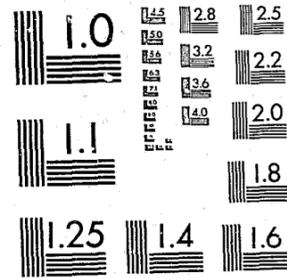


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

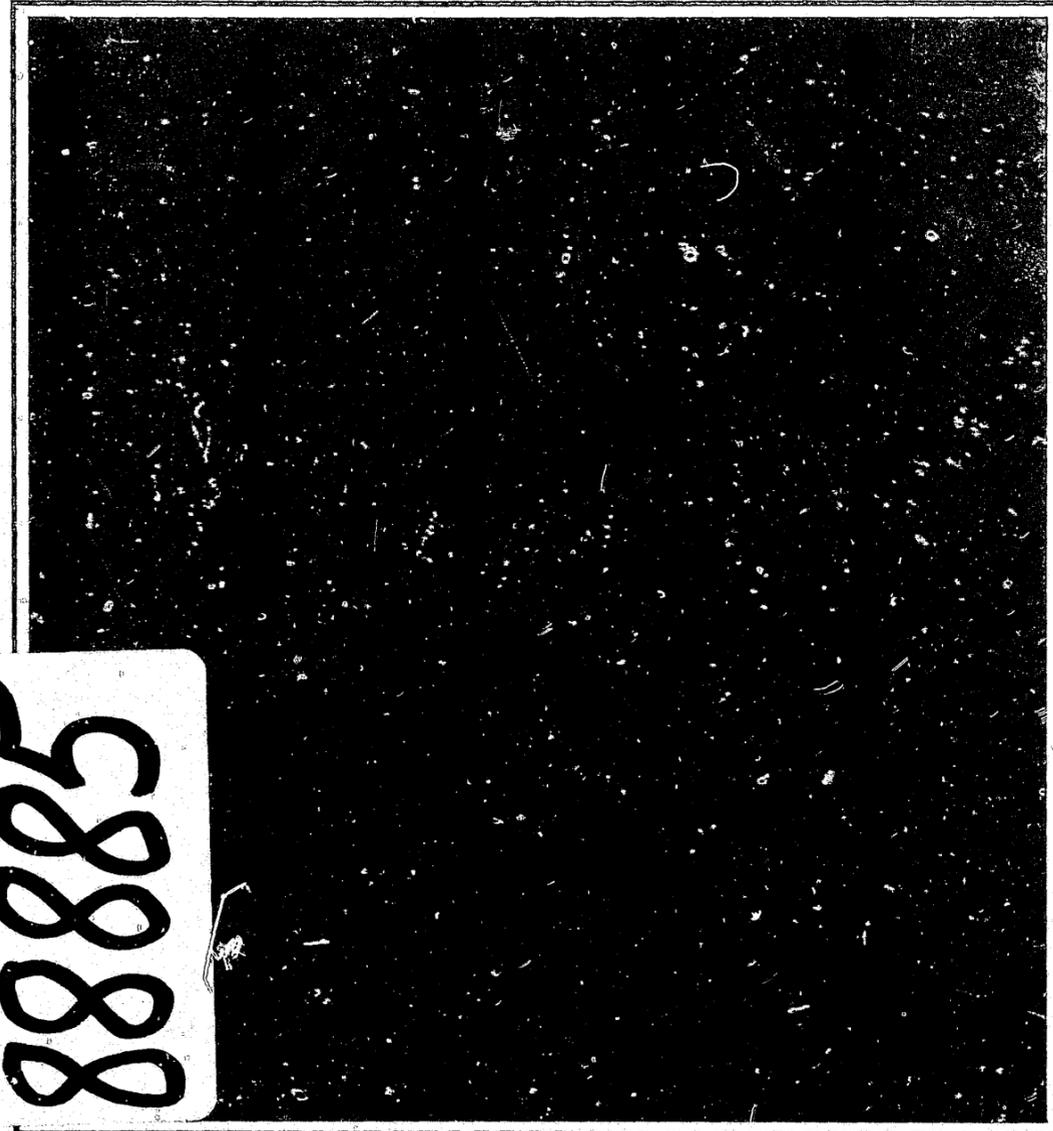
Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

9/19/83

Police-Community Relations in the City of Wichita and Sedgwick County

July 1980



88885

A report of the Kansas Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the contents of this report should not be attributed to the Commission but only to the Kansas Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Police-Community Relations in the City of Wichita and Sedgwick County

—A report prepared by the Kansas Advisory Committee to the U.S. Commission on Civil Rights.

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by
Public Domain/U.S.
Commission on Civil Rights

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Kansas Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission and will be considered by the Commission in formulating its recommendations to the President and Congress.

RIGHT OF RESPONSE:

Prior to publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

Kansas Advisory Committee
to the
U.S. Commission on Civil Rights
July 1980

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Staff Director*

Sirs and Madam:

The Kansas Advisory Committee submits this report of its investigation of the state of police-community relations in Wichita, Kansas, as part of its responsibility to advise the Commission about civil rights problems within the State.

During the period August 1978-September 1979, the Advisory Committee and staff of the Central States Regional Office interviewed a wide range of persons with views on police-community relations and employment for minorities and women in law enforcement. Among those interviewed were Wichita city officials, Sedgwick County officials, the Wichita police chief and some of his police officers, the Sedgwick County sheriff and some of his deputies, the district attorney and some of his staff, the U.S. attorney and some of his staff, experts from Wichita State University, representatives of minority and female-oriented groups, and concerned citizens. A factfinding meeting was held in Wichita on February 15-16, 1979. Those persons and organizations who were interviewed or gave statements at the factfinding meeting were provided an opportunity to comment on the draft of the report. Comments and corrections indicated by them have been incorporated into the final draft.

The Advisory Committee found that the State of Kansas laws governing the use of deadly force by law enforcement officers are not similar to the model rules that have been adopted by seven other States. The Advisory Committee urges the Kansas Legislature to investigate the present law on the use of deadly force and consider adoption of the American Law Institute Model Penal Code rules on the use of deadly force. It congratulates the Wichita Police Department for adopting such rules and urges that the Sedgwick County Sheriff's Department promulgate similar rules.

The Advisory Committee notes that neither the police nor the sheriff's department have established rules for escalation in the use of force by an officer and defined the circumstances in which each level of force is to be used. The Advisory Committee urges both the Sedgwick County Sheriff's Department and the Wichita Police Department to adopt the model rules on nondeadly force published by the International Association of Chiefs of Police.

The Advisory Committee recommends that the district attorney hold frequent forums in minority neighborhoods and issue frequent press releases to educate the public as to its rights in circumstances where persons believe they have been

victims of police abuse. The district attorney should also maintain regular contact with minority, civil rights, and women's groups.

The Advisory Committee found that there is a lack of information in the community about what law enforcement officials do, how they do it, and why. Moreover, there is a general lack of communication between law enforcement officials and citizens. The Advisory Committee recommends that the city fund a public relations program to explain what police officers do and why. Further, it recommends that the city, together with Wichita State University, reopen the police-community relations center in the northeastern part of Wichita. The county should support the center. The Committee recommends that the city's police captains follow the example set by the captain of Baker 1, requiring their officers to increase informal contacts between the police and the general public. The city should require the police chief to meet regularly with all segments of the community, including those who raise issues that may be uncomfortable for police officials. The county should require that the sheriff and his principal officers engage in regular discussions with the proposed center's board and its constituency. Both the police and the sheriff's department should arrange regular meetings with women's groups on matters of special concern to women.

The Advisory Committee found that members of minority groups have little confidence in the present system for reviewing citizen complaints of police abuse. The Committee recommends that chief of police refrain from prejudging the results of internal affairs reviews until those are completed. The police department's internal affairs unit should be expanded so that it has sufficient personnel to devote adequate time to all complaints and fulfill its other duties. The chief should specify the standards by which complaints will be determined to be without merit. The sheriff's department should develop an internal review procedure similar to that recommended for the police department. Both city and county should establish a mechanism or mechanisms that will give credibility to the internal procedure. They could develop a citizen review board, strengthen the role of the existing city ombudsman, or restructure the Wichita Board of Crime and Corrections.

The Advisory Committee found that the city and the police department have at

times made effective and well-directed efforts to recruit minorities and women. But at other times, the level of effort and commitment has been open to question. The Advisory Committee does not find the overall effort commensurate with that suggested as desirable by the National Advisory Commission on Criminal Justice Standards and Goals. The Committee urges the city to assign all recruitment functions to the police department, undertake an extensive public relations campaign (perhaps in cooperation with the sheriff's department or other law enforcement agencies), encourage minorities and women to become law enforcement officers, provide assurances of a reasonable career structure, centralize the testing procedures, and validate each test for cultural or sex bias. The city manager should require the police chief and personnel manager to take such measures as are necessary to comply with the city's affirmative action goals.

The Advisory Committee found that the county has no effective affirmative action plan for the sheriff's department. The county should adopt an effective affirmative action program, including goals, and ensure that its selection process is free of bias.

We urge you to concur in our recommendations and to assist the Advisory Committee in followup activities.

Respectfully,

BENJAMIN H. DAY, *Chairperson*
Kansas Advisory Committee

**MEMBERSHIP
KANSAS ADVISORY COMMITTEE TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS**

Benjamin H. Day, *Chairperson*
Leavenworth

James L. Crawford
Wichita

Russell W. Getter
Lawrence

Jaclyn Gossard
Wichita

Will Florence Robbins Hudgins
Kansas City

Rayna F. Levine
Overland Park

John Mendoza
Topeka

Constance L. Menninger
Topeka

Ruth G. Schechter
Shawnee Mission

Forrest Swall
Lawrence

Alfredo M. Valenzuela
Garden City

Clarence E. Wesley
Wichita

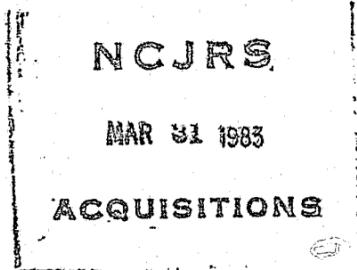
Preceding page blank

ACKNOWLEDGMENTS

This report was produced with the assistance of the Commission's Central States Regional Office. The project director was Anthony D. Lopez. Research was conducted by Anthony D. Lopez and Malcolm J. Barnett. Writing was done by Malcolm J. Barnett. Legal review was conducted by Melvin L. Jenkins, Esq. The study began while Thomas L. Neumann was Regional Director. It was completed after Melvin L. Jenkins became Regional Director. Regional operations, nationwide, are under the overall supervision of Thomas L. Neumann.

Editorial assistance was provided by the Publications Management Division. The staff of the Publications Support Center, Office of Management, was responsible for final preparation of the document for publication.

CONTENTS



1. Introduction 1

2. The Setting 4

3. Use of Force 13

4. Use of Police Discretion 21

5. Police-Community Communication 25

6. Police-Community Conflict Resolution 31

7. Affirmative Action Employment Efforts of the Wichita Police Department and Sedgwick County Sheriff's Department 47

8. Role of Reviewing Agencies Capable of Offering Remedies 60

9. Summary 64

10. Findings and Recommendations 67

Tables

2.1 Ethnic Groups in Wichita and Sedgwick County (Percentages of Populations).. 5

2.2 Proportion of City Population in County (by Ethnic Group) 5

2.3 Employment in Wichita SMSA, March 1978..... 6

2.4 Wichita Police Department Comparative Survey..... 11

3.1 Firearms Incidents, Wichita Police Department 16

6.1 Complaints Filed Against Wichita Police Officers and Action Taken by the Department 36

6.2 Complaints Filed with the Wichita Grievance Office 40

7.1 Number and Percentage of Minority Officers in the Wichita Police Department 48

7.2 Police Officers Employed by the Wichita Police Department, 1970-79 50

8.1 Race and Sex Composition of Wichita Citizens Participation Organization Area Councils 62

Charts

2.1 Patrol Areas, Wichita Police Department..... 8

2.2 Organization, Wichita Police Department, 1979 9

2.3 Organization, Sedgwick County Sheriff's Department..... 10

Appendices

1. Remedies for Individuals..... 71

2. Marvin D. Dunnette and David A. Bownas, "Technical Review of 'A Research Study to Improve the Selection of Applicants for Police Officers, Wichita Police Department', Associated Personnel Technicians, Inc., Wichita, Kansas, 1975" 74

 2a. Letter from Lewis D. Eigen, University Research Corporation, to Robert K. Burkhardt, Office of Civil Rights Compliance, Law Enforcement Assistance Administration, October 31, 1979..... 81

3. Model Penal Code Rule on Use of Deadly Force 85

4. Model Rules for Law Enforcement Officers: A Manual on Police Discretion (Section on Nondeadly Force)..... 86

5. Letter of Comment from the Sheriff's Legal Counsel..... 89

6. Letters from the City Manager, City of Wichita, pertaining to its refusal to provide comments 90

 a. E.H. Denton to Melvin L. Jenkins, September 27, 1979

 b. Melvin L. Jenkins to E.H. Denton, September 28, 1979

 c. E.H. Denton to Melvin L. Jenkins, October 1, 1979

1. Introduction

Assistant Attorney General Drew S. Days III, in an address delivered on Nov. 10, 1979, stated:

Since 1931, when the National Commission on Law Observance and Enforcement (The Wickersham Commission) reported to President Hoover on the widespread extent of police brutality, Americans have been asking perennially "Who will watch the watchmen?"

The dilemma, simply posed, is how can our society exert effective control over an institution like the police which possesses so much potential for depriving each of us of our constitutional liberties without thwarting the legitimate peace keeping function of that institution. The important contribution of the Commission on Law Enforcement and Administration of Justice in 1967 and the National Advisory Commission on Civil Disorders (the Kerner Commission) in 1968—was that police brutality and abuse were not viewed in a vacuum. Instead, lawless behavior on the part of police was identified as an overwhelmingly important factor in exacerbating racial tensions in urban centers and as the sparking incidents which ultimately resulted in the catastrophic riots of 1968. . . . Police abuse—the use of derogatory and insulting language, unreasonable rousts, frisks and searches on streets, the stopping and searching of cars for no good reason, and the indiscriminate searching of homes in ghetto areas—perhaps more than isolated cases of outright brutality—reinforces in the minds of minorities the symbolism of the police as an occupying army, as representatives of the segregated, racist society which they feel exists beyond the boundaries of their neighborhoods. Equally as important, both Commissions recognized that, apart from whatever objective

statistics could be marshalled to support the contention, most ghetto residents *believed* that police brutality and abuse were widespread. They were convinced that lawless, unbridled police activity was being perpetrated upon their number in gross disproportion to that inflicted upon other groups in the city. This latter situation stemmed, the commissions concluded, primarily from the failure of police departments to open adequate channels of communication to minority communities and to provide easy, efficient and effective mechanisms for receiving citizen complaints. . . .

We must remember that:

"Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States*, 277 U.S. 438, 483 (1928) (Brandeis, J.).

Let us work together to ensure that the *proper* lessons are taught. Only in that way, can we get those who have lost faith in our system of laws to believe once again.

The Kansas Advisory Committee to the U.S. Commission on Civil Rights undertook this study of police-community relations in Wichita in response to suggestions from the Commissioners that State Advisory Committees provide input into the national review of this problem. Wichita was chosen because it is the largest city in the State and yet had not been the subject of a State Advisory Committee review over the past 8 years.

Beginning in August 1978, staff wrote numerous letters to city and county officials, conducted over 125 interviews with city officials, police officials, police officers, county officials, sheriff's officers, Federal officials, and private citizens. In addition, the Advisory Committee held an open meeting on February 15-16, 1979, at which all interested persons were asked to appear to give the Committee the benefit of their knowledge and perspectives on police-community relations. Over 40 persons appeared before the Advisory Committee.

A draft report was circulated for comment in August 1979. All persons who participated in the open meeting or were mentioned in the draft were supplied with copies and encouraged to tell the Committee what errors or omissions they found. All responses either have been used to correct errors, incorporated in the text as alternative perspectives, or used as footnotes unless it was the advice of counsel that the comments would defame or degrade.

After reviewing the setting of Wichita and Sedgwick County and crime in the area, the Advisory Committee examines the rules governing the use of force, both deadly and nondeadly; the use of discretion by the police and the sheriff's department; problems of communication between the police and sheriff's departments on the one hand and citizens on the other; the avenues for redress of complaints against law enforcement officials; affirmative action efforts by city and county law enforcement agencies; the enforcement efforts of the U.S. Equal Employment Opportunity Commission, U.S. Office of Revenue Sharing, U.S. Law Enforcement Assistance Administration, Kansas Governor's Committee on Criminal Justice, and Wichita Civil Rights and Equal Employment Opportunity Commission; and the oversight efforts of the Wichita Citizens Participation Organization. In appendix 1 to this report, the Advisory Committee lists the agencies that can provide remedies for complaints of discrimination either in the provision of services or employment.

The Advisory Committee has received a mixture of cooperation and condemnation from the city and the police department. The city initially cooperated fully with the Advisory Committee's staff. However, when the preliminary draft of the report appeared, the police chief denounced the report on radio, TV, and to the newspapers. He stated that:

¹ *Wichita Eagle*, Aug. 14, 1979.

² E.H. Denton, city manager, Wichita, letter to Central States Regional Office (CSRO) staff, Sept. 5, 1979.

It doesn't take into consideration the majority of the citizens as a whole; it doesn't even represent the majority of the minority community as a whole.

The people who wrote this were either incompetent—inexperienced in investigation—or they came into this with preconceived notions. After a big splash in the news media, it's just going to go on a bureaucratic shelf and these people (the committee) will have justified their existence.¹

The city manager and the chief told staff that they had become concerned that the purpose of this report was to pave the way for Federal litigation of the sort begun in Philadelphia. They asserted that:

The greatest disappointment with the preliminary draft was the tendency to disregard direct testimony of responsible, professional witnesses, made publicly and open to cross-questioning. Much of the draft includes allegations, innuendoes, and wholesale copying of news media accounts, largely based on hearsay or oversimplified accounts of complex socio-economic community problems.²

The Advisory Committee's staff was told that the city took particular exception to the use of newspaper articles about the police department. However, the Advisory Committee is of the opinion that since the *Wichita Eagle* and *Wichita Beacon* are the principal sources of hard news in the community, what they report takes on particular importance. Since the newspapers also are a principal source for recorded history in the city, it would be hard to report past events without reference to their columns. Similarly, their positions make it impossible to avoid reference to their views of current events, especially on public questions such as those discussed in this report. Since the Advisory Committee has no reason to believe that reporters for these papers misrepresented the facts, and the city has presented no evidence to show that the facts have been misrepresented, the Advisory Committee cannot avoid citing the newspapers. Moreover, what is contained in the newspaper accounts merely provides circumstantial detail supporting allegations made to the Advisory Committee.

After listing several omissions and corrections, the city manager stated on September 5, 1979, "Given an opportunity, we will be happy to provide further

and more detailed commentary on the report." On September 11, 1979, the city manager agreed that rather than supply a further written list of concerns, his staff would meet with Advisory Committee staff to review those. He urged this procedure so that documentation could be examined on the spot. At a meeting held on September 27, 1979, the city manager and chief of police refused to honor their commitment. Instead, they stated that only if the Committee submitted to a variety of additional demands would further cooperation be supplied. The city manager did say that a list of errors in the draft would be assembled by the police department and that the chief might unveil that list when the report was released. The chief asserted, "I'm not prepared to go through it [with you] because I don't

think you are capable of reporting the truth." The text of the city's letter offering assistance, its position statement of September 27, 1979, and the reply from staff are in appendix 6 to this report.

Since there has been no positive response to the staff letter, the Advisory Committee has completed the report without further assistance from the city. Despite that, every effort has been made to accommodate the police department and the city by incorporating quotations from the persons they favor: the chief, the city manager, and Professor Dae Chang. In addition, all specific issues raised by the city have been discussed in the revised draft and the city's position either adopted or noted.

2. The Setting

The Locale

Wichita, Kansas (population in 1977, 259,136),¹ is the largest city in the State. Located in Sedgwick County, 195 miles southwest of Kansas City, the city is in a major metropolitan area serving Kansas, Oklahoma, and southeastern Colorado.² Blacks were 5.5 percent of the population in 1880, 7.8 percent in 1960,³ and 9.7 percent in 1970.⁴ By 1978 blacks were approximately 10.04 percent of the city's population. Also in 1978, Hispanics were 1.79 percent, American Indians 0.29 percent, other minorities 0.92 percent, and whites 86.96 percent.⁵ In 1977 Sedgwick County's population numbered 337,049 persons, of whom 89.55 percent were white, 8.15 percent black, 1.44 percent Hispanic, 0.28 percent Indian and 0.58 percent other minorities.⁶ (See table 2.1.)

Minorities are concentrated in the city. For example, in 1977 Wichita residents comprised 76.88 percent of the total county population and 74.78 percent of the white population in the county; yet, the city contained 96.27 percent of the county's black population, 91.51 percent of the Hispanic population, 80.63 percent of the Indian population, and 91.44 percent of the population of other minorities.⁷ (See table 2.2.)

¹ Bobby F. Stout, Deputy Chief of Police, Statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979, attachment I (hereafter cited as Stout Statement).

² Richard Upton, Wichita Chamber of Commerce, telephone interview, Oct. 30, 1979.

³ Louis Goldman, Carl A. Bell, Jr., and others, *School and Society in One City* (Wichita: USD 259, July 1969), p. 28.

⁴ U.S., Department of Commerce, Bureau of the Census, *General Population Characteristics: Kansas* (PC(1)-B18), table 23.

