right to kill in this situation, because the police officer does not even have that right. Police officers are as much amenable to the law as other persons, and they must not use their official authority as a cloak to violate the law. Even where the suspected party has committed a felony, an officer will not be justified in taking life where the arrest can be made without violence. Ex Parte Finney, 205 P. 197 (Ok. Cr. 1922)

Since statutory law does little to define the extent of force which may be used by a citizen making a citizen's arrest, it is necessary to turn to the common law. In Oklahoma there is only one Oklahoma case which examines the extent of force which may be used by a private citizen in effecting an arrest, Hulls v. Williams, 29 P. 2d 449 (Ok. 1962). The Hulls case was a civil action for personal injury brought by a felon for injuries sustained when he was shot by the defendant, who was attempting to arrest him. The plaintiff had been caught in the act of stealing gas from a pipeline by the defendant, who was a night watchman. When the plaintiff did not respond to the defendant's demand that he come out of the ditch, the defendant fired a warning shot. Still receiving no response, the defendant fired into the ditch, striking the plaintiff in the arm.

In Hulls the Oklahoma Supreme Court noted the rule that when a person subject to a lawful arrest refuses to go, the party making the arrest has the right to use reasonable force to overcome the resistance, but not the right to use unreasonable and unnecessary force or to wantonly or maliciously injure the person. The court further noted that the question is not whether the defendant acted without malice and in the honest belief that the force which he used was necessary, but whether under the circumstances the force used was in fact unreasonable and excessive. The court concluded that in the case at hand substantial evidence of the use of unreasonable and excessive force had been presented, and the defendant was liable for damages.

While the degree of force which a private citizen may use in arresting a felon has been only broadly defined in Oklahoma with reference to the circumstances of a given case, this issue has been directly addressed and defined by a common law rule in Pennsylvania to the effect that the use of deadly force by a private person in order to prevent the escape of one who has committed a felony is justified only if the felony committed is

treason, murder, voluntary manslaughter, mayhen, arson, robbery, common law rape, common law burglary, kidnapping, assault with intent to murder, rape, or rob, or a felony which normally causes or threatens death or great bodily harm. Commonwealth v. Chermansky, 242 A. 2d 237 (Pa. 1968). The court explained its decision as follows:

The common law principle that killing necessary to prevent the escape of a felon is justifiable developed at a time when the distinction between a felony and misdemeanor was very different than it is today. (At early common law, virtually all felonies were punishable by death.) Statutory expansion of the class of felonies has made the common law rule manifestly inadequate for modern law. Hence, the need for a change or limitation in the rule is indicated.

In a later case the Chermansky rule was followed, and the court concluded that the larceny of a car "falls far short of those crimes which are specifically enumerated as justifying the use of deadly force." Commonwealth v. Allen, 276 A. 2d 539 (Pa. 1971).

In summary, a private citizen must have used lawful ways and means in seeking to apprehend a felon in order for the resulting death of the felon to be ruled justifiable homicide pursuant to § 733. Oklahoma statutes do not define the extent of force which a private citizen may use in attempting to apprehend a felon, but is clear that in most circumstances they do not possess authority to use "all necessary means" to effect the arrest, as do police officers. It is also clear that the common law in Oklahoma recognizes that the concept of excessive force is applicable to citizen's arrests of felons, and that the degree of force used must be considered in the context of the circumstances of the arrest. Further, the Pennsylvania common law rule justifying the killing of a felon by a private citizen attempting to arrest him only where the felon has committed certain enumerated crimes harming or endangering other persons exemplifies a legal trend toward placing greater value on human life.

Finally, it is worthwhile to note that the conclusion that private citizens are more restricted than police officers in the degree of force which they may utilize in effecting an arrest is supported by practical as well as legal considerations. While police officers often have excellent training in the use of firearms, private citizens often have no training at all. To allow private citizens to use firearms in all situations involving the apprehension of fleeing felons could prove to be more dangerous to the general public than allowing the felons to escape. Furthermore, private citizens are not as restricted in the actual use of firearms as police officers. Unlike police officers, private citizens are not trained to be hesitant to use a firearm and are more likely to act on impulse than upon a rational consideration of the safety of persons in the area and of the potential beneficial or detrimental consequences of the use of a gun.²

²The Oklahoma City Police Operations Manual, "Use of Firearms by Law Enforcement Officers," No. 9103, Issued 9-1-75, exemplifies the restrictions on use of deadly force by police officers. It provides:

"The Oklahoma City Police Department will not deviate from the State law as a guideline and shall not be more restricted than the law itself; but, under all circumstances, bearing in mind the value of a human life, an officer will exercise the utmost discretion in the use of his weapon. The use of a firearm by an officer is not justified if an apprehension and/or arrest can reasonably be made without violence."

"The use of firearms is not justified to apprehend a fleeing offenders except as permitted under justification specified in this policy statement."

"The police officer is justified in using his firearm only: in defense of life in instances where the suspect is armed and/or making an attempt to kill or do great bodily harm, in accordance with 21 O.S. § 732, 'Where necessarily committed in retaking felons who have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice.' NOTE: In this context 'necessarily' is defined as being essential as a last resort, or 'when necessarily destroying an injured, maimed or vicious animal.'"