⁵ Stout Statement, attachment H. In a telephone interview on Dec. 14,

The largest employers in Wichita are Cessna Aircraft Company (11,500 employees), Beech Aircraft Corporation (7,000), Boeing Wichita Company (6,500), McConnell Air Force Base (4,600), Unified School District No. 259 (3,500), Coleman Company, Inc. (3,000), City of Wichita (3,000), St. Francis Hospital (2,500), and Wesley Medical Center (2,500). Sixteen employers have more than 1,000 workers. Six more have 500-999 employees, and 23 firms have 200-499 employees.⁸

Of 181,300 persons in the employed labor force of Butler and Sedgwick Counties (the Standard Metropolitan Statistical Area) in March 1978, 55,650 were in manufacturing, 40,100 in wholesale and retail trade, 33,700 in services, and 22,550 worked for government. The employed labor force had increased by 2.3 percent in a year; the only declines in employment were in the sectors of food and kindred products, chemicals and allied industries, contract construction, and retail trade and services. Of these declines, only food, chemicals, and construction were significant. The average hourly wage was \$6.03.⁹ In January 1979 the unemployment rate was 3.3 percent.¹⁰ For 1978, the most recent data

1978, Joyce McFadden of the Wichita Planning Department told Advisory Committee staff that Hispanic identification was never asked but merely decided by the census taker.

⁸ Stout Statement, attachment I.

⁹ Ibid.

¹⁰ Wichita Chamber of Commerce, untitled, n.d., n.p.

¹¹ Kansas Department of Human Resources, *Labor Market Review*, April 1978, January 1979.

¹² Ibid.

TABLE 2.1
Ethnic Groups in Wichita and Sedgwick County
(percentages of populations)

	City of Wichita (1978)	Sedgwick County (1977)
Black	10.04%	8.15%
Hispanic	1.79	1.44
American Indian	0.29	0.28
Other minorities	0.92	0.58
White	86.96	89.55
Total number	257,550	337,049

Source: Lt. Col. Bobby Stout, Deputy Chief, Wichita Police Department, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979, attachments H and I.

TABLE 2.2
Proportion of City Population in County
(by ethnic group)

Total	76.88
White	74.78
Black	96.27
Hispanic	91.51
American Indian	80.63
Other minorities	91.44

Source: Lt. Col. Bobby Stout, Deputy Chief, Wichita Police Department, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979, attachment I.

TABLE 2.3
Employment in Wichita SMSA, March 1978

Total employed labor force	181,300 persons
Manufacturing	55,650
Wholesale and retail trade	40,100
Services	33,700
Government	22,500
Average hourly wage (all manufacturing)	\$6.03
Unemployment rate	3.7%
Minority unemployment rate	4.7%

Note: The SMSA includes Sedgwick and Butler Counties.

Source: Kansas Department of Human Resources.

available, the minority unemployment rate was 4.7 percent.¹¹ (See table 2.3.)

The executive vice president of the Wichita Area Chamber of Commerce told staff that while there is a corridor of poverty in the north-central portion of the city, by and large the city has either developed substantial numbers of housing units or has rehabilitated declining areas. He particularly noted the success of the redevelopment of "Midtown." He pointed out that the factories, which still dominate the Wichita economy, were originally located at the fringes of the city because of the nature of their activities but that these are by no means at the outer fringe.¹²

The chamber of commerce states:

Wichitans have worked together to build their city. This heritage of cooperation serves as the base of progress and prosperity and sets a tempo for pleasant living, safe streets and possibilities as exciting as the expanded skyline.¹³

¹¹ Kansas Employment Service, *Manpower Information for Affirmative Action Programs: Wichita SMSA* (March 1979).

¹² Richard D. Upton, Wichita Chamber of Commerce, telephone interview, Sept. 5, 1979.

¹³ Wichita Chamber of Commerce, *Meet Wichita* (Feb. 1, 1977).

The county is governed by a three-member county commission, all of whom are white males. The city is governed by a five-member city commission (mayor and vice mayor elected by the commission from among its members) and run by a city manager. As of October 1979 the five-member commission included three white males, one white female, and an Hispanic male.¹⁴

Minorities in Wichita

The state of race relations in Wichita after World War I can be guessed at by the size of the Ku Klux Klan. While Wichita in 1920 had 1/17th of the State's population, it had 1/7th of the Klan membership (6,000 members, compared to only 5,000 in the much larger Kansas City metropolitan area).¹⁵ Speaking of current race relations, the city manager stated, "We have a white majority that has a history of being more intolerant than city government. We are trying to build bridges to change that."¹⁶

¹⁴ Margo Parks, City of Wichita, City Manager's Office, telephone interview, July 9, 1979.

¹⁵ Goldman, *School and Society in One City*, p. 18.

¹⁶ E.H. Denton, interview in Wichita, Sept. 27, 1979.

In the fall of 1912 Wichita schools were segregated by law. Although legal segregation ended in 1952, de facto segregation remained.¹⁷ Only in 1969 did the district undertake comprehensive efforts to end racial isolation.¹⁸

Racial isolation was perpetuated by the real estate industry, which during the period after 1955 allowed black families to move only into neighborhoods contiguous to the original black community. The Wichita Real Estate Board never answered a petition from local groups asking for its help to end this practice.¹⁹

Like other large cities, Wichita experienced racial violence in 1967 and 1968. In the aftermath of the 1967 disturbances, there was talk of creating more job opportunities for blacks and establishing more recreational facilities in the predominantly black neighborhood. Although no permanent changes were noted by 1969, the city states that significant new facilities have been developed in the black neighborhood and that many programs have been established to help minorities find jobs.²⁰

Crime in Wichita and Sedgwick County

Reports from the Wichita Police Department and Sedgwick County Sheriff's Department on arrests, together with reviews by the regional planning commission, provide a profile of criminal activity in the city and county. (The city police have primary jurisdiction in the city; the county sheriff's department has primary jurisdiction in unincorporated areas.)

For 1977 the Wichita Police Department reported 5,006 juvenile arrests, of which 1,115 were of black persons (22.3 percent), 52 were American Indians (1 percent), 1 was Asian (less than 0.01 percent), and 156 were other races (3.1 percent). The department reported arresting 4,983 adults (age 18 years and older) of whom 1,623 were black (32.6 percent); 66 persons were American Indians (1.3 percent), and 164 were other races (3.3 percent).²¹ Of the minority

¹⁷ Goldman, *School and Society in One City*, pp. 19-20.

¹⁸ U.S., Commission on Civil Rights, *School Desegregation in Wichita, Kansas* (August 1977).

¹⁹ Goldman, *School and Society in One City*, p. 21.

²⁰ *Ibid.*, pp. 22-23; and E.H. Denton, letter to CSRO staff, Sept. 5, 1979.

²¹ Stout Statement, p. 2, attachments B and C.

²² Region III Planning Unit, *1979 Region III Comprehensive Criminal Justice Plan* (March 1978), p. 64; based on the city's 1977 reports of uniform crime statistics and data drawn from the police department's computer, including crime statistics for the period June-December 1977.

²³ *Ibid.*, p. 31.

²⁴ *Ibid.*, p. 32.

persons, 75.6 percent were arrested for property crimes, 0.8 percent for murder, 2.2 percent for rape, 10.6 percent for robbery, and 10.8 percent for assault.²²

The Region III planning commission of the Governor's Committee on Criminal Administration (GCCA) identifies a high crime area, concentrated largely in the northeastern portion of the city.²³ The committee notes, based on census and other regional planning documents, that this area includes 3.5 percent of the city's population, 10.6 percent of its housing units, 20 percent of the land area, and had a population density of 4,018 per square mile (versus the citywide average of 2,667) after subtracting land used for nonresidential purposes.²⁴ The area includes 90 percent of the city's black population and 70 percent of all nonwhite ethnic groups.²⁵ It also has "a higher proportion of young people than would be expected in terms of its location relative to the center of the city."²⁶ Over 20 percent of the households are headed by a female, and a similar proportion of families have incomes below the poverty line.²⁷ The median value of owner-occupied units was reported in the 1970 census as under \$9,000, versus a city average of \$12,000-\$14,000.²⁸ The median rent was under \$70 per month, versus a citywide median of \$82 per month.²⁹ Housing units were about 2-5 percentage points more likely to be substandard than in Wichita as a whole.³⁰ Median education for the area was between 10 and 11.9 years of schooling, versus 12.4 for the city as a whole.³¹ In short, the high crime area contains a multitude of disadvantaged persons, many of whom are black. Much of this area is in what is now called "Baker-1," a patrol area established in 1978 after publication of the statistics cited here. (See chart 2.1.)

The population of the Baker-1 patrol area is 42,000. Twenty-two thousand of the city's 26,000 black population reside there.³² Baker-1 had 25 percent of the murders (the next highest area had 19 percent), 24 percent of the rapes (tied with another

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.* Because census data are based on people's responses, they are subject to error and should be read with caution.

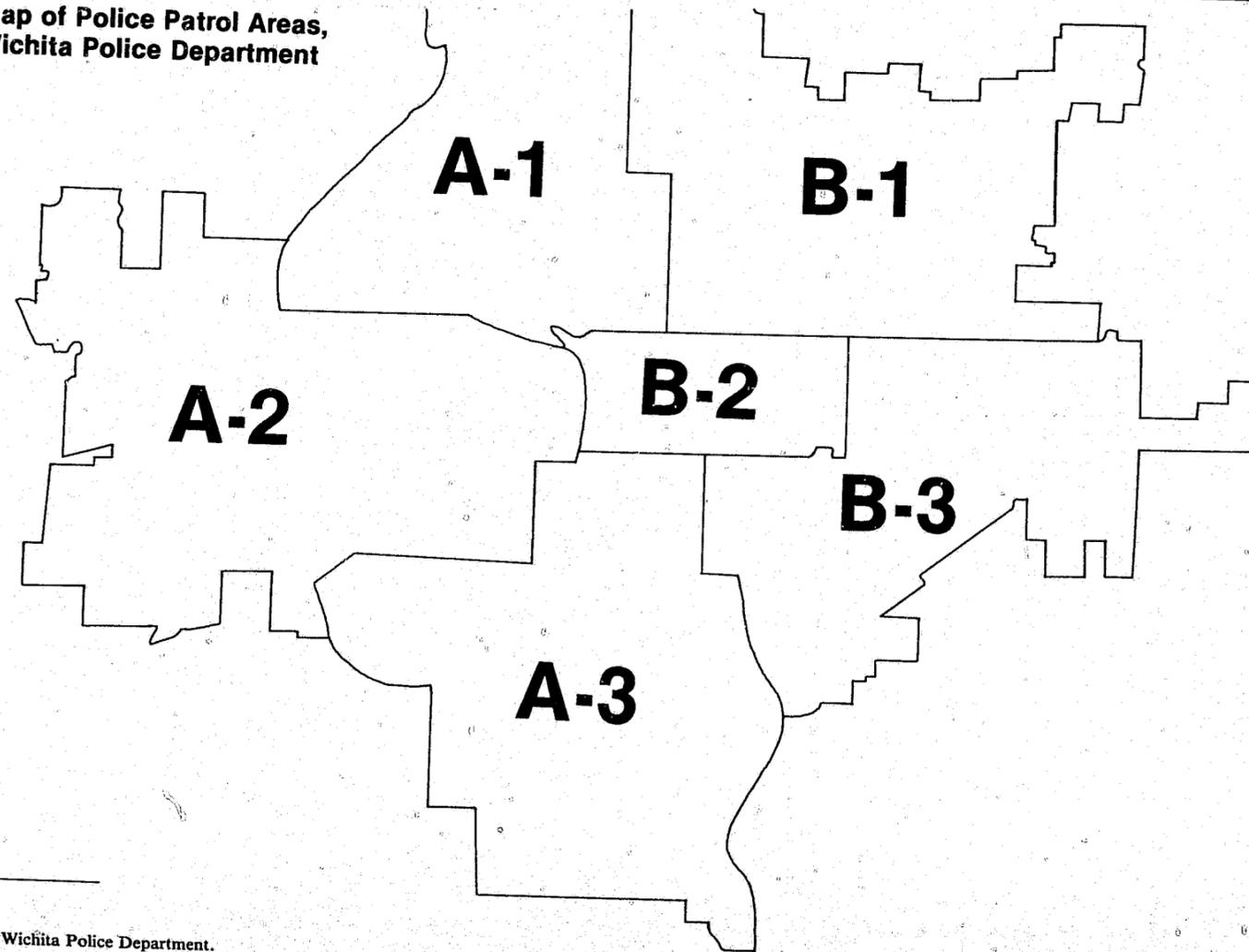
²⁹ *Ibid.*, p. 32.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 33.

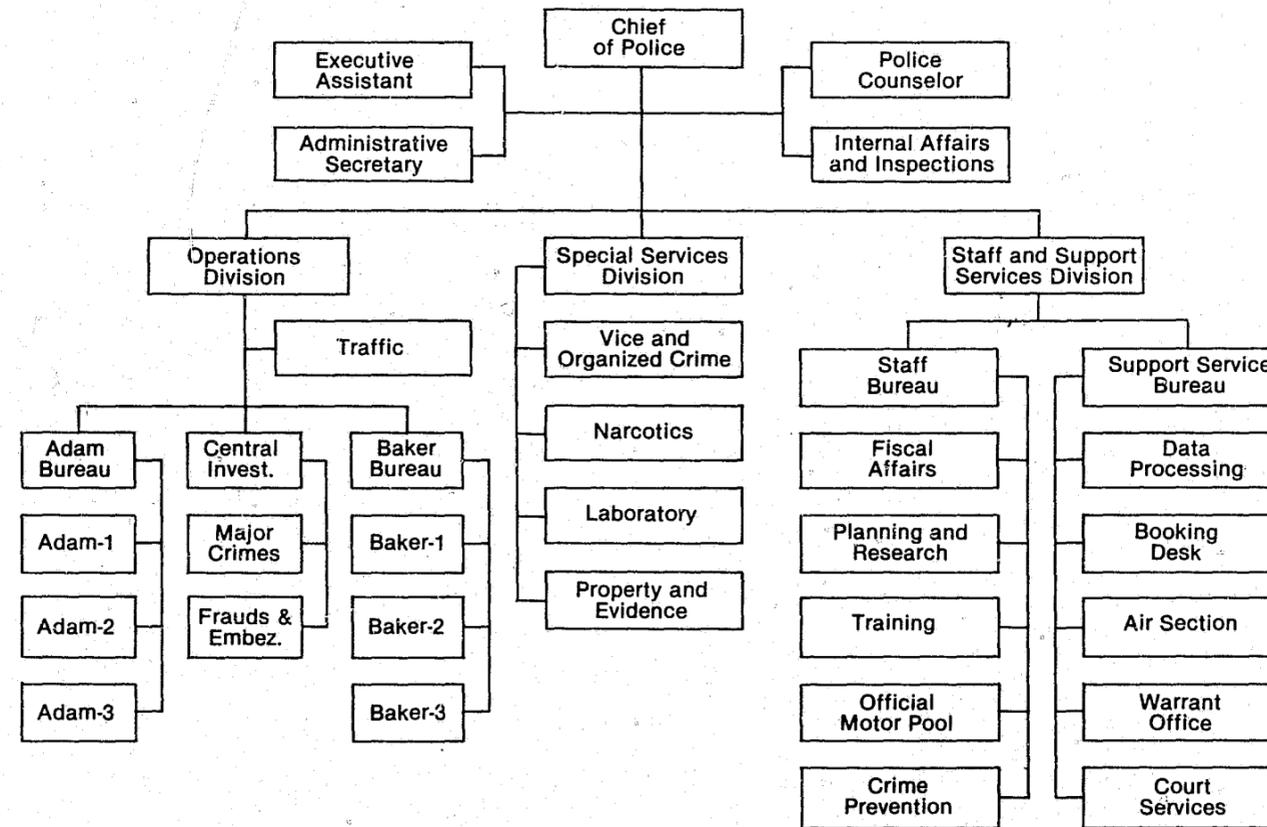
³² Transcript of the Open Meeting on Police Concerns of the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15-16, 1979, vol. I, p. 141, lines 12-21.

CHART 2.1
Map of Police Patrol Areas,
Wichita Police Department



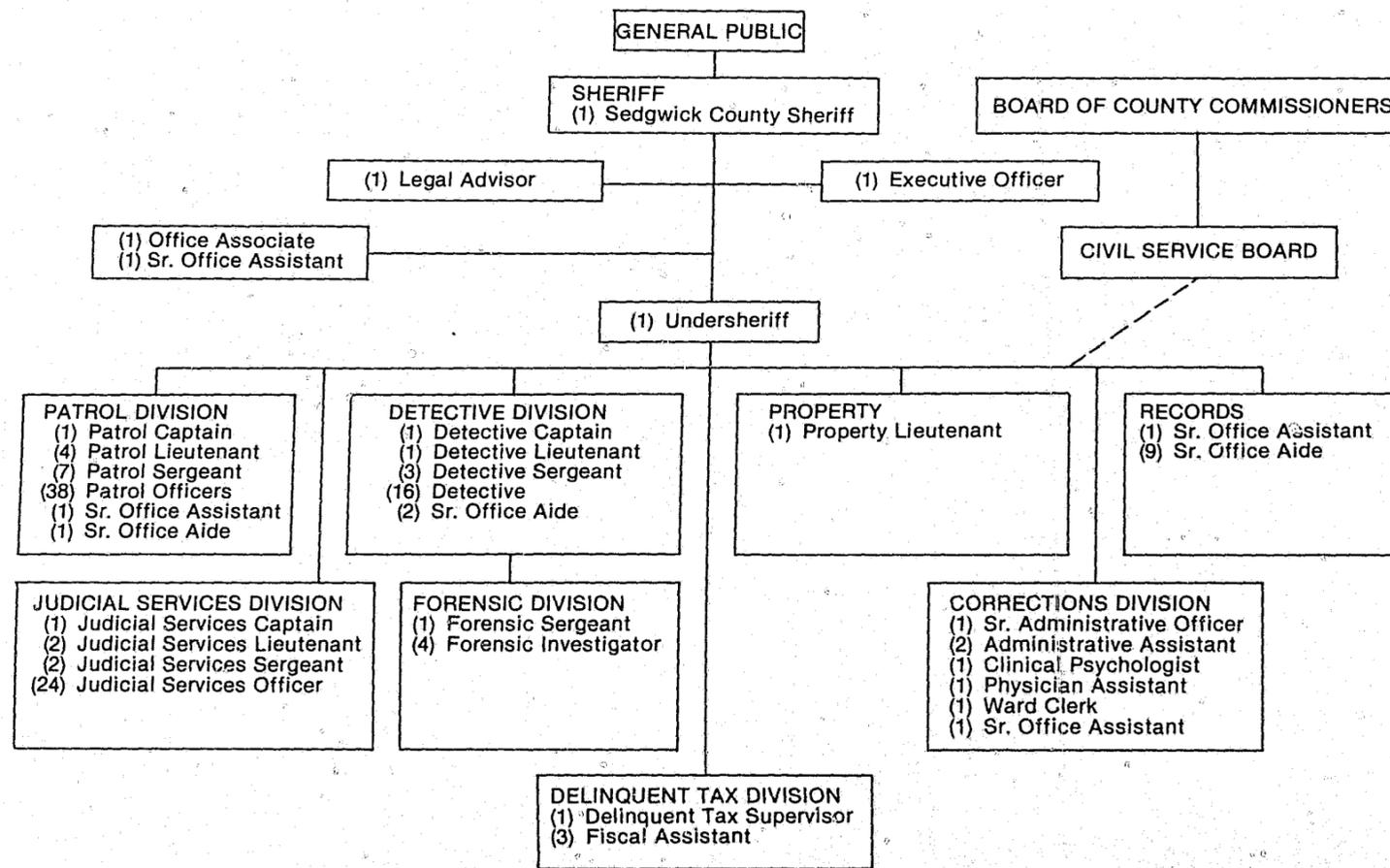
Source: Wichita Police Department.

CHART 2.2
Organization of the Wichita Police Department, 1979



Source: Lt. Col. Bobby Stout, Deputy Chief, Wichita Police Department, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979, attachment A.

CHART 2.3
Organizational Chart, Sedgwick County Sheriff's Department



Source: Sedgwick County Sheriff's Department

**TABLE 2.4
Wichita Police Department Comparative Survey**

Cities	Population	Sq. miles	Officers	Officers per sq. mile	Officers per 1,000 pop.	Part I crime index	Officers per part I crime
Wichita, Kan.	261,862	100	390	3.9	1.5	20,504	52.57
Dayton, Ohio	243,601	45	487	10.8	2.0	24,273	49.84
Tucson, Ariz.	317,000	101	543	5.3	1.7	32,025	58.98
Des Moines, Ia.	194,000	65	349	5.3	1.8	15,156	43.43
Tulsa, Okla.	465,950	142	691	4.8	1.5	24,449	35.38
Arkron, Ohio	252,000	54	470	8.7	1.9	17,689	37.64
Omaha, Neb.	370,000	88	563	6.3	1.5	22,020	39.11
Birmingham, Ala.	301,297	99	672	6.7	2.3	24,975	37.17
Toledo, Ohio	383,105	86	726	8.4	1.9	30,965	42.65
Austin, Texas	331,557	121	540	4.5	1.6	23,536	43.59
				AV 6.5	AV 1.8	44.04	AV

City of Wichita notes: Depicts size of city in square miles and in population. Indicates a size of department by number of commissioned officers employed and breaks down number of officers utilized per square mile and per 1,000 population. A total of Part I Offenses are shown to illustrate workload. Part I crime index taken from the FBI Uniform Crime Report. Other data furnished by each city.

CSRO note: AV = unweighted average

Source: Capt. Jordan Jones, Commander, Planning and Research Section, Wichita Police Department, letter to CSRO staff, Aug. 1, 1979.

area), 21 percent of the robberies (the next highest area had 19 percent), 40 percent of the assaults (the next highest had 14 percent), 29 percent of the residential burglaries (the next highest had 19 percent), 12 percent of nonresidential burglaries (the highest had 20 percent; Baker-1 was lowest), 14 percent of the larcenies (tied for lowest proportion), and 14 percent of the auto thefts (the second lowest proportion).³³

The Wichita Police Department clearance rates (proportion of reported crimes solved) for crimes investigated are 82 percent for murder, 60 percent for rape, 43 percent for robbery, and 83 percent for assault. The overall clearance rate for property crimes is 25 percent.³⁴

Statistics submitted to the FBI by the Sedgwick County Sheriff's Department show that of the 580 juveniles arrested in 1976, 19 were black (3.3 percent) and 2 were Native American (0.3 percent). Of 308 adults arrested by the sheriff's department in 1976 for whom racial data was available, 66 were blacks (21.4 percent) and 2 were American Indians (0.7 percent).³⁵ Of all the black adults, 7.6 percent were arrested for aggravated assault, 4.6 percent for burglary, 12.1 percent for larceny, and 66.6 percent for other offenses.³⁶

Organization of Law Enforcement in Wichita and Sedgwick County

The Sedgwick County Sheriff's Department is organized along functional lines while the Wichita Police Department has recently converted to a "team policing" structure. Chart 2.2 shows the structure of the Wichita police department; chart 2.3 shows the structure of the sheriff's department.