B. Interpretation of 21 O.S. § 733(3) in Light of Changing Common Law Views.

As already noted in the previous section, common law views concerning the amount of force which may be used by a private citizen attempting to make an arrest have become more restrictive as to the use of force, placing greater emphasis on the dangerousness of the fleeing felon rather than on apprehension at all costs. These past and present common law views are pertinent not only to the definition of the term "lawful ways and means," but to the interpretation of the purpose of the statute as well.

The relevance of the common law views has been recognized by the California courts in interpreting California's justifiable homicide statute as follows:

But the section does no more than codify the common law and should be read in light of it. Taken at face value, and without qualification, it represents an oversimplification of the law today...The authorities generally rely on Blackstone for the earliest expression of the rule. He rationalized it in terms of no killing being justified to prevent crime unless the offense was punishable by death...But in those days all felonies were capital offenses...Any civilized system of law recognizes the supreme value of human life, and excuses or justifies its taking only in cases of apparent absolute necessity.

People v. Jones, 191 Cal.App.2d 478 (1961); See also People v. Piorkowski, 41 Cal. App. 3d 324 (1974).

In People v. Piorkowski, supra, the California court applied this rationale in interpreting 8 Calif. Pen. Code § 197(4), which defines justifiable homicide in exactly the same language as 21 O.S. § 733: "When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace." In Piorkowski the court held that this definition does not authorize a private citizen to use deadly force in effecting the arrest of a person fleeing following the

commission of a nonviolent felony. The court noted that thefts, conversion of real estate, a second offense of indecent exposure, and thefts are felonies, stating that "modern rationale must preclude the holding that a private citizen may use deadly force in attempting to arrest a person for such offenses." According to the court, where the character of the crime and the manner of its perpetration doesn't warrant the use of deadly force to effect an arrest, it isn't "necessarily committed." The court held that the use of deadly force was not justified in the instant case, which involved the burglary of a business during the daytime and no confrontation by force.

More recently, the California court has stated:

In this day and age neither an officer nor a private person may rely on the literal language of the 1872 code provisions which appear to justify the use of deadly force to effect an arrest for, or to prevent the commission of, any felony. In view of the great expansion of crimes which have been made felonies, the courts have held that deadly force may be used against felony suspects only if the felony is a 'forcible and atrocious' one, which threatens death or great bodily harm.

Kortum v. Alkire, 69 Cal. App. 3d 325 (1977).

This viewpoint should be reflected in the law in Oklahoma, should the issue ever reach the courts. A narrow interpretation of § 733(3) to allow the use of deadly force against only those felons who have committed a forcible and atrocious crime which threatens death or great bodily harm at this point in time is not inconsistent with the actual language of the statute and is consistent with the development of the common law in this legal area in Oklahoma and other jurisdictions. The justifiable homicide statute was enacted into law in 1910, and the common law now places greater value on human life than it did at that time. This was recognized by the Oklahoma Supreme Court in 1968 in Hulls v. Williams, supra, which established that deadly force by a private citizen to make a citizen's arrest of a felon is not lawful in all circumstances.

C. Interpretation of 21 O.S. § 733(3) in Light of Whole Statute

A narrow interpretation of § 733(3) to allow the use of deadly force against only those felons who have committed a forcible and atrocious crime which threatens death or great bodily harm is entirely consistent with the intent of the justifiable homicide statute, when read as a whole, to protect the person from the commission of a felony. The first definition of justifiable homicide 21 O.S. § 733(1), involves resistance of an attempt to murder or commit a felony on the person or upon his dwelling house. The second definition, 21 O.S. § 733(2), covers situations involving the "lawful defense" of the person, his or her husband, wife, parent, child, master, mistress, or servant, "when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished." Although the third definition, 21 O.S. § 733(3) does not expressly govern situations involving defense of a person, such a purpose may be inferred in light of the rule that words, phrases, and sentences of a statute are to be understood as having been used, not in any abstract sense, but with due regard to context and that sense which best harmonizes with all other parts of the statute; Haines v. State, 275 P.2d 343 (Ok. Cr. 1954); Groendyke Transport, Inc., v. Gardner, 353 P.2d 695 (Ok. 1910) and where one part is susceptible of two constructions and the language of another part is clear and definite and consistent with one of such constructions, and opposed to others, that construction must be adopted which will render all clauses harmonious. Haines v. State, supra.