³³ Region III Planning Unit, 1979 Region III Comprehensive Criminal Justice Plan, pp. 38-40.

³⁴ Ibid., p. 63.

³⁵ Paul A. Zolbe, Chief, Uniform Crime Reporting Program, FBI, letter to CSRO staff, June 22, 1978.

The crucial difference is the assignment of almost all Wichita police patrol and investigative functions to six "teams" that are permanently assigned to specific parts of the city of Wichita. These areas are comparable in their need for police services. Each team has a virtually identical complement of 1 captain, 6 lieutenants, 2 master police officers, 31 patrol officers, and a clerk. Separate from these six units are the major crimes, embezzlement and fraud, narcotics, and vice and organized crime units, which operate citywide. Lt. Col. Bobby Stout stated that, "Team policing methods, by permanently assigning officers to specific geographic areas encourages... that officers become a part of instead of apart from the community they serve."³⁷ It also leads to:

1. Combining all line operations of patrol, traffic, and investigation into a single group under common supervision;
2. Forming teams with a mixture of generalists and specialists;
3. Permanently assigning the teams to geographic areas; and
4. Charging the teams with responsibility for all police services within their respective areas.³⁸

That the city of Wichita police are below strength, compared to other cities, is evident from a table prepared by police department's office of planning and research. Table 2.4 shows that all 10 cities (including Wichita) averaged 6.5 officers per square mile, while Wichita had only 3.9 officers per square mile. All 10 cities averaged 1.8 officers per 1,000 population while Wichita had 1.5. Only Tucson, Arizona, with 58.98 part 1 crimes per officer had more than Wichita's 52.57. The average for the 10 cities was 44.04 part 1 crimes per officer.

³⁶ Ibid.

³⁷ Stout Statement, pp. 5-6.

³⁸ Ibid., p. 5.

3. Use of Force

Paul Takagi, commenting in *Crime and Social Justice* on the disproportionate number of black persons killed by police officers nationwide, stated that "police have one trigger finger for whites and another for blacks."¹ Regardless of intent, the use of force by the police is limited by both common law and statute. The U.S. Supreme Court discussed the limits in *Pierson v. Ray*.² The U.S. Court of Appeals for the Eighth Circuit has further discussed this matter in *Landrum v. Moats*.³ It is in the context of these statements of the law that the Advisory Committee reviews Kansas statutes and local police procedures.

In 1961 civil rights workers attempting to desegregate the interstate bus waiting room in Jackson, Mississippi, were arrested by local police on the grounds that their actions were causing or likely to cause a breach of the peace. The Supreme Court held in *Pierson v. Ray* that it was for a jury to decide whether the officers "reasonably believe in good faith that the arrest was constitutional." The Court held that this test was necessary both at common law and under 42 U.S.C. sec. 1983 (the Civil Rights Act of 1871).

¹ Paul Takagi, "A Garrison... a 'Democratic Society,'" *Crime and Social Justice*, Summer 1974, p. 30, note 1. The issue of police shootings is surveyed in John S. Goldkamp, "Minorities as Victims of Police Shootings: Interpretations of Racial Disproportionality and Police Use of Deadly Force," *The Justice System Journal*, vol. II, issue 2 (Winter 1976), pp. 169-83.

The city manager and chief of police believed the statements by Professor Dae Chang in his remarks to the Advisory Committee were important and should be incorporated into this study. Professor Chang stated: the police have been "trained" to provide more services to the community elites. These elites no longer overtly control the police as they once did. Rather, they provide the taxes necessary, and in some instances, "donations" and "charity," to operate a police department,

Deadly Force

What would be required to show that the use of deadly force was appropriate was reviewed by the Eighth Circuit Court of Appeals in *Landrum v. Moats*. The court held in the case, where two police officers were charged with killing a fleeing burglar, that:

If police officers (1) believe that a certain amount of force is necessary to make an arrest, (2) believe that use of that amount of force is lawful under the circumstances, and (3) have reasonable grounds for each of the foregoing beliefs, then they are entitled to the defense of good faith even if the use of force turns out, *ex post*, to have been illegal or excessive.⁴

Among the tests that the court cites for good faith is whether the officers' police manual allows the level of force used in the particular circumstances for like offenses.⁵ In *Jones v. Marshall*,⁶ the Second Circuit Court of Appeals, in ruling on a Connecticut statute, held that the use of deadly force was permissible if the statute under which it was used required that the police officer must actually believe and reasonably believe (1) that the person is a felony suspect and (2)

and they share with many police officers a common idea of the police mission.

In short, although the ideal is equal protection under the law, "some are more equal than others."

Dae H. Chang, "Educational Strategies for Law Enforcement and Community Citizens," statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979, p. 5.

² 18 L.E.D. 2d 288 (1967).

³ No. 77-1656, Eighth Circuit Court of Appeals.

⁴ *Landrum v. Moats*, No. 77-1656, Eighth Circuit Court of Appeals (1978).

⁵ *Id.* at 14-16.

⁶ 528 F.2d 132 (1975).

that deadly force is necessary under the circumstances to make the arrest.⁷

The Sixth Circuit Court of Appeals held that the legislature had exercised reasonable discretion when it gave law enforcement officers the statutory right to shoot fleeing felons where there was the possibility they were armed (in the instant case, they had robbed a sporting goods store).⁸ However, in *Garner v. Memphis Police Department* the Sixth Circuit asked the District Court for the Western District of Tennessee to consider "is a municipality's use of deadly force . . . to capture allegedly nondangerous felons fleeing from nonviolent crimes constitutionally permissible under the fourth, sixth, eighth and fourteenth amendments."⁹

The National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG) has stated that: "Every police agency should define situations in which force is permitted, establish a range of alternatives to its use, and restrict it to the minimum amount necessary to achieve lawful police objectives."¹⁰

The Model Penal Code (section 3.07) states that the use of deadly force is not justifiable 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 if his apprehension is delayed.¹¹

⁷ Thomas J. McCormick, "The Use of Deadly Force to Arrest: Conflicting and Uncertain Standards in the Courts," *Creighton Law Review*, vol. 12 (1978), p. 667.

⁸ *Wiley v. Memphis Police Department*, 548 F.2d 1247 (6th Cir. 1977); cert. denied, 434 U.S. 822 (1978).

⁹ *Garner v. Memphis Police Department*, 600 F.2d 52 (1979).

¹⁰ National Advisory Commission on Criminal Justice Standards and Goals, *Police* (Washington, D.C.: Government Printing Office, 1973), p. 18.

¹¹ Thomas J. McCormick, "The Use of Deadly Force . . ." p. 662.

¹² International Association of Chiefs of Police, *Model Rules for Law Enforcement Officers. A Manual on Police Discretion* (Gaithersburg, Md.: IACP, 1974), p. 145.

Further, the model standards of the International Association of Chiefs of Police suggest that "the use of firearms in situations involving a moving or fleeing vehicle is impractical, dangerous and should be prohibited."¹² The standards go on to suggest that officers should not use deadly force if the person "is simply running away to avoid apprehension, or escaping after being apprehended. . . unless the escapee has the apparent present ability and intention to cause injury."¹³ Of course, an officer may never use deadly force against an escaping misdemeanant.¹⁴ Among the police departments using the Model Penal Code rules are Kansas City (Mo.), St. Louis County (Mo.), Knoxville (Tenn.), Boston (Mass.), Charlotte and Durham (N.C.), Washington (D.C.), Oakland (Calif.), New Haven (Conn.), and the Connecticut State Highway Patrol.¹⁵

Kansas law like that of 24 other States codifies the fleeing felon law. Under K.S.A. 21-3215, a law enforcement officer:

need not retreat or desist from efforts to make lawful arrest because of resistance or threatened resistance to an arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or another person, or when he reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted to commit a felony or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.¹⁶

But the fleeing person must be a "felon in fact" or the officer has acted improperly.¹⁷

Part of the problem with the Kansas law is that fleeing has come to include nondangerous activities.

¹² *Ibid.*

¹³ J. Paul Boutwell, "Use of Deadly Force to Arrest a Fleeing Felon—A Constitutional Challenge," *FBI Law Enforcement Bulletin*, September 1977, p. 27.

¹⁴ Floyd R. Finch, Jr., "Deadly Force to Arrest: Triggering Constitutional Review," *Harvard Civil Rights-Civil Liberties Law Review*, vol. II (1976), p. 370, note 42.

¹⁵ K.S.A. 21-3215.

¹⁶ *Id.*

For example, Steven C. Day, writing in *The Criminal Law Bulletin*, notes that:

a burglary can be committed without the breaking and entering of a domicile and at day as well as night. The very elements which make common-law burglary exceptionally dangerous are no longer required.¹⁸

One law review commentator has stated:

It is immediately apparent that State rule which permits deadly force to be employed against any felon [original emphasis] is not sufficiently narrow to meet . . . [the test of existing case law] analysis, since such a rule would reach persons whose activity is not sufficiently threatening to the vital interests of the State.¹⁹

Analysis of the case law suggests that use of deadly force under the fourth amendment may be permitted only where:

1. There is probable cause to make an arrest;
2. There is reason to believe that the fleeing suspect has committed a crime of such nature that it presents a serious threat to the local enforcement officer or a third party;
3. The officer is able to point to specific facts which justify a reasonable belief that the fleeing suspect threatens a serious social interest; and
4. The officer, after having given notice of arrest to the fleeing suspect, has reason to believe that deadly force is necessary to make the arrest.

Failure to comply with these standards when employing deadly force in the arrest potentially imposes civil liability on the police officer under 42 U.S.C. 1983.²⁰

As a result of these standards, and a ruling by the Eighth Circuit Court of Appeals in *Mattis* (although vacated by the U.S. Supreme Court on technical grounds), the Kansas fleeing felon doctrine may not be an absolute defense in all the use of force incidents the statute now appears to cover.²¹ Accordingly, seven States have now placed limits on

¹⁸ Steven C. Day, "Shooting the Fleeing Felon: State of the Law," *Criminal Law Bulletin*, vol. 14, no. 4 (July-August 1978), p. 300.

¹⁹ Thomas J. McCormick, "The Use of Deadly Force . . ." p. 679.

²⁰ 42 U.S.C. 1983.

²¹ J. Paul Boutwell, "Use of Deadly Force . . ." p. 13.

²² *Ibid.*, pp. 30-31.

²³ Transcript of the Open Meeting on Police Concerns of the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15-16, 1979 (hereafter cited as Transcript), vol. II, p. 194, lines 4-21).

²⁴ *Wichita Eagle and Beacon*, June 24, 1979.

The city manager objected to the extensive use of newspaper reports, saying: "Much of the draft includes allegations, innuendoes, and wholesale

their fleeing felon rules, in line with the Model Penal Code.²²

The Wichita police regulations and the present State statute are of great concern to the members of the minority community. State Senator Billy McCray of Wichita told the Advisory Committee:

Our statute now is written so that it is very difficult, in my judgment, for a policeman to use whatever force that he deems necessary to prevent defeat of an arrest when it is made. As a result, young policemen or inexperienced policemen are put in a bind whereby they feel that they must arrest a person under all circumstances, no matter what.

One of the things that concerns me is this: as the statute is written, if an officer believes that a felony has been committed. . . then officers can use whatever force they want to prevent that arrest from being defeated. It puts a burden on the policeman, whoever he is, whether he's young or old, and certainly puts a burden on a policeman that has not very much experience in making decisions on what he has to do in order to accomplish that arrest.²³

Chief Richard LaMunyon's report of firearms incidents is shown in table 3.1.

Minority community concerns are based on many episodes stretching over a long period of time. The *Wichita Eagle-Beacon* has chronicled events going back to 1969. During this time, there have been 26 alleged episodes of police abuse against blacks, Hispanics, and whites.²⁴ The first use of deadly force cited in a series of articles published in June 1979 was the 1974 fatal shooting of Freida White. A police officer shot her with his shotgun from a distance of 3-5 feet when, in a deranged condition, she lunged at him with a knife and after he had backed away 25 yards.²⁵

In December 1978 three black youths fled from a gas pump where they had taken \$5.00 worth of gasoline without paying. The police, seeing and hearing what later turned out to be backfires, but

copying of news media accounts, largely based on hearsay or oversimplified accounts of complex socio-economic community problems." (E.H. Denton, city manager of Wichita, letter to CSRO staff, Sept. 5, 1979, p. 2.) The Advisory Committee has offered the city an opportunity to indicate specific instances in which it believes that unfair allegations or innuendoes result from the use of newspaper accounts. Where these have been identified by the city, either appropriate changes have been made in the text of the report or the concern of the city has been noted. Allegations of oversimplified accounts of complex socioeconomic community problems have not been documented by the city.

²⁵ *Wichita Eagle*, Mar. 6, 1974. See also E.H. Denton, letter to CSRO staff, Sept. 5, 1979, and Capt. Jordan Jones, telephone interview, Sept. 11, 1979.

TABLE 3.1
Firearms Incidents, Wichita Police Department

	1975	1976	1977	1978
Accidental discharges	0	4	0	0
Discharges at animals	4	1	12	8
Discharges that didn't hit anyone or anything	13	7	13	5
Discharges damaging property only	8	2	12	7
Discharges wounding people only	10	4	6	2
Discharges resulting in fatalities	1	2	3	2
Total discharges	36	20	46	24

Source: Richard LaMunyon, Chief, Wichita Police Department, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979, p. 16.

which at the time they believed to be gunshots, fired at the fleeing youths. Police allegations that the youths had used a gun were later withdrawn.²⁶ But under Kansas law, since the youths while fleeing backed into the police car, forcing an officer to fall, the police had a legal right to use deadly force.²⁷

On July 9, 1979, a 19-year-old black youth, Bobby Jacobs, was shot and killed by a police officer at the scene of a burglary. Reports of the incident conflicted, according to the report in the *Wichita Eagle*. Three neighbors at the site of the shooting stated that the officer responsible gave no warning before firing. Police stated that there were adequate warnings and that the three neighbors were not actually eyewitnesses to the episode or able to hear what transpired from their vantage points. One person, whose house was hit by 27 pellets from an officer's gun, stated that one of the officers on the scene told

her that he thought the wrong person had been shot. She was also concerned because nine of the pellets went into her 13-year-old daughter's bedroom. Rev. D.D. Miller, president of the local NAACP, noting that Mr. Jacobs was merely an unarmed burglary suspect, contended, "This is like going out and shooting down animals."²⁸

Following this episode, the *Wichita Eagle* stated in an editorial:

Officially, Wichita's latest incident involving the shooting of a citizen by a police officer is closed. The day after 19-year-old Bobby Jacobs was fatally wounded, District Judge Elliot Fry ruled there was "no probable cause" to issue a criminal warrant against the officer involved. Monday, the police internal affairs division cleared officer Ray Winiker of any wrongdoing, and found his action to be in line with

police hit conspiracy" were totally without evidence. By his own admission he had no information to support the claims. [original emphasis] Litigation against the NAACP for the malicious statements is presently being considered by the City and individual officers involved.

E.H. Denton, letter to CSRO staff, Sept. 5, 1979.

It would appear that the city and its officers have not challenged Reverend Miller's analogy cited in the text of this report, although they had an opportunity to do so.

department policy and in compliance with State law.

Once again the furor of negative police-community relations besets Wichita and Sedgwick County. Once again there are claims and counterclaims, charges and allegations, and most disheartening, a general feeling of mistrust pervades some sectors of the city.²⁹

Subsequently, the NAACP Wichita branch filed suit against the city to obtain an injunction to end what it claimed were abuses in the use of deadly and nondeadly force.³⁰ The senior ranking black officer on the force, pointing to the changes he had implemented since taking command of police in the predominantly black area, stated that the suit would not help police-community relations.³¹

Despite such episodes, Wichita Police Chief LaMunyon commented to the Advisory Committee: "It goes without saying that restricting this statute (K.S.A. 21-3215) in regards to use of force to apprehend fleeing felons, would have an adverse effect on law enforcement and the community."³² Commenting on an extreme example in the use of deadly force, the Eighth Circuit Court of Appeals wrote: "The police officer cannot be constitutionally vested with the power and authority to kill any and all escaping felons, including the thief who steals an ear of corn, as well as one who kills and ravishes at will."³³ The question of when force is justified was asked best in the 1930 session of the American Law Institute.

It has been said, "Why should not a man be shot down, the man who is running away with an automobile?" Why not kill him, if you cannot arrest him? . . . May I ask what we are killing him for? . . . Are we killing him for stealing the automobile? . . . It cannot be. . . that we allow the officer to kill him because he stole the automobile, because the statute provides only [a short jail term]. . . . Is it for fleeing that we kill him? Fleeing from arrest is also a common law offense and is punishable by a light penalty. . . . If we are not killing him for stealing the automobile and not killing him for fleeing, what we are killing him for?³⁴

Commenting on the Kansas situation, the *Wichita Eagle* noted that the Legislative Coordinating Coun-

²⁶ *Wichita Eagle*, July 18, 1979.

²⁷ *Wichita Eagle*, Oct. 12, 1979.

²⁸ *Wichita Eagle*, Oct. 13, 1979.

²⁹ Richard LaMunyon, Chief, Wichita Police Department, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979, p. 11.

cil had refused to authorize a study of Kansas law dealing with occasions on which police might lawfully shoot. The *Wichita Eagle* stated that:

The American Bar Association developed a model penal code that addresses the subject of the use of deadly force: Not only must the crime be a felony in order to warrant the use of deadly force, but the use of such force must provide no substantial risk to others in the area; the officer or other individuals must be threatened with the risk of deadly force; or it must be believed that death or injury will occur if the arrest is delayed.

. . . The thought of increased crime rates, wanton violence and injured police officers is repulsive. Equally repulsive is the thought of suspects shot for infractions that are far outweighed by the ultimate price that may be exacted by a bullet or a shotgun blast.

Twenty-four states have "fleeing felon" statutes such as Kansas'. [Other] States have adopted laws patterned after the ABA code, and that distinguish when and how much force an officer may use in a given situation. They are Utah, Oregon, North Dakota, New York, Illinois, California and Pennsylvania.

Kansas should be in that number.³⁵

Following circulation of the preliminary draft of this report, and after completion of a study of firearms policy by the department, the police chief did modify the department's firearms policy to effectively incorporate the Model Penal Code rules. The new rules state that:

4.401

This regulation presents guidelines for the conduct of an officer concerning the use of firearms and other authorized weapons.

The use of firearms by law enforcement officers is authorized and limited by state statute. It is the responsibility of each officer to read and to be familiar with this statute (Kansas Statutes Annotated 21-3215).

Under all circumstances, an officer will exercise the utmost discretion in the use of firearms and other authorized weapons. In a stress

³⁰ *Mattis v. Schnarr*, 546 F.2d 1007 (1976).

³¹ *ALI Proceedings*, vol. 9 (1930), pp. 186-87.

³² *Wichita Eagle*, July 18, 1979.

situation, a police officer's first reaction should be to determine whether the objective can be accomplished without the use of a weapon. An officer's decision, relative to the use of a firearm, must be legally justifiable, considering both the nature of the crime and the circumstances surrounding the arrest.

4.402

Drawing and displaying firearms shall be limited to:

1. When an officer, in the exercise of sound judgment, has reason to fear for personal safety or for the safety of others.
2. For inspection purposes.

An officer is also authorized to discharge a firearm under the following circumstances:

1. At a moving vehicle— *only* when the officer reasonably believes that an occupant of the vehicle is using or threatening use of deadly force against an officer or a citizen, placing them in immediate danger and *only* when the officer reasonably believes the shot(s) will be effective in stopping the vehicle. Once the immediate danger is past, firing at the vehicle is no longer justified.
2. From a moving vehicle— *ONLY* when an officer's life or the life of another is in immediate danger.
3. At an approved range.
4. To kill an animal—In complaints involving animal bites, unless an officer must kill an animal in self-defense, or to prevent serious injury to some other person, the animal unit should be called to capture the animal alive. If the animal must be killed, the fatal wound should be inflicted in such a manner not to damage the animal's head. Damage to the animal's head precludes diagnosis for rabies and makes anti-rabies treatment mandatory. It will be mandatory for an officer to capture or destroy an animal only if the Animal Care Unit or the Health Department fails to respond: A field supervisor should be consulted before taking action.

4.403

An officer is authorized to discharge a firearm, or use any other force likely to cause death

³⁶ E.H. Denton, letter to Melvin L. Jenkins, regional director, CSRO, Jan. 18, 1980.

or serious injury, under the following circumstances:

1. In defense of the officer's own life or the life of another person; in situations, when an individual is armed and attempting or threatening to kill or do great bodily harm to another.
2. To apprehend a fleeing felon where the officer reasonably believes the felon has used or threatened use of deadly force, caused or attempted great bodily harm, or is escaping by use or threat of deadly force or bodily harm, and the officer reasonably believes that such force is necessary to prevent the arrest from being defeated. However, even under these circumstances, an officer may discharge a weapon only when the officer can do so without endangering other human lives, and only when the officer reasonably believes the shot(s) will strike the objective.

4.404

An officer is not justified in discharging a firearm under the following circumstances:

1. When use of less force would safely accomplish the objective.
2. To apprehend a fleeing offender (felony or misdemeanor) except in those instances outlined by the Wichita Police Department Regulation 4.403.
3. To fire a warning shot.
4. To fire at moving or fleeing vehicles whenever a misdemeanor or a traffic offense has been the *ONLY* violation committed.

A first violation of this rule will result in 30 days suspension. A second violation will result in dismissal.³⁶

Nondeadly Force

In "Model Rules for Law Enforcement Officers, A Manual on Police Discretion," copyrighted in 1974 by the International Association of Chiefs of Police, model rules governing escalating use of force are indicated.

Whenever a police officer finds it necessary to use non-deadly force to achieve a lawful police objective, it shall be incumbent upon that officer to exhaust every reasonable means of

employing the *least* [original emphasis] amount of force to effect the purpose before escalating to the next, more forceful method. However, nothing in this rule shall be interpreted to mean that an officer is required to engage in prolonged hand-to-hand combat or struggle rather than resort to that method which will most quickly and safely bring the arrestee under control.³⁷

The lowest, least drastic method of a police officer using force would be physical strength and skill (holding, throwing, restraining, pushing, pulling. . . .) Physical prowess is a reasonable method of overcoming the resistance of a person who is unarmed or simply failing to abide by the officer's lawful command to submit.

There are few situations where an officer should resort to any force greater than physical prowess.

Chemical mace should be used only if physical strength and skill are ineffective or impractical.

In instances where physical strength and skill or mace are ineffective or their use might constitute a danger to the officer or a third party, the officer is justified in using the baton or sap to overcome resistance and to end the conflict.

The application of the baton is considered the most drastic form of non-deadly force. It must be used judiciously and only if lesser methods have failed or their use would be impractical.³⁸ As a basic rule, firearms, should be utilized *only* [original emphasis] in self-defense or in defense of another against death or grievous bodily harm.³⁹

The *Policy and Procedure Manual* of the Wichita Police Department merely cites Kansas law that an officer not have to retreat from making an arrest because of resistance and that the force an officer may use is "only that force they reasonably believe necessary to make the arrest or defend themselves. . . from bodily harm. . . ." ⁴⁰ Later in the manual, officers are instructed that: "The police baton will be used only to defend the officer or another person from death or serious injury. Exces-

³⁷ IACP, *Model Rules for Law Enforcement Officers, A Manual on Police Discretion*, pp. 138-39.

³⁸ *Ibid.*, pp. 140-42.

³⁹ *Ibid.*, p. 143.

⁴⁰ Wichita Police Department, *Policy and Procedure Manual* (Oct. 10, 1978), para. 505-08.

⁴¹ *Ibid.*, para. 540, sec. 04, 05, 07.

⁴² *Wichita Beacon*, Feb. 6, 1978.

sive use of force or malicious assaults is prohibited. . . . Choke holds should be performed as a last resort to control an individual. When applying choke holds, extreme caution should be exercised not to seriously injure the individual."⁴¹ In short, while there are hints to the officer of a sequence of force, the guidelines are not unambiguously specified.

In February 1978 a party at the Wheatshocker apartments attracted police attention. Three persons were arrested: the black cocaptain of the Wichita State University (WSU) football team, the president of the WSU black student association, and an off-duty black U.S. Air Force security police officer. All three required medical attention for injuries sustained while being taken into custody.⁴² The city points out that two of the three were convicted for acts connected to this incident.⁴³ However, all charges were dismissed against Staff Sgt. Delmar Gillespie, a military police officer. He told the Advisory Committee that he saw Wichita police officers "just beating him [one of the other persons arrested], trying to get him to retaliate." While observing this, Sergeant Gillespie stated, he was struck by officers and handcuffed with his hands behind his back. He stated that subsequent blows by Wichita officers pushed him into a window. He stated that an officer later "came up to me and he just put his heel into my instep. . . ." and said "Stand still, you're not going anywhere." Sergeant Gillespie pointed out that: "From my training in the service, when you get somebody in that position, there is no need for you to go to excessive force with somebody like putting your foot in his ankle. It would seem to me that they would have known that as much as they beat me, that I wasn't going anywhere. If I was going to do anything, I would have done it right at the beginning." He told the Advisory Committee that at no time did he resist the officers or hinder their work.⁴⁴ Sergeant Gillespie indicated in his testimony to the Advisory Committee that none of the participants in the Wheatshocker incident was aware of the level of force that could or would be used against them by the police.⁴⁵

⁴³ The city further commented that the draft report "attempts to imply that due to their individual credentials, they were 'model citizens.'" (E.H. Denton, letter to CSRO staff, Sept. 5, 1979) It cites only the convictions as evidence to the contrary.

⁴⁴ Transcript, vol. II, pp. 99-109.

⁴⁵ Transcript, vol. II, pp. 102-05. This was also indicated in the complaints by the Herman Hill Involvement Group on file in CSRO.

In July 1978 an off-duty Wichita Police Department warrant officer was assaulted by on-duty officers who did not realize he was a policeman.⁴⁶ In an incident occurring in December 1978—the so-called Espinoza incident—three arrested youths complained that after they were in custody and restrained, police officers beat them and subjected them to racial slurs.⁴⁷ The department, following an internal affairs investigation, stated that these charges were unfounded. In February 1979 a black high school vice principal's efforts to gain entry to his own apartment, after locking his keys and identification in his car, led to an assault by the apartment manager (an off-duty police officer) with the consent and assistance of an on-duty officer who was present. Both officers were disciplined for their actions in this episode; the off-duty officer was fired and the on-duty officer was suspended for 5 days.⁴⁸

The *Wichita Eagle* investigated the use of non-deadly force. Its reporters quoted several police officers:

Take the older lieutenant who told of repeatedly kicking a black suspect one night because the man wouldn't obey his order to get into a patrol car.

⁴⁶ *Wichita Eagle*, June 25, 1979.

⁴⁷ *Wichita Eagle*, Jan. 5, 1979.

⁴⁸ Transcript, vol. I, pp. 178-88; *Wichita Eagle*, Feb. 22, 1979; and E.H. Denton, letter to CSRO staff, Sept. 5, 1979.

"What was I supposed to do?" he asked rhetorically. "Call other officers off their duties to help me get him gently in the car when I could kick him in and be done with it?"

Almost immediately, he added, "Now, of course, I know what I'm doing, and when to do it, because I've been at this so long. If I caught one of my officers doing that, I'd give him hell!"⁴⁹

[Lt. Jerry] Bullins, an outspoken critic of the soft approach, echoes many officers in objecting to an incident where a police officer was spit at by a young suspect who had kicked his windshield out. "The officer did nothing. I know what I'd do," Bullins says. "I'd hit him upside the head. I don't have to take that. If officers would get some support (from the administration), they wouldn't be worrying about an arrest before it occurs. Someday an officer is going to get hurt or killed."⁵⁰

When Sheriff Johnnie Darr was asked about his department's written guidelines, he said: "We don't have written guidelines. We are working on one at this time, and in fact, it's been given to all my officers to look it over. . . ."⁵¹

Sheriff's counsel added, "We have a stringent policy against our officers carrying night sticks or batons. . . .very few of them carry Mace."⁵²

⁴⁹ *Wichita Eagle*, June 27, 1979.

⁵⁰ Ibid.

⁵¹ Transcript, vol. II, p. 163, lines 10-12.

⁵² Transcript, vol. II, p. 163, lines 22-24.

4. Use of Police Discretion

The National Advisory Commission on Criminal Justice Standards and Goals has pointed out that:

The police routinely investigate behavior that, while suspicious, often proves to be innocent. The acceptance of police authority depends largely on the belief that its exercise is reasonable.¹

Egon Bittner of Brandeis University has commented:

it is not a paranoid distortion to say that police activity is as much directed to who a person is as to what he does. The preferred targets of special police concern are some ethnic and racial minorities, the poor living in urban slums, and young people in general.²

Typical of current minority concerns are those of Victor Montemayor, Jr., president of the local chapter of the League of United Latin American Citizens (LULAC), who asked:

Why are we treated as second-class citizens? We pay taxes like the rest of the citizens. Are we supposed to sit back and be pounced on? We as rational human beings will fight back for survival in the proper courts of the United States law. Why are our police not listening? Do our people have to be punished and mistreated as animals? Do we have the same human

¹ National Advisory Commission on Criminal Justice Standards and Goals, *Police* (Washington, D.C.: Government Printing Office, 1973), p. 18.

² Egon Bittner, *The Function of the Police in Modern Society* (Washington, D.C.: Government Printing Office, 1970), p. 10.

³ Transcript of the Open Meeting on Police Concerns by the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 14-15, 1979 (hereafter cited as Transcript), vol. II, p. 81, line 23, to p. 82, line 4.

rights that President Carter preaches to the world about?³

As an example of his concern, Mr. Montemayor complained that the Wichita police were violating Federal and State law by stopping Hispanic-appearing persons and demanding either proof of citizenship or proof of legal alien status, with no other reason.⁴ This concern was shared by many Hispanics interviewed by *Wichita Eagle* reporters.⁵ The Wichita police department procedures manual as it read in February 1979 failed to make clear that the police lacked jurisdiction to question persons' citizenship. Eventually, Chief Lamunyon agreed to stop the practice and informed Mr. Montemayor that he had held an inservice training session to ensure that Wichita officers all were aware that they could not conduct illegal alien searches.⁶

During the 1950s, the police regularly enforced the prevailing mores by arresting groups of black and white persons socializing together. On an occasion particularly sensitive to the black community, a black woman, the sister of a future mayor of Wichita, was arrested with two men whom the police mistook for white.⁷ A recent article in the *Wichita Eagle* reports a black salesman's comments that "One way to have trouble with them. (police) is

⁴ Ibid., vol. II, p. 80, lines 15-24.

⁵ *Wichita Eagle*, June 26, 1979.

⁶ Richard LaMunyon, chief of police, Wichita, letter to Victor Montemayor, Feb. 22, 1979.

⁷ Chester Lewis, interview in Wichita, Jan. 8, 1979.

to drive around and let them stop you with a white woman in your car."⁸

Chester Lewis, a leading black attorney in Wichita, stated that during the administration of Chief Eugene Ponds, even at the height of racial unrest in the late 1960s, discipline was maintained and complaints about unequal treatment nearly disappeared.⁹

In 1972 former Chief Floyd Hannon in an address to his officers seemed to try to set a similar tone by saying:

"A citizen is a citizen regardless of his color." And in so uncertain terms he warned the officers that any misconduct toward citizens would not be tolerated. ". . . We are professional people but when we point fingers or shake fists or drag people we have ceased to be professionals and we are in the gutter."¹⁰

But in 1974 Freida White, a deranged black woman, was shot and killed by a Wichita police officer. The local Urban League protested:

The recent gunning down of a black Wichita woman by a police officer and subsequent justification of it by the police department as appropriate action taken in the line of duty is a tragic reminder of what local officers consider to be appropriate action for blacks. It underscores the trigger-happiness with which black disturbance calls are all too often responded to. It is now time for the Wichita Police Department to take a serious look at what is a dual and discriminatory and racist law enforcement system, one that tolerates lawlessness within itself.¹¹

Kenneth Miller, executive director of the Northeast Task Force of Concerned Citizens, protesting recent episodes, told the Advisory Committee:

community residents watch crime increase on the one hand and police misconduct increase on the other. Within the last 2 years we have seen the worst form of police repression the city has ever seen [since 1974]. . . .¹²

Among the incidents that led to this statement were the verbal abuse of a black citizen during a police raid on a predominantly black club, the Inn Crowd, one of several raids that some in the black communi-

⁸ *Wichita Eagle*, June 25, 1979.

⁹ Chester Lewis, interview in Wichita, Jan. 8, 1979.

¹⁰ *Wichita Beacon*, Feb. 4, 1972.

¹¹ *Wichita Eagle*, Feb. 26, 1974.

¹² Transcript, vol. II, p. 76, lines 6-11.

¹³ *Wichita Eagle*, Aug. 30, 1977.

ty thought were unreasonable.¹³ Reporters for the *Wichita Eagle* have written that, according to persons they interviewed, when police stop blacks, the officers often are verbally abusive.¹⁴ Speaking of this pattern of police abuse and violence, Professor Bernice Hutcherson of Wichita State University commented: "We're frightened in the northeast area because it is frightening when you cannot trust your own police force to protect you."¹⁵

However, black officers patrolling the Baker-1 area complain that they face unreasonable hostility from black residents. One black officer told *Wichita Eagle* reporters that:

the general attitude displayed toward police officers by most blacks is "hostile." At least three black officers said that often abusive crowds of onlookers hamper their work in black neighborhoods. It is acknowledged by a large number of blacks who were interviewed that black citizens often are at fault in confrontations with police. Some said there is extreme hostility in black neighborhoods toward the police, and especially toward the white officer because he is white.¹⁶

Complaints by Hispanics of harassment were chronicled by the *Wichita Eagle*. Its reporters cited statements by Jim Apodaca, Al Hernandez, Richard Lopez, Phillip Leon, and Victor Montemayor in which they alleged numerous instances of police abuse. The *Wichita Eagle* reporters stated that: "Hispanics repeatedly told city officials that [an officer] was a brutal, sadistic and prejudiced officer who made illegal arrests and provoked suspects into hitting him."¹⁷

Al Hernandez, editor of *El Perico*, a Wichita Spanish-language newspaper, told the reporters that "he believes harassment and brutality are a standard operating procedure within local law enforcement agencies." Victor Montemayor told the reporters that "he thinks it usually is limited to a handful of officers running unchecked. . . ."¹⁸

The *Wichita Eagle* also reported denials of all these allegations:

[The officer], who has studied Hispanic culture on his own, says he thinks the fabrications are blown up further in tales of brutality by the

¹⁴ *Wichita Eagle*, June 25, 1979.

¹⁵ Transcript, vol. II, p. 97, lines 17-19.

¹⁶ *Wichita Eagle*, June 24, 1979.

¹⁷ *Wichita Eagle*, June 26, 1979.

¹⁸ *Ibid.*

Hispanic community's hostility against law enforcement officers. . . .

Police Captain Mike Hill, head of the Adam-1 team policing the barrio, and Chief LaMunyon say that LULAC members sincerely, but erroneously perceive a pattern of abuse that rarely occurs.¹⁹

Officers in the sheriff's department alleged that fellow officers in the department and officers in the Wichita Police Department are very hostile to blacks and Hispanics. The sheriff's officers reported hearing derogatory racial epithets, and one officer witnessed police and sheriff's officers manhandle a black male who was with a white female. The officer reported other incidents of improper procedure or harassment of minorities.²⁰

Barbara Mawhiney, chairperson of the Wichita Commission on the Status of Women, task force on family violence, told the Advisory Committee that women face a similar problem, as victims of spouse and sex abuse.

There is an assumption of guilt by some officers, that women are guilty, that they deserve what's happening to them. There's a neverending complaint that the police respond to the call and don't do anything. Sometimes I don't think that's a justified complaint, because women don't understand that the police cannot make an arrest, they cannot force somebody to leave the scene, that they cannot transport the woman wherever she wants to go because she wants them to. But there are other cases. There seems to be rather inconsistent treatment by the police of battered women.²¹

Under K.S.A. 22-2401, officers can make an arrest when they have probable cause to believe a person is about to commit a felony or a misdemeanor.²²

Ms. Mawhiney pointed out that the police require women to wait 48 hours before they may file a complaint of assault. Then they must go to the warrant office, which is open from 10:30 to 11:30 a.m. and 1:30 to 3:30 p.m. on weekdays. Chief LaMunyon explained that all simple assault type offenses are handled the same way.²³

¹⁹ *Ibid.*

²⁰ Tony Gallegos, interview in Wichita, May 7, 1979; and Ernie Simms, interview in Wichita, May 8, 1979.

²¹ Transcript, vol. II, p. 31, lines 4-14.

²² James E. Flory, assistant attorney general, Kansas Attorney General's Office, telephone interview, July 20, 1979.

²³ Transcript, vol. II, p. 246, lines 2-8.

²⁴ *Ibid.*, p. 21, lines 18-25.

Ms. Mawhiney stated that:

And in order to get that complaint filed you nearly always have to have a witness and if you are married to your accused assailant, you have to normally be willing to pursue other civil action, such as getting a divorce, before they will actually go through and file a complaint.²⁴

Another problem is that facing rape victims. Dr. Mary Jeanette Hageman, chairperson of the Sexual Assault Task Force in Wichita, complained that Wichita Police Department officers are not in regular communication with the Wichita Area Rape Center so that information, communication, and services of all those serving rape victims is uncoordinated. Dr. Hageman pointed out that while women often want female officers to assist them following a rape, the female officers have been "pressured to be brave, true, strong, one of the boys, and they have a tendency to come on extremely strong with rape victims."²⁵

Ms. Mawhiney and Dr. Hageman pointed out that by vote of the city commission the city had ended support for the special family crisis intervention team in 1973-74, stating it was not a priority and cutting it from the budget.²⁶ The area rape center has received general revenue sharing funding from the city sufficient to keep it operational.²⁷

The city manager states that:

when Federal support for the [special family crisis intervention team] ended, all members of the department received training in family crisis intervention. In addition, the report failed to mention that cross-culture communications were a part of that training. Moreover, extensive training in this area is included in the Police Academy curriculum.²⁸

But the evidence presented by the city is contradictory. One statement shows 22 hours of "Techniques of Family Crisis Intervention" as a portion of the 640 hours of police training.²⁹ Another document, which purports to be a schedule of a police academy class shows 1 hour for the women's crisis center, 8

²⁵ *Ibid.*, p. 31, lines 17-25.

²⁶ *Ibid.*, p. 17, lines 5-8; and Barbara Mawhiney, letter to Benjamin H. Day, Aug. 28, 1979.

²⁷ Barbara Mawhiney, letter to Benjamin H. Day, Aug. 28, 1979.

²⁸ E.H. Denton, letter to CSRO staff, Sept. 5, 1979, p. 3.

²⁹ Wichita Police Department, Training Academy, *Recruit Training Curriculum* (Jan. 1, 1978), n.p., on file in CSRO.

hours for the rape center, and 10 hours for conflict resolution.³⁰ Similarly, while the city manager states that cross-cultural communications were a part of that training,³¹ the only such training shown is 2 hours by the NAACP, 1 hour by the National Conference of Christians and Jews, and 2 hours on

³⁰ Wichita Police Academy, schedule, n.d., on file in CSRO.

³¹ E.H. Denton, letter to CSRO staff, Sept. 5, 1979, p. 3.

The city manager and chief of police asserted that the statements by Professor Dae Chang are important and should be incorporated into this study. Professor Chang stated:

Surveys of the nation's prisons and penitentiaries show that prisoners come from the lower economic strata and are likely to be minority members, namely blacks. The poor and blacks are also more often the victims of crime.

Thus the behavior of these community members is more likely to come under police scrutiny. This is so much a part of American policing that we tend to assume that it is universally true. But my studies of European and Asian police have shown me that in certain countries,

police and minority groups (which, however, are separate from the family crisis intervention classes). To give some notion of relative importance, a discussion of organ transplants is assigned 1 hour of time.³²

like Japan and Denmark, the police are more willing to scrutinize the behavior of the rich. They are more sympathetic to the "poor but honest" lower class and more suspicious of the rich.

The experience of these other countries provides hope for change. No change is possible in the United States, however, until the realities of race are faced up to. Past oppressions have given way to impersonal forces of destruction. The frustrations of blacks are felt all the more keenly for being caused by unseen and subtle processes.

Dae H. Chang, "Educational Strategies for Law Enforcement and Community Citizens," statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979, pp. 5-6.

³² Wichita Police Department, Training Academy, *Recruit Training Curriculum* (Jan. 1, 1978), n.p.

5. Police-Community Communication

The evidence collected by the Advisory Committee and others indicates a profound disparity in perception of police activity.

Professor Fred I. Klyman and Joanne M. Kruckenberg did a survey of perceptions of police-community relations in Wichita between January and May 1973. Their research shows very sharp disparities between white and black attitudes. For example, while 20 percent fewer whites than blacks disagreed with the statement, "The likelihood of a citizen being abused by a policeman in this city is high" (8.5 percent of nonwhites versus 29.2 percent of whites "disagree very much"), 11 percent more blacks than whites were convinced this was very true (14.5 percent of nonwhites "agree very much" versus 3.5 percent of whites).¹

A survey conducted in 1974-75 by the Police Neighborhood Service Center located in the north-east community shows the extent of the disparity in citywide perspectives not only between whites and blacks, but also between blacks and the officers of the Wichita Police Department. On a scale of 1-7 (where 1 was "strongly disagree" and 7 was "strongly agree"), persons in the center's service area

scored 4.67 in their belief that police felt superior to people who are not white. Persons living far away from the center service area scored 3.84 and police officers scored 2.72.²

In September-October 1978 the Wichita Board of Crime and Corrections conducted a survey of community attitudes. They reported that 92 percent of minority respondents answered "true" or "partially true" to the question: "Occasionally the police are accused of using excessive force in carrying out their duties. Do you believe these allegations are: true, partially true, or not true?" While 36 percent of black persons questioned believed this statement was true, only 6 percent of whites answered "true."³

These data have not been assimilated by city officials. In February 1979 the Wichita city manager asserted:

My assessment of the relationship between the police department and citizens of Wichita is that the relationship is good—but like most things can get better. For the city as a whole, the community is supportive of the efforts of the police department.⁴

Police-community relations if practiced was . . . secondary and at times considered nonessential unless there were community tensions in a specific community or an actual crisis bringing the community tensions to a surface. [Police] agents [have been] concerned only with laws and apprehending violators. Police [work], however, is much more complex than waging a war on crime, yet despite the obvious importance of other types of duties, the police have not performed these types of duties, nor have they been trained for them. To perform their duties, all of their duties, sufficiently, the police have to be able to communicate and interact effectively with the public they serve. This task is often complicated by factors in the community of prejudice, misinterpretation, misunderstanding, and public confidence is essential. Public confidence, however, is seriously low.

¹ Fred I. Klyman and Joanne M. Kruckenberg, "A Survey of Perceptions of Police-Community Relations," in Fred I. Klyman, Floyd B. Hannon, and Max Armstrong, *Police Roles in a Changing Community* (Wichita: Kansas Criminal Justice Community Relations Training Institute, 1973), pp. 327-51.

² John J. Hartman and Bernice Hutcherson, *Household Survey Data Summary, 1974-1975* (Wichita: Wichita State University, 1975), p. 18.

³ Edwana Collins, president, Wichita Board of Crime and Corrections, to members of the Wichita Board of City Commissioners, "Data Analysis of the Law Enforcement Public Opinion Survey," Dec. 15, 1978, p. 4.