Section 733(3) has never been interpreted by the Oklahoma courts, but there are numerous interpretations of the first two definitions of justifiable homicide contained in § 733(1) and (2) which place a high

emphasis on the value of human life. These cases establish the rule that mere fear of harm is not sufficient to justify homicide. Smith v. State, 174 P. 1107 (Ok. Cr. 1918); Fields v. State, 188 P. 2d 231 (Ok. Cr. 1948); Abby v. State, 114 P.2d 499 (Ok. Cr. 1941); Hood v. State, 106 P.2d 271 (Ok. Cr. 1940); Jamison v. State, 304 P.2d Ok. Cr. 1956); Murphy v. State, 112 P.2d 438 (Ok. Cr. 1941). The law places too high an estimate upon human life to justify it being snuffed out by a mere whim of either cowardice or anger. Rogers v. State, 158 P. 637 (Ok. Cr. 1916). Homicide perpetrated in the heat of passion, by means of a dangerous weapon, is manslaughter in the first degree. Rogers v. State, id. A homicide is not justifiable unless the slayer was then in apparent imminent danger of losing his life or sustaining serious bodily injuries. People v. Gonzales, 164 P. 1131 (Ok. Cr. 1917); Roddie v. State, 198 P. 342 (Ok. Cr. 1921); Ging v. State, 239 P. 685 (Ok. Cr. 1925). The right of self-defense is solely and emphatically a law of necessity; it does not imply the right of attack. Jenkins v. State, 161 P.2d 90 (Ok. Cr. 1945).

The Oklahoma courts have also tended to apply a stricter standard in situations where the slayer has used deadly force to defend himself from an attack. According to the Oklahoma Supreme Court, where the slayer has not used a deadly weapon, he must have reasonably believed that he was in danger of receiving bodily harm; but where a deadly weapon was used, the slayer must have reasonably believed that he was in danger of receiving some great bodily harm. Boston v. Muncy, 233 P.2d 300 (Ok. Sup. Ct. 1951). The Oklahoma Court of Criminal Appeals has held that the use of a deadly weapon is justifiable only to prevent unlawful and violent attack on one's person of such nature as to produce reasonable apprehension of death or great bodily injury. Lee v. State, 244 P. 455 (Ok. Cr. 1926). Thus it has been held that where the deceased knocked the defendant down to the ground twice, the

defendant was not justified in shooting the deceased on grounds of self-defense, Jamison v. State, 250 P. 548 (Ok. Cr. 1926). A deadly weapon may be used to repel a simple assault by beating without a weapon only where the assault is of such violence that the defendant feared for his life. Easterling v. State, 267 P. 2d 185 (Ok. Cr. 1954).

Finally, the Oklahoma Court of Criminal Appeals has drawn a distinction between the threatened commission of violent felonies and the threatened commission of non-violent felonies in interpreting 21 O.S. § 733(1) and (2). In Mammano v. State, 333 P. 2d 602 (Ok. Cr. 1958) the court held that a killing to prevent a felony is not justifiable pursuant to these sub-sections if the felony is a secret one, or unaccompanied by force, or if it does not involve the security of the person or home, or where the commission of the felony is problematical or remote. Mammano v. State, 333 P. 2d 602 (Ok. Cr. 1958).

It is thus clear from a review of case law concerning the first two definitions of justifiable homicide contained in § 733 that the obvious intent of the entire statute, when read as a whole, is to protect the person from the commission of a felony. To read the third definition as allowing the homicide of a person who has committed any type of felony would not be in harmony with this intent. This is particularly clear in light of the Mammano case, which draws a distinction between the necessity of killing persons who threaten to commit non-violent as opposed to violent felonies. If killing to prevent a non-forceable type of felony which does not involve danger to the person or home is not justifiable, pursuant to § 733(1) and (2), it is unreasonable to assume that § 733(3) justifies the homicide of a person who has committed this type of felony, and is simply attempting to escape. Such an assumption is not only inconsistent with the statute as a whole, but places a greater premium on the punishment aspect,

as opposed to the prevention aspect, of law enforcement.

III. Conclusion

Although § 733(3) has never had the benefit of a judicial interpretation in Oklahoma, it is clear that it does not automatically authorize the killing of a felon who is fleeing from the commission of any type of felony. A private citizen is restricted in the degree of force which he may use; the force used must not be excessive in light of the surrounding circumstances. Common law views and judicial interpretations of § 733(1) and (2) indicate that the use of deadly force against a fleeing felon who has not committed a forcible crime which threatens death or great bodily harm to the slayer or others is excessive, unlawful, and outside the ambit of § 733(3).

Thus the Oklahoma County District Attorney's decision not to prosecute Charles Wilson for the death of Thomas Foley, based on the theory that the homicide was justifiable pursuant to § 733(3), is unsupported by the law. The felony allegedly committed by Foley, burglary of a car, was not a forcible crime threatening death or great bodily harm to Wilson or to others. The facts show that Wilson had already arrested Foley. Wilson and Foley had already reached the street without mishap when Foley started to run. Wilson shot Foley in the back of the head when he was so far away as to impose no immediate physical threat, yet close enough to insure the accuracy of the shot.

At the very least this review of Oklahoma's justifiable homicide law raises presumptions of standards which requires judicial review. Since this case involves serious moral and social consideration, i.e. whether private citizens are given authority to intentionally kill any fleeing felon, the legal issues involved in the statute must be resolved by the

courts of this state. Unfortunately a judicial review will never occur as long as the statute is used solely in an administrative manner by state prosecutors.

END