⁴ City Manager E.H. Denton, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979.

The city manager and the chief of police asserted that the statements by Professor Chang and his colleagues were important and should be incorporated into the report. Professor Chang stated:

In September 1979 the chief of police stated: "I know the feelings in the minority community. The statements in this report [the Advisory Committee's] do not reflect the views of the majority of the black community."⁵

District Attorney Vern Miller stated: "I think that our community relations are as good or better than any place in the State of Kansas that I've been involved in."⁶ When asked whether the black community saw problems, Mr. Miller stated:

You're not going to convince me that the majority of black people feel that, you know. I don't feel it in this community. I'll never believe that this is not a good black community. We're not having that kind of trouble.⁷

When this statement was summarized to Senator Billy McCray, he said, "we're not on the same wavelength."⁸ Bernice Hutcherson, professor of social work at Wichita State University and project director of the Police Neighborhood Service Center when it was run by Wichita State University, stated that: "Presently I think they [police-community relations] have totally broken down. I feel that there is little or no trust whatsoever, and trust to me is important when I think of human relations."⁹ Prentice Lewis of the Wichita Urban League agreed,¹⁰ as did many black citizens interviewed by reporters for the *Wichita Eagle*.¹¹ Such disparate views are not surprising in the light of the survey evidence. Nor, as the 1968 President's Commission on Civil Disorders pointed out, are they unusual.¹²

The National Advisory Commission on Criminal Justice Standards and Goals notes that: "Members of minority groups must be convinced that their police service expectations are known and respected by the police, and that their recommendations are being acted upon."¹³ Further, it urged that: "each chief [police] executive should recognize the special problems presented in communicating with minority groups, and strive to develop methods of insuring

that he is in communication with all elements of his community."¹⁴

In 1973 Fred I. Klyman, Floyd B. Hannon (then chief of police in Wichita), and Max L. Armstrong (then a captain in the police department) published a set of papers that had been delivered at a symposium in Wichita on police-community relations. These papers included a range of ideas for improving police-community relations, sampling the best of the current practices. Professor Klyman noted that in 1957 the St. Louis (Missouri) Metropolitan Police Department became the first police force in the country to establish a special unit to provide specialized community relations services.¹⁵ Professor Klyman's survey of the larger departments around the country showed that most assigned some officers to police-community relations efforts. One-quarter of the departments maintained a special police-community relations citizens advisory committee.¹⁶ In a later article in the same volume, Professor Klyman pointed out the importance of community participation in police decisions, especially where the goal is participation. He pointed out that sometimes the techniques used to get input stifle the community.¹⁷ The study included a sampling of the then current techniques to improve communication.¹⁸

As early as 1974 there were numerous efforts by the black community to establish better police-community relations; all attempts were rebuffed by the police. The Committee of Concerned Black Residents, led by Rev. Willie C. Thomas, pastor of the Baptist Tabernacle Church, complained about the refusal of then Chief Hannon to meet with the group. The committee complained that there were "constant recurrences of police mistakes in the northeast area and other minority areas of the city and all we are getting is 'I'm sorry' in some cases, lambasted in others."¹⁹

Responding to complaints about the shooting of Freida White in 1974, Chief Hannon stated: "The

problem arising at this time is from a small group bent on creating problems."²⁰

Following several episodes of alleged police harassment, the Wichita branch of the NAACP, led by Rev. D.D. Miller, held two street marches and demonstrations during the summer of 1977.²¹ These were not perceived to be successful in obtaining change.

The arrest of the black cocaptain of the Wichita State University football team and others at the Wheatshocker apartments and the injuries they sustained while being taken into custody led to formation of the Northeast Task Force of Concerned Citizens in February 1978. At the request of the city, the U.S. Department of Justice, Community Relations Service, began to mediate between the department and the task force.²² Various agreements were proposed. After a February meeting, the *Wichita Eagle* reported Police Chief LaMunyon's agreement to 13 to 15 points raised by the northeast task force.²³ In May 1978 Kenneth Miller, spokesman for the task force, stated that they were near agreement on most issues.²⁴ The *Wichita Eagle* reported that: "Wichita city officials said Friday they'd rather work out problems with the city's black community themselves than use Federal negotiators. . . city representatives said they want 'one-on-one' meetings with the black community."²⁵

The draft agreement, never accepted by the city, included a revised firearms policy limiting discretion; improvements in the police-school liaison program, including the appointment of more black officers; participation by the Wichita Civil Rights and Equal Employment Opportunity Commission staff in internal affairs reviews; establishment of a police-community relations commission for the northeast; a proposal for the northeast task force to participate in a recruitment campaign to attract black applicants; police support for the Wichita United Methodist Urban Ministries anticrime program; and community support for an increase in the police department's budget and personnel.²⁶

Chief LaMunyon refused to continue meeting with the northeast task force or the NAACP. City

officials claimed they were unrepresentative.²⁷ In this belief, Bernice Hutcherson told the Advisory Committee, they were mistaken.²⁸ The *Wichita Eagle* reported that approximately 80 percent of the black community supported the task force.²⁹

The *Wichita Observer*, a local black newspaper, discussing problems in 1978, commented:

Chief LaMunyon said that "A cultural breakdown in communication and sociological variables are some of the reasons for problems between the northeast community and the police department.

Many have labeled that statement as just so much bureaucratic rhetoric, but it is actually an accurate analysis of the situation.

It means that the police do not understand the situation that they must be faced with daily, and are unable to effectively interact with the people they are bound to serve and protect. It means that problems will occur in the black community and other minority communities that the majority communities are unable to understand.³⁰

Black observers discussing this issue with reporters for the *Wichita Eagle* agreed.³¹

In December 1978 the community was again angered by the Espinoza incident in which the police fired shotguns at three youths fleeing from a \$5.00 gasoline theft and allegedly beat the youths while they were in custody and defenseless. It was also alleged that the police subjected them to racial slurs.³² The community did not believe the explanations offered by the police for their actions.³³

Prentice Lewis, of the Wichita Urban League, suggested that:

I think that if we could get the people of the community in the position to have confidence that the things they hear from the police department about what went on and what sparked the incident were true, I think that our relationship in that area would improve.³⁴

Hispanics have also complained about poor communications. The *Wichita Eagle* reports that the

Transcript of the Open Meeting on Police Concerns of the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15-16, 1979 (hereafter cited as Transcript), vol. I, pp. 28-29.

⁵ Richard LaMunyon, interview in Wichita, Sept. 27, 1979.

⁶ Transcript, vol. II, p. 176, lines 14-16.

⁷ Ibid.

⁸ Ibid., p. 199, lines 14-21.

⁹ Ibid., p. 88, lines 3-6.

¹⁰ Ibid., vol. I, p. 73, lines 20-25.

¹¹ *Wichita Eagle*, June 25, 1979.

¹² National Advisory Commission on Civil Disorders, *Report* (New York: Bantam Books, 1968), pp. 299-322.

¹³ National Advisory Commission on Criminal Justice Standards and Goals, *Police* (Washington, D.C.: Government Printing Office, 1973), p. 31, Standard 1.4.

¹⁴ Ibid.

¹⁵ Klyman, Hannon, and Armstrong, *Police Roles in a Changing Community*, p. 83.

¹⁶ Ibid., pp. 86-87.

¹⁷ Ibid., p. 225.

¹⁸ Ibid., p. 284ff.

¹⁹ *Wichita Beacon*, Feb. 25, 1974.

²⁰ *Wichita Eagle*, Feb. 26, 1974.

²¹ Rev. D.D. Miller, interview in Wichita, Oct. 2, 1978.

²² E.H. Denton, city manager, letter to Donald H. Burger, Community Relations Service, Department of Justice, Feb. 10, 1978; Transcript, vol. II, p. 232, lines 19-21.

²³ *Wichita Eagle*, Feb. 24, 1978.

²⁴ *Wichita Eagle*, May 17, 1978.

²⁵ *Wichita Eagle*, June 10, 1978.

²⁶ "Draft Memorandum of Understanding," May 1, 1978.

²⁷ *Wichita Eagle*, June 25, 1979.

²⁸ Transcript, vol. II, p. 97, lines 5-8.

²⁹ *Wichita Eagle*, June 25, 1979.

³⁰ *Wichita Observer*, Dec. 28, 1978, reprinted in *Wichita Eagle*, Jan. 4, 1979.

³¹ *Wichita Eagle*, June 25, 1979.

³² *Wichita Eagle*, Jan. 5, 1979.

³³ *Wichita Eagle*, Jan. 6, 1979.

³⁴ Transcript, vol. I, p. 73, lines 20-25.

League of United Latin American Citizens (LULAC) began a series of meetings about their complaints against the police in November 1978. The newspaper accounts state that:

The results were disappointing. Police became convinced that the situation was calm; Hispanics became convinced that the police weren't listening.³⁵

Another meeting was held on February 7, 1979. Although LULAC officials believed they had convinced the police department of the need for action to curb violations of the law regarding investigations of illegal aliens, these persisted.³⁶ A policy change by the department was announced on February 22, 1979.³⁷

The *Wichita Eagle* reported that:

Montemayor told LULAC members he witnessed City Manager Gene Denton and Mayor Tony Casado (himself an Hispanic) order Chief LaMunyon on April 23 to transfer. . . [an officer, the cause of many complaints by Hispanics] out of uniformed duty in the barrio to some special human relations training. This partially abated the anger of Hispanic youths who were contemplating violent protests and threatening officers' lives, sources said.

But in early June, Mexican Americans felt betrayed when [the officer]. . . was seen in uniform in the barrio making arrests.

Casado and Denton said later that they never ordered LaMunyon to move. . . [the officer], that the transfer was a regularly scheduled training assignment in the detective division.³⁸

Edwana Collins, former chairperson of the Wichita Board of Crime and Corrections, in her comments on this report told the Chairperson of the Advisory Committee that:

A radio station last spring carried an address of LaMunyon's to a graduating class of patrolmen in which he used the phrase "They don't understand" about six times referring to the community. Last week he was quoted as saying that he was going to do things that were in the interest of the department, he didn't care about

³⁵ *Wichita Eagle*, June 26, 1979.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Edwana Collins, letter to Benjamin H. Day, Aug. 7, 1979.

⁴⁰ Bruce Kirkpatrick, sheriff's counsel, letter to CSRO staff, Jan. 11, 1979.

⁴¹ Transcript, vol. II, p. 152, lines 1-5.

groups in the community. It was this isolation that I hoped to break down. [Mrs. Collins, although asking to be reappointed, was removed from the board.]³⁹

Communication problems are not limited to the Wichita Police Department. In a letter to the Advisory Committee staff, the Sedgwick County Sheriff's Department acknowledged that it did "not consult on a regular basis with any minority or feminist organizations, although it does consult with members of minority groups on an irregular basis regarding our policies."⁴⁰ When the sheriff was asked about organizations he had met with, he replied:

Well, I don't know the name of the church, but it is over in the northeast community. I went to and talked to a group over there personally.

Q. Was that recently?

A. It's been quite some time ago now.⁴¹

The police have made efforts to improve relations between themselves and the black community. As early as 1966 then Chief Ponds attempted to establish a community service center in the northeastern part of Wichita.⁴² In June 1974 a center was opened under a grant from LEAA, with the police department paying one-quarter of the cost.⁴³ At the end of the first year, a survey of clients in the area showed a significant reduction in the strength of the community response to a variety of questions that could be construed as hostile to the police.⁴⁴ The center was closed in June 1977.⁴⁵ Bernice Hutcherson noted in an interview with Advisory Committee staff that black attitudes, especially those of black youths, towards the police were much more relaxed when the center was in operation.⁴⁶ Chief LaMunyon reported that "the department attempted, without success, to secure continued funding for the neighborhood service center. We adamantly opposed the cutback in the [fiscal year] 1979 police department budget."⁴⁷ Funds were cut from the 1977 police

⁴² *Wichita Beacon*, Nov. 15, 1968.

⁴³ Hartman and Hutcherson, *Household Survey*, p. iii.

⁴⁴ *Ibid.*, p. 53.

⁴⁵ Bernice Hutcherson, interview in Wichita, Jan. 8, 1979.

⁴⁶ *Ibid.*

⁴⁷ Richard LaMunyon, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979, pp. 9-10.

request by city manager Eugene Denton. They were not requested again by the chief.⁴⁸

Dr. Ronald Tannehill of Wichita State University, whose credentials include many years as a police officer, commented:

Many members of the minority community (or any community for that matter), do not understand police operations and duties. In our encounter sessions with minorities while I was a member of the Crisis Intervention Team in 1972, we found that most of the people we talked to had little or no understanding of why police were required to operate as they do. Much misunderstanding could probably be minimized or eliminated through public education and two-way communications between the police and the community.⁴⁹

The principal efforts by the police department to correct this problem include the school liaison program and a community relations unit in the northeast. Eventually, the chief stated, he expects a full community relations program to be active in all of the police sectors. He stated that the refusal of the city to give him sufficient sworn officers has limited the chance to do so immediately.⁵⁰

Zora Graves, one of the officers in the school liaison program, noted that it only reached youths in school, not those who have dropped out. She stated that to make the program more effective more officers who are sensitive to other persons' needs and problems and more and better materials would be necessary.⁵¹

Lt. Charles Franklin, the community relations officer in the northeast area, pointed out that although he needed considerable backup and support from his commanding officer, as of February 1979 he was not getting it.⁵²

Reporters for the *Wichita Eagle* found that:

Regardless of how black Wichitans diagnose the cause of the police-community relations problem in black neighborhoods, they agree that it is a severe problem that has not been effectively dealt with by officials.

Most of those interviewed said that, as long as the situation is allowed to continue, the police-

⁴⁸ *City Manager's Budget Message—1977; City Manager's Budget Message—1979.*

⁴⁹ Supplied in Dae H. Chang, letter to Benjamin H. Day, Aug. 20, 1979.

⁵⁰ Richard LaMunyon, interview in Wichita, Dec. 13, 1978.

⁵¹ Zora Graves, interview in Wichita, May 8, 1979.

⁵² Transcript, vol. I, p. 136, line 23, to p. 137, line 23.

⁵³ *Wichita Eagle*, June 25, 1979.

black picture in Wichita will be bleak and marred by violence.⁵³

Training

To argue that the mere presence of minorities and women on a police force could modify departmental attitudes was never, of itself, realistic. Part of the reason for this is that: "Selection procedures and socialization processes have favored minorities and women who could identify with or assimilate existing police attitudes, and thereby evidence the same prejudices in their work."⁵⁴

One possibility, many have urged, is better basic training and ongoing inservice training. Of 640 hours of basic training provided by the Wichita Police Department, approximately 102 are devoted to human relations, cultural differences, handling sexual assaults, and handling disputes. Of these, 12 hours are devoted to battered women, rape, and sexual offenses and 14 hours are devoted to issues related to minority groups.⁵⁵ The sheriff's department requires 200 hours of training for new officers covering all subjects. Of the 608 hours from which these must be selected, 7 deal with race relations.⁵⁶ Thus a sheriff's officer could avoid taking any training in race relations.

The police department has been reluctant to undertake inservice training on such matters as rape. Consequently, some senior officers continue to retain the classic male attitude toward the rape victim and impose it on new officers, despite training.⁵⁷ The effect of this is not clear. In 1975 Marquette University consultants commenting on the police department's practices stated:

The Department has exerted other efforts to better equip its personnel to constructively build the departmental image; such as, inservice training in the sociological aspect of law enforcement and cross-cultural communications. Theoretically, the foundation for such training is the belief that people can be taught to change their behavior; however, this assumption is currently undergoing reexamination by social scientists.

Many now believe that the best way to change a person's behavior is to alter his environment. In

⁵⁴ Gerald E. Caiden, *Police Revitalization* (Lexington, Mass.: Lexington Books, 1977), p. 130.

⁵⁵ William Hannon, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979.

⁵⁶ Bruce Kirkpatrick, sheriff's counsel, letter to CSRO staff, Jan. 11, 1979.

⁵⁷ Transcript, vol. II, p. 26, lines 3-6.

the context of this study, this would mean that officers failing to deal civilly with the public would be disciplined accordingly.⁵⁸

But speaking at a recent consultation conducted by the U.S. Commission on Civil Rights, Dr. Terry Eisenberg, a consultant to many police departments, replied to a similar comment that:

I think the training can make a difference. I think it will go so far because there are limitations. . . but I . . . think that at the recruit training as well as supervisory command and executive levels that police training can make a difference in terms of performance, in terms of service, and in terms of civil rights.⁵⁹

Aside from human relations training, improvement in technical skills is likely to have a beneficial effect on police-community relations by improving on-the-job professionalism.

It should be noted that many of the subjects in which officers need training are covered in the rookie academy training program. Indeed, of 640 hours, the police state that 58 or 9 percent are devoted to "police response to community social problems." The city manager and chief of police urged that the Advisory Committee take notice of the statement of Dr. James A. Fagan, of the Wichita State University department of administration of justice, who stated that:

⁵⁸ James W. Witt, Eugene M. Robinson, and William P. Krueger, *Report on Preliminary Technical Assistance Visit to the Wichita, Kansas Police Department* (February 1975), p. 15.

⁵⁹ U.S. Commission on Civil Rights, *Police Practices and the Preservation of Civil Rights* (Dec. 12-13, 1978), p. 50.

⁶⁰ Transcript, vol. I, p. 29, line 20; p. 30, line 5.

Criminal justice standards and goals [commission] has advised that it is crucial that police officers be trained in other than law enforcement activities; however, they also note that current police curriculum training, other than law enforcement, consists of only 5 to 20 percent, seriously low to train a police officer effectively when 95 percent of his time is spent in other than law enforcement activities, and a large proportion of his time or his training is actually spent in law enforcement rather than these other activities or training such as sociology, psychology.⁶⁰

Similarly, little time is given to rules on "shoot, don't shoot"; only 2 hours of 50 in the "Dynamics of Effective Patrol Services" were assigned to this question in a statement of the police curriculum of January 1978. In another statement provided by the police department, 2 hours are allocated to all discussions of limitations on use of force.⁶¹

The data provided by the police department confirm the statement by Officer Zora Graves, who told staff she had received no crowd-control training at the training school.⁶²

It is not the number of incidents of conflict between police and the black community but the fact they occur at all that has caused tension between the black community and the police.⁶³

⁶¹ Wichita Police Department, Training Academy, "Recruit Training Curriculum" (Jan. 1, 1978); Wichita Police Academy, schedule of classes (n.d., n.p.).

⁶² Zora Graves, interview in Wichita, May 8, 1979.

⁶³ Chester Lewis, interview in Wichita, Jan. 8, 1979.

6. Police-Community Conflict Resolution

The principal complaint from minorities is that the police have refused to take action against abusive officers.

An expert on police procedure described the problem facing police officials when challenged by the community:

police superiors do depend on the good will of subordinates, if only to protect their own employee interests within the institutions. Thus, they are forced to resort to the only means available to insure a modicum of loyalty, namely covering mistakes. . . superiors must confine themselves to whitewashing bad practices involving relatively unregulated conduct, that is, those dealings with citizens that lead up to arrests.¹

In 1974 the officer who shot Freida White was tried and acquitted on a charge of involuntary manslaughter. He was routinely prosecuted by the district attorney at the request of the police department. The district attorney reported that when he conducts such prosecutions he always encourages everyone with information to come forward.² Following community protest, on August 30, 1977, a patrolman was suspended without pay for alleged verbal abuse of a black citizen.³ The police department denied any improper conduct by its officers in either the Wheatshocker or Espinoza incidents.⁴ In the latter case, their judgment was upheld by the

¹ Egon Bittner, *The Function of the Police in Modern Society* (Washington, D.C.: Government Printing Office, 1970), p. 59.

² Transcript of the Open Meeting on Police Concerns of the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15-16, 1979 (hereafter cited as Transcript), vol. II, p. 168, lines 21-22.

United States attorney. He noted that proving an allegation of misconduct is very difficult.

The *Wichita Eagle* coverage of current police responses to charges of abuse reveals conflicting police patterns. The *Eagle* states:

There are two Wichita Police Departments.

In one department, law officers are genuinely baffled by charges of frequent brutality and routine harassment. In the other, some of the same law officers will admit to knowing colleagues who have no business wearing a gun or a badge. In the first, officers proudly point to an administration that will not tolerate excessive force. In the other, some of the same men admit that line officers and some supervisors cover up "questionable or understandable excess" so that administrators never find out. In one, top administrators drill their troops on maintaining the existing excellent relations with the community, implicitly contradicting accounts that those relations need massive rather than minimal improvement. In the other, middle-management supervisors indirectly tell their officers to ignore the flurry of complaints and do the best job possible despite what the taxpayer might think.⁵

The Sedgwick County sheriff's office has the same split personality.⁶ The *Wichita Eagle* reported: "A black former police officer related incidents in which she said captains, majors and veteran officers

³ *Wichita Eagle*, Aug. 30, 1977.

⁴ *Wichita Eagle*, Jan. 5, 1979; *Wichita Eagle*, Feb. 27, 1978.

⁵ *Wichita Eagle*, June 27, 1979.

⁶ *Ibid.*

ignored incidents, covered them up or only halfheartedly investigated them."⁷ The *Wichita Eagle* reporters found that:

Several officers said Chastain, the officer fired in February [1979] for beating an assistant school principal, was a sacrificial lamb to the public's anger over recent confrontations. "Ninety percent of the force think Chastain got screwed," two policemen said in separate interviews.⁸

Many authorities feel that the citizen complaint process can be an important tool for detecting police violations. A 1964 *Harvard Law Review* article, "The Administration of Complaints by Civilians Against the Police" by Harold Berol and Marcus Sisk, quoted with approval by the International Association of Chiefs of Police (IACP), stated the complaint system should serve two ends:

A properly administered complaint review system serves both the special professional interests of the police and the general interests of the community. As a disciplinary device, it can promote and maintain desired standards of conduct among police officers by punishing—and thereby deterring—aberrant behavior. Just as important, it can provide satisfaction to those civilians who are adversely affected by police misconduct.⁹

Discussing the perceptions of minorities and other advocacy groups, the IACP noted that when 17 agency citizen complaint systems were assessed through IACP field research and interviews of the news media and community groups, it found:

A common theme throughout these interviews was distrust of internal investigations, generally founded upon the citizens' lack of information about the process. Many community representatives stated that police agencies should not investigate complaints against their own personnel. The rationale was that investigations would be biased. The terms whitewash and cover-up were used to describe community sentiment toward departmental investigation practices. These groups stated that alternative bodies, such as the district attorney's office, other law enforcement agencies, and private investigators should be responsible for investigating complaints.

⁷ Ibid.

⁸ Ibid.

⁹ International Association of Chiefs of Police, *Managing for Effective Police Discipline* (Gaithersburg, Md.: IACP, 1977), p. 48.

The fact that citizens' groups did not communicate with the police on an ongoing basis, and generally were not aware of investigative practices, generated this criticism. In one jurisdiction, the district attorney actually was responsible for investigating serious allegations. Community representatives were unaware of this practice.¹⁰

Following one particularly serious allegation of police misconduct, the *Eagle and Beacon* editorialized about the existing review procedures in Wichita:

And in the future something else will have to be done if the community is ever to trust its own police department. Disputes will have to be investigated by an independent agency if the findings are to be respected. This may mean a civilian review board to take the place of the internal affairs office of the police department.

The most thorough and unbiased report is useless if no one believes in its truthfulness. The people of Wichita, of whatever color, deserve better than that.¹¹

Internal Affairs and Inspection Section, Wichita Police Department

The International Association of Chiefs of Police manual on police discipline states:

Complaints or allegations of police officer misconduct may be brought by citizens who believe they have witnessed or suffered from officer misconduct or may be brought by fellow officers or supervisors. Complaints of officer misconduct must be afforded the same degree of serious consideration as reports of criminal offenses.¹²

The Wichita Internal Affairs Inspection Section (IAIS) is under the direct supervision of the chief of police. It was established on March 1, 1972, following a recommendation by the city's coalition planning board that:

a full-time adequately staffed internal affairs unit be created at the staff level within the Wichita Police Department to assist the Chief of Police in fulfilling his responsibility for the

¹⁰ Ibid., p. 49.

¹¹ *Wichita Eagle and Beacon*, Jan. 6, 1979.

¹² IACP, *Managing for Effective Police Discipline*, p. 51.

achievement and maintenance of desirable levels of personal discipline and control.¹³

This section, staffed by two police officers, prefers to receive all complaints in writing but will take complaints by telephone. Under departmental regulations IAIS shall, on receipt of a complaint, collect all information that is available at the time and present this information to the chief of police, enabling him to decide whether the charge will be pursued by the department.¹⁴ The chief has the discretion to order an investigation and, following the investigation, he may amend, modify, reject, or approve the recommendation of IAIS or an investigation board.¹⁵ The rules and regulations limit IAIS to investigation. It may not recommend discipline or any action that is the sole prerogative of the chief.¹⁶

In response to whether all complaints are received and investigated, Chief Richard LaMunyon stated:

My policy is that all complaints are investigated up to a point. Some complaints are obviously foundationless. Somebody calls in on the phone and says, "Officer so and so has done this and that," and hangs up; you cannot find anything out about officer so and so doing this and this.¹⁷

Chester Lewis stated prior to the department's action in February 1979 regarding Officer Chastain:

We have never had, and I've been in this community 25 years, a police brutality complaint brought by black residents sustained, not once.¹⁸

Mr. Lewis told the Advisory Committee staff that the "internal affairs investigation is a joke and I will never ever recommend that anyone go through internal affairs because it's an absolute cover-up. . . . They can't even do anything unless [Chief] LaMunyon gives his okay." When discussing the Espinoza case, Mr. Lewis stated, "We didn't know the names of some of the officers until LaMunyon held his press conference and declared the case was closed."¹⁹ This view was reiterated by numerous black and Hispanic leaders in discussions with *Wichita Eagle* reporters.²⁰

¹³ City of Wichita, Budget and Management Division, "Proposed Changes to the Wichita Board of Crime and Corrections," *Research Assistance Report No. 20* (May 3, 1978), pp. 1-2. The Advisory Committee was refused information on subsequent changes in the structure and staffing of IAIS.

¹⁴ Wichita Police Department, *Manual of Rules and Regulations*, para. 7.004(9).

¹⁵ Ibid., para. 7.004(3).

¹⁶ Transcript, vol. II, p. 56, line 10.

¹⁷ Ibid., p. 238, lines 24, 25, to p. 239, lines 1-4.

In several instances, the police chief exonerated his officers before completed internal affairs reports were available. For example, in the Wheatshocker incident the chief stated following the completion of the internal affairs investigation that it "does not change my original stand in defense of my officers."²¹ On February 6, 1979, he had stated that the officers were justified in using force. Commenting on this, former mayor Connie Peters stated that: "I think [LaMunyon] has done a good job in all but one area—when he defends his officers' action before enough of an investigation is conducted."²²

Lt. S.A. Stewart of IAIS responded to a question suggesting that filing a complaint is a waste of time by saying:

It would be easy for a person to assume that. We have to have a certain amount of validity to the complaint, and sometimes it's necessary to establish that validity to the complaint. And I can see where a citizen coming in could feel that way. . . .²³

Many Hispanics indicated that they did not file complaints of police brutality which they witnessed because they feared reprisal by the police. The *Wichita Eagle* cites an unnamed Hispanic lawyer as saying:

he knows of several cases of harassment and brutality but would not comment because he says he fears being persecuted by police and city officials.

"I don't want to end up like Chester Lewis," he says, referring to the black activist attorney many minority members feel has been hounded in his private and professional life for his high visibility campaigns against brutality.²⁴

The *Wichita Eagle* also quotes an unnamed north Wichita businessman who "says he has witnessed some incidents he thinks are questionable," but states "they'll shut me down if I say anything."²⁵ Victor Montemayor alleged to the *Wichita Eagle* reporters that one businessman who witnessed an incident of police abuse was told by a police team supervisor:

²¹ Chester Lewis, interview in Wichita, Jan. 8, 1979.

²² Ibid.

²³ *Wichita Eagle*, June 28, 1979.

²⁴ *Wichita Beacon*, Feb. 23, 1978.

²⁵ *Wichita Eagle*, June 28, 1979.

²⁶ Transcript, vol. I, p. 52, lines 13-17.

²⁷ *Wichita Eagle*, June 26, 1979.

²⁸ Ibid.

"You goddamn Mexican lover! If you open your mouth and tell anyone about this, we'll fix you."²⁶

IACP recommends that all complaints be properly registered. It cites model instructions:

It is to the benefit of each member of this Department that every complaint registered by a citizen be taken courteously and recorded. Even if the complaint is known to be unfounded and a simple explanation of a procedure completely satisfies the citizen, that complaint could be a part of a justification for future budget requests for public education or information personnel. All complaints by citizens, real or imagined, are an essential item of required information.²⁷

The black community has provided the Advisory Committee with information about several incidents that documents the response of the internal affairs section when blacks attempted to register a complaint against Wichita police officers. One such case occurred when a black woman and her nephew were confronted by officers at gunpoint and were later discouraged from filing a complaint.²⁸

Wichita Eagle reporters state:

The IA personnel are often privately skeptical of the integrity and purpose of many citizens' complaint.

[Lt. Al Stewart, then head of IAIS] acknowledged that he isn't always the epitome of tact when he deals with a particularly abusive citizen.

"Sometimes they come in here screaming and yelling about this and that and I get just as firm and . . . (intractable) back at them," Stewart said. "Then, when they calm down and we can talk reasonably, we get somewhere."²⁹

Lieutenant Stewart told the reporters that, "In many of these cases, the victim merely wants to talk the complaint out of his system or let the police know of a problem, not start a formal investigation."³⁰ The reporters found that: "Internal affairs personnel

deny trying to intimidate people, although they say they will occasionally try to reason with a citizen whom they believe has an outlandishly fraudulent or unprosecutable complaint."³¹

IACP notes that:

Many citizens denounced the secretiveness of the process of internal investigations. They stated that members of their respective groups who had complained of police misconduct usually were not even contacted by the department during investigations, and that generally they were not informed of the status of the investigations, of any hearings, or of the resolution of the case. Those interviewed expressed skepticism as to whether the agency actually conducted investigations.³²

Although the police department stated it had conducted a complete investigation of the Wheatshocker incident, Delmar Gillespie (an Air Force security officer and one of those involved in the incident) stated at the Advisory Committee open meeting that he had not been interviewed by the Wichita Police Department relative to what had occurred during the Wheatshocker incident in February 1978.³³ Similarly, Jerry Sherwood told the Advisory Committee that his complaint about treatment at Herman Hill was dismissed before he was asked to supply the names of witnesses.³⁴

The *Wichita Eagle* reporters found that: "the Wichita Police Department doesn't always talk to all the witnesses in a case. Two supervisors admitted that a key witness will not be actively pursued if he is reticent to cooperate."³⁵ Talking about the Wheatshocker incident, and the failure to contact Sgt. Delmar Gillespie, a trained police officer and a witness, Lt. S.A. Stewart of IAIS told the *Wichita Eagle's* reporters that ". . . Gillespie was very hard to contact and declined to talk without consulting an attorney. No further contact was made."³⁶ Lieutenant Stewart was quoted as saying: "It's not our job to track down these people and make them talk."³⁷

The city manager asked that it be noted that: it is suggested . . . that no sincere attempt was made by Lieutenant Stewart to contact a key witness, when, in fact, the witness was contacted but refused to cooperate. [original emphasis] A passage from the hearing transcript on page 109 (lines 11 and 12), quotes the witness in question as testifying, "I got a lawyer; I did not talk to internal affairs at the advisement of my lawyer."

E.H. Denton, letter to CSRO staff, Sept. 5, 1979. The city manager neglects to note that this was in response to a question by the Chairperson of the Advisory Committee, "Did you file a complaint later at sometime?" (Transcript, vol. II, p. 109, lines 9-10.) The city manager also neglects to note that Mr. Gillespie, page 111, lines 15 and

The Advisory Committee noted that the Wichita Police Department could not determine whether its activities had a racially disparate impact. The department reported that 95 of the 112 complaints investigated (91 internal and 21 external) were sustained as having a basis in fact. (For further details see table 6.1.) Part A shows 1978 data submitted to the Advisory Committee; part B shows data for the past few years published by the *Wichita Eagle*.)

The 1978 report of investigation activity by the internal affairs section shows that there were 112 internal (from supervisors or colleagues) and external (from citizens) complaints, 352 miscellaneous complaints (no complaint form was signed), 44 claims for property damage, and 109 employee application investigations. This computes to about two cases investigated per day per investigator. Commenting on the review process, Chief LaMunyon stated:

There exists also another internal monitoring process which reviews and evaluates individual incidents in which force was used. All police reports regarding battering of an officer, resisting arrest, and other specified incidents are systematically channeled to the Internal Affairs Section. If there appears to be some question regarding an officer's conduct, based upon this review, his immediate supervisor and section commander are promptly notified. If it is determined that the officer's conduct is a contributing factor, appropriate actions are initiated to correct the situation. [The chief also noted that if an officer is involved in five violent episodes in a year, this is ground for automatic review.]³⁸

In an editorial, the *Wichita Eagle and Beacon* stated:

There are real problems to be faced in Wichita's police-community relationship. There may be disagreement about the exact nature and degree of those problems, but all sides admit that things could, and should, be better.

following, in response to the question whether internal affairs ever contacted him stated:

No. That was the one thing I couldn't understand. I know from being a policeman, in my experience, you always investigate both sides. It would seem like an internal affairs division, if I'd been charged with something and there's charges of police brutality against my section, I would go out and try to find out, "Well, why are you saying this?" And that's why I can't understand [how] the officials in the Wichita Police Department could get on TV and radio and the news media and say that we've completely investigated it, and they still don't talk to

Citizens who feel unfairly put upon by police officers are often unhappy with the way their complaints are handled. They may not know how to get their complaint into the system—a problem of communication—and they may not be satisfied with the results obtained through the department's Internal Affairs investigation unit if they do file a complaint.

An appellate civilian review board, which would hear cases that complaining citizens felt weren't adequately handled by Internal Affairs, could help solve the problem. Certainly, such a board would be a further incentive for full, impartial casework on complaints assigned to Internal Affairs, and would help remove the taint of doubt raised by critics: of the fairness of police officers investigating other police officers.³⁹

The *Eagle and Beacon* is not the only voice urging a change in the existing review of police activity.

Dr. Frederick Wolfe, president of the local chapter of the American Civil Liberties Union, called for a citizen review board to provide citizen oversight of investigations into allegations of police misconduct. He stated that "an obnoxious pattern of charge, denial, self-investigation by the police department, and vindication has emerged."⁴⁰

The idea is pro-police, according to the *Wichita Eagle*, "and it would restore citizen confidence in the police—a confidence Wolfe said has been shaken badly by increasingly frequent charges of abuse and brutality leveled at the police department. . . ."⁴¹

The Advisory Committee was told by Alfred James III, of the police-community relations committee of the South Central Kansas chapter of the American Civil Liberties Union:

We find that the present method of processing complaints is entirely within the police department, and allows the Chief full discretion. . . . Article 7.004(3) (3) of the Wichita Police Department Operations Manual gives the Chief of Police power "to order no investigation be made when it is known that the complaint is unfounded." We ask how it can be known that a complaint is unfounded without

both sides. They never talked to me, so how could they say that? After beating me and charging me with the things they charged me with, he never even talked to me. He doesn't know what my side is.

Transcript, vol. II, p. 111, line 12, to p. 112, line 4.

³⁸ Richard LaMunyon, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979, p. 13.

³⁹ *Wichita Eagle and Beacon*, July 1, 1979.

⁴⁰ *Wichita Eagle*, Feb. 8, 1978.

⁴¹ *Ibid.*

²⁶ *Ibid.*

²⁷ IACP, *Managing for Effective Police Discipline*, p. 52.

²⁸ Stephen Joseph, letter to Jennifer Crabtree, Sept. 11, 1978.

²⁹ *Wichita Eagle*, June 28, 1979.

³⁰ *Ibid.*

³¹ *Ibid.*

³² IACP, *Managing for Effective Police Discipline*, p. 49.

³³ Transcript, vol. II, p. 111, lines 12-15; and *Wichita Beacon*, Feb. 6, 1978.

³⁴ Jerry Sherwood, letter to CSRO staff, received June 26, 1979.

³⁵ *Wichita Eagle*, June 28, 1979.

³⁶ *Ibid.*

³⁷ *Ibid.*

TABLE 6.1
Complaints Filed Against Wichita Police Officers
and Action Taken by the Department

Part A. Data Supplied to the Advisory Committee by the Wichita Police Department from Yearly Summary for 1978

I. Complaints investigated

Total for year of 1978

Internal	91
External	21

Results of investigations

Sustained	95
Not sustained	3
Unfounded	3
Exonerated	11

Resulting disciplinary actions

Verbal reprimand	5
Written reprimand	14
Transfer of watch	1
1-day suspension	25
2-day suspension	22
3-day suspension	6
4-day suspension	1
5-day suspension	9
30-day suspension	1
Terminated	10
Pending	0

II. Accidents investigated

Internal	41
----------	----

Results of investigations

Sustained	41
Not sustained	0

Resulting disciplinary actions

Verbal reprimand	7
Written reprimand	25
1-day suspension	8
2-day suspension	1

TABLE 6.1 (continued)

III. Assault/resist or oppose officer cases

Total arrested	382
Juveniles arrested	34

Court dispositions for above

Guilty	138
Not guilty	28
Dismissed	61
B. W. & B. F.	105

IV. Miscellaneous complaints

Total	352
-------	-----

V. Applicant background interviews

Total	109
-------	-----

VI. Claims for property damage investigated

Total	44
-------	----

Note: Explanation of Parts I, III, IV:

I. Complaints investigated:

Internal—complaints generated from within the department.
 External—formal complaints signed by citizens.

III. Assault/resist or oppose an officer case:

Internal affairs records these cases and monitors officers involved in order to determine if the officers were justified in their actions.

IV. Miscellaneous complaints—complaints taken from a citizen when a formal complaint is not signed:

The total number of complaints investigated is obtained by adding Part I (112) and Part IV (352) for a total of 464 complaints investigated.

Source: Capt. Jordan Jones, Commander, Planning and Research Section, Wichita Police Department, letter to CSRO staff, Aug. 1, 1979.

TABLE 6.1 (continued)
Part B. Published Data, Police Complaints

Year	Internal Complaints	External Complaints	Results	Actions Taken†
1974	55	65	60 sustained 7 not sustained 38 exonerated 10 unfounded 5 pending	14 written reprimands 2 oral reprimands 12 suspensions (1-10 days) 3 dismissals 2 resignations 1 demotion
1975	42	47	49 sustained 3 not sustained 17 exonerated 20 unfounded	22 written reprimands 8 oral reprimands 8 suspensions (2-10 days) 5 resignations
1976	34	24	37 sustained 2 not sustained 10 exonerated 9 unfounded	9 written reprimands 7 oral reprimands 16 suspensions (1-5 days) 1 dismissal 3 resignations
1977	52	37	57 sustained 7 not sustained 16 exonerated 9 unfounded	5 written reprimands 13 oral reprimands 16 suspensions (1-30 days) 3 terminations 9 transfers
1978	91	21	95 sustained* 3 not sustained 11 exonerated 3 unfounded	15 written reprimands 5 oral reprimands 64 suspensions (1-30 days) 10 terminations 1 transfer

†In some cases, officials felt some sustained complaints did not merit any action.
*The bulk of the 1978 internal complaints stemmed from the police strike.

Source: *Wichita Eagle*, June 28, 1979.

investigation. The manual goes on to give the Chief "authority to amend, modify, reject or approve the recommendation of any investigator or investigation board." We submit that this kind of total discretionary authority regarding complaints may be very necessary and proper as regards complaints arising from within the Department, inasmuch as the Chief is the executive and must have this authority over his employees. However, in the matter of complaints arising from citizens outside the Department, such authority could be misused or misunderstood, in such a manner as to suspect denial of individual rights, due process, and a full and fair investigation and disposition of the complaint. This would have the effect of undermining confidence in the minds of many citizens; we submit this is indeed the case at hand.

In our statement to the City Commission January 2 [1979] we stated, "It is not enough for the police to do their job well. . . we must believe [emphasis in original] that they do their job well." There are several possible manners of redress. Our recommendation to the City Commission was for a review board to be created by the Commission from prominent and qualified

* Alfred James III, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979.

members of the community, whose task it would be to process citizen complaints and make recommendations to proper authorities. There is additionally the possibility of expanding the existing Ombudsman's office to handle all citizen complaints against the police department.⁴²

Following the Herman Hill episode, in which police used tear gas to disperse a predominantly white crowd attending a rock concert at Herman Hill Park, the Herman Hill Involvement Group (HHIG) pushed for a citizens review body. At a meeting of the city commission on May 22, 1979, Jerry Sherwood, representing the group, presented such a proposal.⁴³ Thus far the city commission has not acted favorably on the proposal.

Wichita Grievance Office

In Wichita there is already the possibility of external review. The Wichita Community Grievance Office established by city ordinance on July 10, 1972, authorizes the grievance officer to investigate city and county agencies jointly operated by the City of Wichita and Sedgwick County. The 1978

* Jerry Sherwood, letter to CSRO staff, received June 26, 1979.

budget of \$40,441 for the grievance office provides for a grievance officer and a part-time secretary. The grievance officer performs the staff investigations and reports to the grievance office advisory board and the city commission. The board is advisory and has no enforcement powers.⁴⁴ The board's five members include two males, three females, one black, and four whites.⁴⁵

The grievance officer receives and investigates a wide range of complaints, from barking dogs to chuckholes in the street to allegations of police brutality. The office may review and investigate and recommend changes in procedures and codes, mediate disputes between neighbors, and further good rapport between elected persons and city employees and the public.⁴⁶ Frederick Linde, grievance officer for the city of Wichita, testified at the Advisory Committee open meeting on February 16, 1979, as to his office's jurisdiction:

The office is empowered to hear, investigate, and reach conclusions on all types of citizens' complaints against all parts of city government. The police department falls within the ordinance and with the possible exception of issues of high sensitivity and investigations being conducted within the jurisdiction of the FBI, the grievance office will handle citizens' grievances against the police and police actions.

Our role is to determine that the department follows the laws, city codes and regulations, and department policies. We look for departures, and if we detect areas where there have been departures and changes are desirable, we advise the department head, city manager, or city commission. So far as police department regulations are concerned, physical and verbal abuses and all other kinds of brutality are prohibited. If there is proof of violation, we uphold the grievant and conclude the grievance has been proven.⁴⁷

In August 1978 several blacks filed complaints with the grievance officer alleging that Wichita police officers had used excessive force on August 13, 1978, during a confrontation at Church's Chicken, a local fast-food restaurant in the black commu-

⁴⁴ City of Wichita, *Grievance Office, 1978 Grievance Office Annual Report* (1979), p. 1.

⁴⁵ Transcript, vol. II, p. 38, line 10.

⁴⁶ City of Wichita, *Grievance Office, 1978 Grievance Office Annual Report* (1979), p. 31.

⁴⁷ Frederick Linde, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, p. 1.

nity. The grievance office reported its action in this matter as follows:

Since May 23, 1977, the office has heard a total of 3,150 grievances of all kinds. Of these, 85 or 2.7 percent involve areas of police operations which we interpreted to possibly impute aspects of brutality, gross misconduct and other types of misfeasance and malfeasance by police officers. We emphasize that the findings at this point are strictly preliminary and before any investigation.

Investigation of these complaints revealed only one which was actually valid. In this case it was verified that a police officer made contact with the body of a juvenile. However, there was no indication that the officer was acting maliciously nor that the contact was more than an inadvertent reaction to the juvenile's own actions and refusal to obey a valid order.⁴⁸

The grievance office reported that most complaints against the police department fall into these categories: "protesting denial of a request of special services and favors; objecting to a traffic citation or traffic investigations; protesting actions during investigations; demanding actions against family or neighbors which cannot legally be granted."⁴⁹

In his statement the grievance officer concluded that "Based on the size of the city departments and exposure to the public, the records of the police department are good."⁵⁰ For 1978 the five largest city departments generated the number of complaints shown in table 6.2.

Although the grievance office reported very few cases involving the police in its list of significant and interesting cases, these examples reflect the thrust of the office's activities on complaints against the police department:

- Two juveniles complained about being physically abused by police officers. The grievance officer was able to verify that one of the grievants had been slapped or shoved during the investigation.⁵¹
- The police department was accused of brutality. The complainant was driving his car, saw an approaching police car, jumped from the car,

⁴⁸ Ibid. The disparity between the assertion that the investigations had not been conducted in the first paragraph and the conclusions in the second is inexplicable.

⁴⁹ Ibid., p. 2.

⁵⁰ Ibid.

⁵¹ City of Wichita, *Grievance Office, Report of the Wichita Community Grievance Office to the Advisory Board, Aug. 26, 1978-Sept. 25, 1978*, p. 5.

TABLE 6.2
Complaints Filed with the Wichita Grievance Office

Department	Total staff	Complaints	% of all complaints	Ratio staff/complaint
Police	505	172	9	1:0.34
Fire	421	9	0.5	1:0.02
Public works	336	843	44	1:2.5
Health	112	250	13	1:2.2
Park	320	28	1.5	1:0.09

Source: Wichita Grievance Office, statement by Frederick A. Linde, Grievance Officer, Feb. 16, 1979.

ran and hid in some bushes. The officer searched the area with drawn revolver. This was the basis of the brutality claim. The officer was proper and within police policy and regulations.⁵²

- The daughter of a handicapped driver complained about being denied a temporary "disabled driver permit" by the police department. The police department has no authority to issue permits, but we did get one through the efforts of the Governor's Wichita Branch Office.⁵³

- An automobile was impounded by police order in 1975. In 1978 the owner charged her car had been confiscated because the police department "refused to release it." A release dated July 1975 was sent by the police to her attorney. There was no grievance.⁵⁴

The 7-year statistical comparison of all grievances indicates an increasing number of grievances filed each year. In addition the report notes an average investigation of 1 hour and 56 minutes at a cost of \$20.05.⁵⁵ This could mean the officer preparing a detailed charge has available slightly over 60 minutes to make contact with the witnesses and conduct the necessary interviews.

In 1978 Dr. Charles Merrifield of Kansas Newman College proposed that the grievance office be designated the exclusive "first step" in all complaints about police actions, with the power to recommend action. The grievance board held hearings at which the chief of police opposed the idea. The board, by a

⁵² City of Wichita, Grievance Office, *1978 Annual Report* (1979), p. 12.
⁵³ *Ibid.*, p. 12.
⁵⁴ *Ibid.*, p. 14.
⁵⁵ *Ibid.*, p. 7.

vote of 3 "nays" and 1 "yea," rejected the Merrifield proposal, but did reaffirm to the chief the authority of the grievance office to receive complaints against the police, to investigate, and to reach conclusions.⁵⁶

Wichita Board of Crime and Corrections

Yet another potential external review body is the Wichita Board of Crime and Corrections (WBCC). The board was established by city ordinance on May 9, 1972. The WBCC is composed of 10 members appointed by the city commission, whose function is to serve as citizen input to the police department. It is in this capacity that the board makes recommendations to the department executive, the governing body, and the city manager in all areas of policy related to law enforcement in Wichita. The board is also to serve as a community relations board to facilitate communication between the community and the police department.⁵⁷ Three of the current board members are black.⁵⁸

Available information related to the establishment of the Wichita Board of Crime and Corrections dates back to January 1972. At that time, at the request of Commissioner Garry Porter, a proposal for the Wichita Board of Crime and Corrections was presented. The intent of the proposal was to include as much public participation as possible in an advisory capacity to the city's law enforcement program. It was decided that the issue should be

⁵⁶ City of Wichita, Grievance Office, *1978 Annual Report*, p. 6.
⁵⁷ City of Wichita, An Ordinance Creating a Wichita Board of Crime and Corrections. . . (Ord. 32-152), May 9, 1972.
⁵⁸ Edwana Collins, letter to Benjamin H. Day, Aug. 7, 1979.

referred to the Coalition Planning Board task force for its recommendation.⁵⁹

On February 1, 1972, the board of city commissioners again reviewed the proposal. During that meeting city staff presented Research Assistance Report No. 70 on the subject of police advisory/review boards. This report reviewed the police department organization, including its public relations and complaint-handling functions; summarized the pros and cons of police advisory/review boards; and reviewed alternatives available for handling citizen complaints pertaining to police activities. The intent of the report was to draw attention to the opposing viewpoints in order to provide interested parties with an up-to-date, indepth summary for both sides of this controversial subject. The report was received by the city commissioners and referred to the public safety and administration of justice task force of the Coalition Planning Board for a recommendation.⁶⁰ Several meetings were held by the task force, culminating in a vote on February 10, 1972, by the Coalition Planning Board to support the following goal statement:

It is recommended that the concept of a Police-Community Relations Advisory Committee be adopted to maximize community input as it relates to optimizing the police-community relations, but that the specific details of how it should be appointed and who should serve be further considered by the process of community goals.⁶¹

On February 16, 1972, the GOALS Steering Committee met and voted unanimously to adopt the following motion:

"It is recommended that a Police-Community Relations Advisory Committee, representative of majority and minority peoples, be implemented by the City Commission to maximize community input as it relates to optimizing the police-community relationship."⁶²

These recommendations were then presented at the February 22, 1972, meeting of the board of city commissioners. Former Police Chief Floyd Hannon suggested that this board be composed of laypersons appointed by the chief of police to assist him in receiving citizen input. This suggestion was not

⁵⁹ City of Wichita, Budget and Management Division, *Research Assistance Report No. 20* (May 3, 1978).
⁶⁰ *Ibid.*, p. 1.
⁶¹ *Ibid.*, p. 1.
⁶² *Ibid.*, p. 2.

adopted. "The City Commission voted to direct the City Manager to prepare an ordinance establishing a Board of Crime and Corrections, and *the Board be advisory and not a review board.*" (emphasis added)⁶³

The WBCC has never received a budget for staff support, and the police department currently provides staff to prepare agendas, minutes, etc. The minutes for the board until February of 1978 were taken by the administrative secretary for the chief of police. Starting in February 1978 the meetings were recorded; the executive assistant for the chief of police then reviews the recording of the meeting and prepares the official minutes for the chairperson's signature.⁶⁴

The police department is represented at the meetings by the police chief and his executive assistant. Other members of the police department only attend to answer questions or present information to the board.⁶⁵

The WBCC proposed to the city commission that funds be provided to it for the purpose of hiring a secretary effective June 1, 1978. The city concluded that funds were not available to hire this staff for 7 months at a cost of \$5,699. In addition, the city concluded that the proposed 1979 budget request of \$48,660 for the WBCC staff would have to be ranked along with other city programs during the zero-based budget rankings for 1979.⁶⁶ Edwana Collins, as chairperson of WBCC, told the Advisory Committee:

I personally was responsible for withdrawing the proposal [for funds for WBCC] when it was apparent that the money would have to come out of the budget for the Police Department and that substantial cuts were imminent in that budget as proposed by the chief. Chief LaMunyon had plainly stated to the Board that he would tolerate it on one condition, that being that the Board never compete with him for his funding resources. It was entirely possible with the make-up of the City Commission at that point in time, that some sort of funding might have been granted to the WBCC but it would have meant open warfare with the chief.⁶⁷

The effectiveness of the WBCC has been questioned. On January 30, 1979, Betty J. Schountz, an active leader of the local American Civil Liberties

⁶³ *Ibid.*, p. 2.
⁶⁴ *Ibid.*, p. 8.
⁶⁵ *Ibid.*, p. 8.
⁶⁶ *Ibid.*, p. 9.
⁶⁷ Edwana Collins, letter to Benjamin H. Day, Aug. 7, 1979.

Union chapter, resigned after serving more than 2-1/2 years on the WBCC, claiming that the board was ineffective and lacked cooperation from the chief of police.⁶⁸

The chief of police met with the city budget office staff on May 1, 1978, and stated the board had no valid function; in his opinion, there was no recognizable need for the board; there were no blacks or other minorities on the board; special interest groups were represented on the board; the board's activities were counterproductive; the function of the board could be handled more effectively by the Citizen Participation Organization (CPO); he (the police chief) would prefer to not be involved directly with the board at all; and he concurred with the recommendation regarding the WBCC that was presented in 1975 by the Carl S. Becker Company (consultants) of Denver, Colorado, in its study entitled, *Manpower-Organization Study for Wichita, Kansas Police Department, 1975*. The recommendation as presented on page 227 of the study was the following: "The value of the Board is dubious, given its present role. Therefore, it seems timely for the City Commission to repeal ordinance 32-152 since the Board appears to be a non-essential one." The chief also sent a memorandum dated March 4, 1977, to the city manager stating there was no need for the Wichita Board of Crime and Corrections.⁶⁹

In response to questions about the operations of WBCC, former Chairperson Edwana Collins stated the WBCC had recently conducted a professional survey of community attitudes about police officers. In the past it had set up neighborhood meetings that were very poorly attended or that became shouting matches between citizens and the chief of police.⁷⁰

In response to Advisory Committee questions as to what should be done to improve police-community relations in Wichita, Ms. Collins stated ". . . I think there needs to be some communication between individual members of whatever communities are in confrontation; in this instance it's the black community. . . since this is a predominantly white community. . . it's not aware of how biased it is."⁷¹

Ms. Collins emphasized at the factfinding meeting:

. . . I think there's a need for the kinds of things that the board of crime and corrections is trying to do. For one thing. . . I think the police role needs to be more narrowly confined and, if that

⁶⁸ *Wichita Eagle*, Jan. 30, 1979.

⁶⁹ City of Wichita, Budget and Management Division, *Research Assistance Report No. 20*, p. 12.

is true, then somebody needs the overall review of the total criminal justice system, including corrections and including all social problems, and so forth.⁷²

Alternatives to Civilian Review

A serious critique of civilian review efforts has been made by Professor Gerald Caiden of the University of Southern California:

Actually as a means for ending police misconduct, civilian review was suspect. It was based on several incorrect assumptions. As a means of restraining police, emphasis on redressing grievances of victims was "ill-founded, and unfortunate" and theoretically untenable and impractical. Misconduct was rewarding and easy to hide. Punishment was a poor deterrent that was evadable, delayed and lenient—"a transparent bluff which can be easily ignored"—and tended to be dysfunctional. The victims who most needed civilian review were the ones least likely to take advantage of it. They had a low propensity to complain, as a cultural factor, and as social marginals, they lacked "the initiative, resources, fortitude and skills to fight the injustices inflicted on them." They were easy prey for police and would on no account want to involve themselves in an adversary process against the police. Even if they went so far as to complain just to inform and to encourage police executives to respond to general charges, they would not persist: they would rather drop their complaints and not cooperate with investigators. Anyway, it was virtually impossible to prove their cases beyond a shadow of doubt, simply because they were too easily outsmarted or the police were too ingenious in suppressing misconduct. Should they persist and find their charges sustained, they might receive satisfaction in being vindicated, but there was no guarantee that they would not continue to be victimized by the same offender or that the offender's peers would desist or that any police executive would feel the need to act once a penalty had been imposed. Even a perfect disciplinary system and complaint-handling process could not prevent undesirable police behavior, which was rooted in police practices, the police officers' view of the world and their place in it, police administrative and supervisory

⁷⁰ Transcript, vol. II, pp. 47-48.

⁷¹ *Ibid.*, p. 48, lines 9-16.

⁷² *Ibid.*, p. 50, lines 10-16.

ry arrangements, group norms and ineffectual social controls.⁷³

Part of the reason for this resistance, Professor Caiden states, is that:

[The police]. . . did not see [civilian review boards]. . . as criticisms of police service delivery but as mischief making. . . Civilian review failed because the police would not have it and successfully brandished it as something un-American.⁷⁴

Another reason, Professor Goldstein of the University of Wisconsin-Madison points out, is the nature of the evidence needed to prove police misconduct:

Those most likely to witness police actions are other police officers. It follows that review of a specific incident often is heavily dependent upon the testimony of other officers. But police will rarely incriminate a fellow officer. They will either support the officer's actions or deny knowledge of the incident. This attitude has come to be referred to in police circles as the blue curtain.

those who work in the police field say that the code of secrecy among police officers is tighter and more absolute than in other fields.⁷⁵

The *Wichita Eagle* was told by one unnamed vice squad detective that "Policemen will cover for another policeman on almost anything except stealing, queering, chasing (women) or drinking beer on duty."⁷⁶ Consequently, Professor Goldstein points out, the police administrator who attempted to use the review process, or any open process, faced difficulties:

Well-intended administrators committed to open and fair investigation of citizen complaints are especially vulnerable to allegations that morale, under their leadership, has declined. Important as morale may be, it is not an objective to be pursued independently at any cost. . . So a police administrator. . . must also be prepared to do battle in the public forum in response to the charge that personnel are unhappy and morale is low.⁷⁷

⁷³ Gerald E. Caiden, *Police Revitalization* (Lexington, Mass.: Lexington Books, 1977), pp. 194-95.

⁷⁴ *Ibid.*, p. 194.

⁷⁵ H. Goldstein, *Policing a Free Society* (Philadelphia: Ballinger Books, 1977), p. 165.

⁷⁶ *Wichita Eagle*, June 28, 1979.

One solution is limiting the discretion of officers to act:

. . . Chief Edward Davis of Los Angeles strongly supports an aggressive posture by police in spelling out their policies. He responds to the concerns of city attorneys by contending that, while the existence of policies may cause some additional problems for them in the immediate future, the better guidance that policies convey to operating personnel will, in the long run, reduce the kind of behavior that gives rise to citizen complaints and subsequent legal actions.⁷⁸

Professor Goldstein points out that limiting discretion has been endorsed by the National Advisory Commission on Criminal Justice Standards and Goals, the American Bar Association, and the board of officers of the International Association of Chiefs of Police. Draft instructions are currently available in such areas as searches, lineups, stopping and questioning suspects, domestic conflicts, labor-management strife, public inebriates, mentally ill, and juvenile offenders.⁷⁹ But the bottom line of any effort is the reaction of an officer's immediate supervisors:

Enough pressure should be exerted on a precinct commander, for example, to result in his viewing an overly aggressive police officer who is constantly offending citizens as a major administrative problem, rather than—as it is often the case—an extremely valuable employee who frequently gets into trouble.⁸⁰

Existing External Review

Federal Attorney

The U.S. attorney's office is charged with the responsibility of prosecuting cases where individuals were deprived:

under color of any law. . . of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States on account of such inhabitants being an alien or by reason of his color or race.⁸¹

⁷⁷ Goldstein, *Policing a Free Society*, p. 167.

⁷⁸ *Ibid.*, p. 124.

⁷⁹ *Ibid.*, pp. 116-17.

⁸⁰ *Ibid.*, p. 169.

⁸¹ 18 U.S.C. 241, 242.

A person's right to be free from unlawful assault by law enforcement officers has been made definite and is applicable to the statute above.⁸²

The Advisory Committee was told by the U.S. Attorney for Kansas, James P. Buchele, that, nationwide, U.S. attorneys' offices and the Department of Justice during the fiscal year ending September 30, 1978, received 10,000 complaints alleging criminal interference with civil rights. Of those complaints, one-third were referred for investigation. However, only 52 cases were presented to Federal grand juries and 30 indictments were returned. Cases were brought against 66 individuals of whom 49 were police officers.⁸³

In Kansas, the U.S. attorney's office instituted investigations on 38 complaints during fiscal year 1978. Of those, approximately 25 involved police action of which a dozen occurred in Wichita.⁸⁴

Complaints of police misconduct may be filed with any local U.S. attorney's office. Mr. Buchele said that his office may initiate action in civil rights violations when it is deemed to be appropriate.⁸⁵ But he stated:

we believe that most matters involving police misconduct can best be handled by police department administrative action, or by State or local prosecution.⁸⁶

The U.S. attorney stated that if a complaint warrants an investigation, it will be turned over to the FBI to conduct a preliminary investigation and that:

Upon conclusion of the preliminary investigation, I will make a prosecutive decision; that is, whether or not to decline, to proceed with further investigation, or make a presentment to the grand jury. At this stage, all information is forwarded to Civil Rights Division of DOJ, which retains the final prerogative on whether or not to prosecute.⁸⁷

Many members of the minority community had no knowledge of the role of the U.S. attorney in handling civil rights cases. However the U.S. attorney's office did involve itself in a recent well-publicized allegation of excessive use of force. This charge was filed by juveniles regarding their apprehension December 17, 1978, after a high speed chase was punctuated by an officer's gunfire.

U.S. Attorney James Buchele said a Federal investigation into the December 17, 1978, incident in Wichita found no prosecutable violation of the Federal civil rights laws.⁸⁸ Mr. Buchele said that his probe could not corroborate the allegations made by three black youths that lawmen struck them, used excessive force, uttered racial slurs, and made unprovoked threats at them.⁸⁹

The *Wichita Eagle* on February 23, 1979, quoted Mr. Buchele:

"I don't think in a case like this that there's any way to clear someone. . . . What it boils down to is the young men's word against the officers' word. We found no corroboration for either side."⁹⁰

In his press release at the conclusion of the inquiry, Mr. Buchele stated:

The 10th Circuit Court of Appeals has consistently ruled, and as recently as last week in a civil case states that racially abusive language and life threatening with a sawed-off shotgun by a law enforcement officer was not actionable. In a criminal case the burden must be considered to be even greater.

We do not condone in any way the use of racial slurs. However, it is not by itself a federal criminal violation, and therefore it is more amenable to departmental administrative action.

Conclusion

In a criminal case the evidence must establish that a crime was committed beyond a reasonable doubt. As to the allegations of physical abuse in this case, there is a lack of corroboration and sufficient evidence to support a criminal charge.

Our office was prepared to prosecute any officer for unreasonable use of physical force on persons in custody in the event that it could have been established.⁹¹

In a letter to the Advisory Committee, Mr. Buchele stated:

⁸² U.S. v. Stokes, 506 F.2d 771.

⁸³ James P. Buchele, statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979.

⁸⁴ Transcript, vol. II, p. 188, lines 15-25.

⁸⁵ Ibid., p. 184, lines 22-24.

⁸⁶ Ibid., p. 184, line 24, to p. 185, line 2.

⁸⁷ Ibid., p. 185, lines 11-18.

⁸⁸ *Wichita Eagle*, Feb. 23, 1979.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ James Buchele, attachment to memorandum to CSRO staff, Aug. 22, 1979.

Criminal statutes are designed to punish overt criminal acts. They carry the highest burden of proof in our system of jurisprudence, beyond a reasonable doubt. Prosecution under these statutes requires that *specific intent* be established, that is to say that the police officer intended to act outside the law.

Criminal statutes do not lend themselves to solving human conflict, but prescribe parameters which cannot be exceeded.

Section II of your report goes to the heart of this problem, in my opinion, when the broad parameters under which police officers in Kansas may exercise great latitude in using deadly force are discussed. The Model Penal Code may state a better law, but I am able to prosecute only when the *existing* [original emphasis] law is clearly violated. Just because the police officer may have erred or otherwise used bad judgment under the circumstances does not necessarily place him outside the law. Our prosecutive standard requires before we file charges a determination that the conduct violates federal law *and* [original emphasis] that there is sufficient admissible evidence to sustain a conviction.⁹²

Kansas Attorney General

In addition to the authority of the district attorney's office, the State attorney general may investigate allegations of excessive use of force by law enforcement officials. The attorney general did probe allegations of brutality by police and sheriff's officers in the Espinoza incident, which occurred on December 17, 1978.⁹³ He took no action.

Kenneth Miller, executive director of the Northeast Task Force of Concerned Citizens, told the Advisory Committee that the task force would file all future complaints with the Kansas Attorney General's office.⁹⁴

District Attorney

The Advisory Committee also examined the role of the district attorney's office in handling cases of excessive use of force. Vern Miller, district attorney for the 18th judicial district, which includes Wichita and Sedgwick County, told the Committee that his office investigates complaints of police misconduct and homicides by police officers.⁹⁵

⁹² James Buchele, letter to Benjamin H. Day, Aug. 9, 1979.

⁹³ *Wichita Eagle*, Jan. 19, 1979.

⁹⁴ Transcript, vol. II, p. 90, lines 4-6.

⁹⁵ Ibid., p. 168, lines 5-21.

⁹⁶ Ibid., p. 169, lines 4-10.

Mr. Miller told staff that there is no doubt in his mind that some police officers are afraid of certain situations and will hit a person before they have had an opportunity to assess the situation. If a complaint is filed with the DA's office, that complaint would be investigated by the DA's staff or by the Kansas Bureau of Investigation.⁹⁶ Mr. Miller told the Advisory Committee:

If criminal charges are warranted, we initiate those charges; if no crime has been committed, but it appears that there might be some unreasonable actions or some wrongdoings by the officers involved, we make recommendations to the authorities that have that responsibility.⁹⁷

Prior to the Espinoza incident the DA's office had not received or investigated any complaints of excessive use of force.⁹⁸ Mr. Miller indicated that the primary complaint coming from the minority community is that it is not getting enough law enforcement.

Mr. Miller stated that some of the problems of excessive use of force are perhaps caused by harassment of police officers. But he wants each and every complaint of excessive use of force investigated by the responsible agency.⁹⁹

Criminal charges in homicides or shootings by police officers are filed against the officer as a matter of course. In the last 2 years charges have been filed against four police officers.¹⁰⁰

The district attorney had been asked by the northeast task force to investigate what it believed to be excessive use of force. On December 23, 1978, Mr. Miller said that his investigations into citizen complaints of police misconduct showed Wichita officers were justified in shooting at three black youths during a theft.¹⁰¹ The district attorney also shared his feelings about the need to have an independent investigation when police misconduct is an issue:

We do not use the people who are in the department that we're investigating for our investigators. We use outside agencies because we think that gives us a clear, perhaps perfect, picture, and we don't want any allegations that somebody might be covering our information. We interview the victims as well as the officers

⁹⁷ Ibid., p. 168, lines 16-20.

⁹⁸ Vern Miller, interview in Wichita, Oct. 17, 1978.

⁹⁹ Ibid.

¹⁰⁰ Transcript, vol. II, p. 168, lines 10-22.

¹⁰¹ *Wichita Eagle*, Dec. 23, 1978.

involved, and if any other person has knowledge of the incident, of course, we interview them.¹⁰²

Sheriff's Department

The Sedgwick County Sheriff's Department stated that it does not have a formal internal review process. The process depends upon the manner in which a complaint arises. Many complaints are screened at the lower supervisory level if the complaint is initially made to a supervisor and if he determines that it is not of a grave or serious nature.¹⁰³

If a citizen complaint is deemed to be serious by the supervisor, he communicates it to his commanding officer who may deal with it at his level or may pass it higher in the command structure. When a matter is deemed serious, an internal affairs board of command staff is formed. That board then determines what action should be taken in regard to an

¹⁰² Transcript, vol. II, p. 168, lines 9-16.

¹⁰³ Bruce Kirkpatrick, letter to CSRO staff, Jan. 11, 1979.

officer's actions, subject to review by the sheriff. An officer may appeal this decision to the Sedgwick County Civil Service Board and to the State district courts if dissatisfied with the administrative decision.¹⁰⁴

The total number of complaints received against officers in the sheriff's department is not recorded due to the informal nature of the internal review process. The only available information on the total number of complaints indicates a total of eight complaints filed in 1976, 1977, and 1978 alleging excessive use of force. In 1978 one complaint alleged sexual misconduct, and in 1977-78 several complaints alleged search and seizure violations. In the 3 years reported there had been one police officer terminated, two officers suspended, and one demotion for misconduct. The terminated officer was white and the demoted officer was Mexican American.¹⁰⁵

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

7. Affirmative Action Employment Efforts of the Wichita Police Department and Sedgwick County Sheriff's Department

The Advisory Committee chose to review affirmative action efforts by the police and sheriff's departments, both because they are legally mandated and because they are closely connected to police performance. Professor Gerald E. Caiden of the University of Southern California has summarized the argument for greater affirmative action efforts:

The unrepresentative nature of the police profession, its white masculinity, has definitely shaped the nature of policing in the United States and led to the persistence of questionable police styles. Had the police been more representative from early on, they probably would have been less prone to violence and aggressive behavior, more effective in delivering police services, more responsive to communal needs, more humane and understanding, less discriminatory, much closer to the public they serve and much less set in their ways. Patrolwomen, for instance, would have aroused less antagonism, stimulated less fear and provoked less violence.¹

The National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG), in its review of police standards, put the matter another way: "to police a minority community with only white police officers can be misinterpreted as an attempt to maintain an unpopular status quo rather than to maintain the civil peace. Clearly the image of an army of occupation is one that the police must avoid." The NACCJSG concluded that the way to

¹ Gerald E. Caiden, *Police Revitalization* (Lexington, Mass: Lexington Books, 1977), p. 129.

² National Advisory Commission on Criminal Justice Standards and Goals, *Police* (Washington, D.C.: Government Printing Office, 1979), p. 330.

correct this is to create a police force which mirrors the ethnic composition of the population it serves.²

Equal opportunity efforts are also required by Federal, State, and local regulations. Under Title VII of the 1964 Civil Rights Act, as amended, discrimination is prohibited. But even more stringent requirements are placed upon police agencies that receive Federal funds from the Law Enforcement Assistance Administration (as do both the Wichita Police Department and the Sedgwick County Sheriff's Department). Each recipient must develop and implement an equal employment opportunity program that remedies any discriminatory practices.³ Law enforcement agencies that benefit from Federal general revenue sharing funds (as do both agencies discussed here) are subject to review by the Office of Revenue Sharing to ensure that there is no discrimination in employment.⁴ The Kansas Act Against Discrimination and the Wichita city ordinance that adopts the Kansas act by reference as local law provide the possibility of awards of back pay and compensatory damages to persons who are victims of discrimination in employment.

Utilization of Minorities and Women

Although there had been black police officers in Wichita as early as 1896, the first "colored detective" retired in 1940, not to be replaced until 1953.⁵ The first commissioned policewoman was appointed in 1916. The first female police officer to patrol a beat with the same responsibilities as her male counterpart was appointed April 12, 1972. The first

³ 42 C.F.R. 106.

⁴ 31 C.F.R. 51.53(a).

⁵ *Wichita Eagle*, Jan. 30, 1953.

TABLE 7.1
Number and Percentage of Minority Officers
in Wichita Police Department
(commissioned officers)

	1973	1976	1978	1979
Total				
Black	13 (3.1%)	14 (4%)	17 (4.4%)	15
Hispanic	3 (0.7%)	5 (1.25%)	7 (1.8%)	10
Female	13 (3.1%)	14 (4%)	14 (3.6%)	13
American Indian	0		2 (0.5%)	4
Asian American	1 (0.2%)		3 (0.8%)	2

Note: The police department did not provide a basis for calculating percentages for 1979. Lt. Col. Stout stated that 7.94 percent of its commissioned officers were minorities. Efforts to verify the data here were frustrated by the refusal of the city attorney to provide data requested.

Sources: 1973—City of Wichita 1973 Equal Opportunity and Affirmative Action Program; 1976—*Wichita Eagle and Beacon*, July 25, 1976; 1978—Data provided by Wichita Police Department, on file in CSRO; 1979—Lt. Col. Bobby Stout, Statement to the Kansas Advisory Committee, 1979.

female commissioned officer to hold a supervisory position was appointed to the rank of captain in 1935.⁶ Not until 1967 was there a black lieutenant. In 1937 the department had a female captain in charge of the juvenile section.

The first Hispanic officer joined the force in 1933. Hispanic officers have been promoted in the police department; however, none has achieved a supervisory rank.⁷

The NACCJSG has stated that:

1. Every police agency should engage in positive efforts to employ ethnic minority group members. When a substantial ethnic minority population resides within the jurisdiction, the police agency should take affirmative action to achieve a ratio of minority group employees in approximate proportion to the makeup of the population.⁸

The overall record in achieving the goals recommended by the NACCJSG is evident from the changing composition of the force (see table 7.1). In

⁶ Capt. Jordan D. Jones, letter to CSRO staff, Aug. 1, 1979.

⁷ Ibid.

⁸ National Advisory Commission on Criminal Justice Standards and Goals, *Police*, Standard 13.3, p. 329.

⁹ *Wichita Eagle*, Aug. 23, 1971.

1971, 2.5 percent of the Wichita police force was black, while the black population of the city was 9.3 percent. There was one black lieutenant, one black detective sergeant, one black detective, and six black patrolmen.⁹

In April 1973 blacks constituted 3.1 percent of the 415-person department commissioned work force; there were 13 black, 3 Hispanic, 1 Asian, and 13 female commissioned officers. The affirmative action plan of that year called for an increase to 77 black, Hispanic, or Asian officers. There was no plan to increase utilization of women as officers.¹⁰

In 1976 blacks were less than 4 percent (14) of the 403-member force, women 4 percent (14), and Hispanics 1.25 percent (5).¹¹

In August during 1978, the police department reported that there were 17 black officers (4.4 percent of the force), 8 Hispanics (2.1 percent), 4 American Indians (1.0 percent), and 3 Asian Americans (0.9 percent). Women were 3.4 percent of the force (13 officers).¹²

¹⁰ City of Wichita, *1973 Equal Opportunity and Affirmative Action Program for Employment Practices* (June 1973), pp. 23-24 and 57.

¹¹ *Wichita Eagle and Beacon*, July 25, 1976.

¹² Data provided by Wichita Police Department on file in CSRO.

The police department told the Advisory Committee that as of February 1979 there were 15 black officers, 10 Hispanic officers, 4 American Indian officers, 2 Asian American officers, and 13 female officers.¹³ Robert Palacioz, job developer for SER Jobs for Progress, complained that there were too few Spanish-speaking officers to deal with the Spanish-speaking suspects and arrestees.¹⁴

The Advisory Committee does not have the same historical record for the sheriff's department. As of November 1978, the department reported that of 170 employees, 5.9 percent (10) were black males, 1.2 percent (2) were white females, and 1.8 percent (3) were black females. Of 142 persons in the protection service, 6.3 percent (9) were black males, 1.4 percent (2) were Hispanic males, 0.7 percent (1) was an American Indian male, and 7.0 percent (10) were white females. The detective bureau had no minority officers; the traffic investigators unit had one American Indian officer. The only black female employee of the department worked in the records division. Women were concentrated in clerical functions; only two were detectives (only in 1974 were women allowed to become detectives), and one was in road patrol. There were two women in the judicial service division.¹⁵

Recruitment

Consultants from the Marquette University Center for Criminal Justice Agency Organization and Minority Employment Opportunities, in a 1975 report, requested by the Wichita Police Department, concluded:

racial parity could probably be achieved with minimal expenditures over a period of one year at the most by meeting the Department's turnover rate (10 percent) with an intensive and selective minority hiring program.¹⁶

The National Advisory Commission on Criminal Justice Standards and Goals has suggested: "Every police agency seeking to employ qualified ethnic minority members should research, develop and implement specialized minority recruitment methods."¹⁷

¹³ Bobby Stout, Statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979 (hereafter cited as Stout Statement), attachment K.

¹⁴ Transcript of Open Meeting on Police Concerns by the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15-16, 1979 (hereafter cited as Transcript), vol. 1, p. 70, lines 9-18; p. 72, lines 21-23.

¹⁵ *Wichita Beacon*, July 12, 1974; and Bruce Kirkpatrick, sheriff's legal advisor, letter to CSRO staff, Jan. 11, 1979.

The Wichita Police Department provided data on new officers employed by the department for the years from 1970 through the first half of 1979, shown in table 7.2. During that period never less than 62 percent of those employed were white males. For the 9-1/2 years the proportion was 83 percent. Although during that time 6 percent of those employed were black males, this proportion ranged from highs of 12 percent in 1972, 11 percent in 1979, and 21 percent in 1975 to lows of none in 1978 and 1971. Four percent of the recruits during the period were Hispanic males, but they were all recruited in 4 years. Four percent of those added to the force during this period were white females, but this reflects additions amounting to 10 percent in 1972, 7 percent in 1973, 8 percent in 1975, and smaller proportions in other years except 1970, 1971, and 1979. One percent of those employed during the 9-1/2-year period were American Indian males or black females.

The *Wichita Eagle* reports that in the two recruit classes preceding August 1971 there were no black officers.¹⁸ The data show two Hispanic officers were hired that year, but no black or female officers. In 1972, the table shows, a substantial number of black and female officers were hired. In 1973 Chief Hannon announced a stepped-up effort to recruit minority women, none of whom had been recruited prior to that year. He announced a plan to hire six. But Capt. Robert Peach, assigned to recruit them, later told the *Wichita Eagle and Beacon* that he had been ordered to recruit only two.¹⁹ Table 7.2 shows that he, in fact, got only one onto the force in 1973. Although the police assigned a minority officer to the training section as a recruitment officer for several years, this practice was discontinued because of inadequate funding in 1974.²⁰

During this period, recruitment had been shared between the city personnel department and the police department. Commenting on this, consultants from Marquette University stated:

It was obvious to the consultants that the City Personnel Department as presently staffed, is far from adequate for engaging in the type of

¹⁸ James W. Witt, Eugene M. Robinson, and William P. Krueger, *Report on Preliminary Technical Assistance Visit to the Wichita, Kansas Police Department* (February 1975), p. 6.

¹⁹ National Advisory Commission on Criminal Justice Standards and Goals, *Police*, Standard 13.3, p. 329.

²⁰ *Wichita Eagle*, Aug. 23, 1971.

²¹ *Wichita Eagle and Beacon*, July 25, 1976.

²² See below notes 22, 25, 33, and 36; and *Wichita Beacon*, July 22, 1974.

TABLE 7.2
Police Officers Employed by the Wichita Police Department, 1970-79
(percent of each ethnic group, sex hired in each year)

Year	WM	BM	HM	AAM	AIM	WF	BF	Total
1970	34 (94)	1 (3)	1 (3)	0	0	0	0	36
1971	53 (96)	0	2 (4)	0	0	0	0	55
1972	44 (73)	7 (12)	2 (3)	1 (2)	0	6 (10)	0	60
1973	33 (77)	3 (7)	2 (5)	1 (2)	0	3 (7)	1 (2)	43
1974	59 (89)	4 (6)	1 (2)	0	0	1 (2)	1 (2)	66
1975	24 (62)	8 (21)	2 (5)	0	1 (3)	3 (8)	1 (3)	39
1976	34 (83)	2 (5)	2 (5)	1 (2)	0	2 (5)	0	41
1977	26 (79)	2 (6)	2 (6)	2 (6)	0	1 (3)	0	33
1978	60 (88)	0	3 (4)	0	2 (3)	3 (4)	0	68
1979	17 (85)	2 (10)	0	0	1 (5)	0	0	20
Total	384 (83)	29 (6)	17 (4)	5 (1)	4 (1)	19 (4)	3 (1)	461

Note: Percentages indicated in parentheses rounded to nearest whole percent; thus total can exceed 100 percent. 1979 to June 1, 1979 (1 half-year).

Source: Capt. Jordan D. Jones, Commander, Planning and Research Section, Wichita Police Development, letter to CSRO staff, Aug. 1, 1979, and E. H. Denton, Wichita City Manager, letter to CSRO staff, Sept. 5, 1979.

planning and activity necessary for a minority recruitment program. It has been the experience of the consultants that recruitment campaigns carried on by Civil Service or Personnel Departments tend to be rather formal processes. More variations have been encountered in cases where police management has been free to exercise its own prerogatives with respect to innovation. Furthermore, serious candidates for police careers respond more favorably when approached by an employee of the hiring agency.²¹

In 1975 recruitment was the responsibility of Lt. Floyd D. Powell. He successfully recruited 10 minority and female rookies for the entry classes.²² The table shows 14 minority and female officers hired that year. Lieutenant Powell, recalling his efforts, told the Advisory Committee:

I recruited on a one-to-one basis because if you're going to go out and get someone to join the police department, particularly if they're going to be a minority, you've got to be able to sell the department and sell yourself, you've got to be honest and tell them what to expect and

²¹ Witt, Robinson, and Krueger, *Report*, p. 10.
²² *Wichita Eagle and Beacon*, July 25, 1976.
²³ Transcript, vol. I, p. 117, lines 9-15.

what they're going to get into, and that's exactly what I did.²³

A proposal by the Wichita Urban League to provide minority recruitment by operating a Law Enforcement Minority Manpower Project similar to one it had run in Topeka was rejected by the city. In a reply dated February 17, 1976, the city stated, in part, that it saw no reason for the project, since it was successful in recruiting minorities for law enforcement. (The county also rejected the plan.)²⁴

The *Eagle and Beacon* reported in July 1976 that only six minorities and women had been recruited, although the goal for the year was 17. In fact, the table shows only 2 black males, 2 Hispanic males, 1 Asian American male, and 2 white females were hired.

During the selection process for a new chief, in summer 1976, city manager Eugene Denton noted that "The new chief will be evaluated for, among

²⁴ Wichita Urban League, Statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 15, 1979 (hereafter cited as Urban League Statement).

other things, his success in [meeting affirmative action goals]."²⁵ At the end of that year, the *Wichita Beacon* reported that Chief LaMunyon had ordered his commanders "to hire at least one minority race officer, preferably black, for each two white officers." He stated that this order would remain in effect until the department "has an acceptable number of qualified commissioned black officers—probably about 10 percent of the total force."²⁶

The City of Wichita Personnel Division's 1976 *Annual Report of the City of Wichita* shows that during 1976 total hires in the police department were 100, of which 12 were minorities (12 percent) and 56 were women (56 percent). It shows that of 18 positions which minorities were supposed to fill, only 7 were filled by them. The department achieved 38.9 percent of its goal.²⁷

Despite Chief LaMunyon's commitment, the officer assigned to minority recruitment in 1977 was not successful. Black officers interviewed by the *Wichita Beacon* contended that:

before the department is going to fare better in recruiting blacks and other minorities it's going to have to show the people on the street that you can come on here for 20 years and retire at something higher than a detective.²⁸

The 1977 report shows that of 17 goal positions established, 14 were filled by women or minorities, a fulfillment rate of 82.4 percent. Eight other city departments had higher rates; seven city departments had lower rates.²⁹ The table shows that only six minority males and one white female were actually hired as officers.

Efforts in 1978 were not much more successful. Only 2 white females, 1 black, and 3 Hispanics were among the 50 persons who entered the recruit classes at the end of 1978 and beginning of 1979.³⁰ This was because budget cuts forced an end to the use of a temporary recruiter.³¹ Provision of a recruiter was the last of 60 budget packages proposed by the chief in February 1978. It was ranked 421st of 446 items by the city manager. (The city

²⁵ *Wichita Eagle and Beacon*, July 25, 1976.
²⁶ *Wichita Beacon*, Dec. 3, 1976.
²⁷ City of Wichita, Personnel Division, *1976 Annual Report of the City of Wichita* (1976), p. 6.
²⁸ *Wichita Beacon*, Jan. 3, 1977.
²⁹ City of Wichita, City Manager's Office, *1977 Annual Report of Affirmative Action Program* (1977), p. 4.
³⁰ Capt. William Hannon, interview in Wichita, Oct. 16, 1978. The city manager's *Equal Opportunity Program 1978 Annual Report* contains no detailed discussion of the police department.
³¹ Transcript, vol. I, p. 105, lines 17-23.

funded only packages ranked 1-334. The remaining packages numbered 335-446 were not funded.³² The table shows that no black males or females were hired; only 3 white females and 5 other minority males were hired (out of 68).

Commenting on recent efforts, Dr. Mary Jeanette Hageman, herself an expert on police recruitment, noted:

I consider it necessary for a successful recruitment program to have professional people who know what recruitment is and have some of the funds that are necessary to get the word out to the people. I have a feeling that most effective recruitment done now is by word of mouth.³³

Yet, Capt. William Hannon indicated this would not be possible. He told the Advisory Committee that funds for recruitment had been cut from the 1979 budget.³⁴ Chief LaMunyon complained that he had been told he could not recruit exclusively for minority personnel, although these were the only group underutilized.³⁵

Capt. William Dotts, formerly precinct commander in the area where most of the black citizens of Wichita live, said that he was not aware of any potential black applicants and had made no special effort to find black youth who might want to be police officers.³⁶ When funds for recruitment were cut, Chief LaMunyon said he requested that the city personnel division take full responsibility for recruitment.³⁷ This marks a return to practices Marquette University consultants had said were inefficient and ineffective.³⁸

Chief LaMunyon has suggested reasons why his department has had difficulty with implementing affirmative action:

The Wichita Police Department is the smallest Department in the nation of cities this size, yet is probably the most highly efficient. Reasons for this are our strict entry requirements, intensive training program, and promotional practices based, not upon satisfaction of affirmative action goals, but rather qualifications to per-

³² City of Wichita, *City Manager's Zero-Base Budget Message* (1979), pp. ix-xxiii.
³³ Transcript, vol. I, p. 80, lines 17-22.
³⁴ *Ibid.*, p. 105, lines 17-23.
³⁵ Chief Richard LaMunyon, Statement to the Kansas Advisory Committee to the U.S. Commission on Civil Rights, Feb. 16, 1979 (hereafter cited as LaMunyon Statement), p. 19.
³⁶ Transcript, vol. I, p. 151.
³⁷ Richard LaMunyon, interview in Wichita, Dec. 13, 1978.
³⁸ Witt, Robinson, and Krueger, *Report*, p. 10.

form the job. For the Police Department to reduce its standard in any of these activities would be to seriously jeopardize the community's welfare.³⁹

Others felt that a more representative police force could be achieved without sacrificing performance. Dr. Mary Jeanette Hageman, who has both practical experience in police work and teaches in the criminal justice field, told the Advisory Committee:

With women employed in the full range of law enforcement not only in specific cities throughout the United States but also worldwide, I find it extremely interesting that no women trained as police officers have been graduated in the last two classes held by the Wichita Police Department.⁴⁰

Prentice Lewis of the Wichita Urban League told the Advisory Committee:

the personnel policies regarding hiring, promotion, demotion, transfer and termination of black and other minority commissioned police officers . . . are viewed as having a negative effect on race relations in this community. Those same personnel policies have also caused most racial minorities to by-pass law enforcement as a career choice. In short, there is concern in the community that the Wichita Police Department is, in fact, not an equal opportunity employer.⁴¹

The city states that:

the following efforts that have been and are being made by Personnel to recruit police officers.

In September and October of 1978, the following individuals and/or organizations were contacted by phone to inform them of our needs for applicants for the position of police officer.

- (a) Wichita Urban League
- (b) Jesse Rice, Civil Rights Equal Employment Opportunity Commission
- (c) S.E.R. Jobs for Progress
- (d) ORO Development Corporation
- (e) Carl Foster, N.E., YMCA
- (f) City of Wichita, Job Teams

³⁹ LaMunyon Statement, p. 2.
⁴⁰ Transcript, vol. I, p. 77.

(g) National Association for the Advancement of Colored People

In December 1978, a letter was sent to various individuals and/or organizations to inform them of our recruitment efforts for police officers. . . .

In March of 1979, a meeting was held between representatives of the Urban League, S.E.R., City of Wichita Personnel Division, and Public Affairs Office. At this meeting various means of recruitment efforts were discussed. The following action was taken because of this meeting.

(a) Newspaper ads were placed in the El Perico, News Hawk and Observer.

(b) A representative from the Personnel Division and Police Department met with the employment staff of the Urban League, S.E.R., and Work Options for Women to discuss recruitment efforts and to answer questions.

(c) A television commercial was developed and was run as a Public Service Announcement on all three local stations.

(d) Representatives from the Police Department appeared on local television shows, Other Issues-Different Answers and Looking In, to assist in emphasizing our recruitment efforts and to answer questions about the Police Department.

(e) A special poster . . . has been developed which emphasizes minority recruitment. This brochure will be given to various organizations as part of our recruitment effort.

The above efforts resulted in the spring 1979 Police Officer training class of 20 having 3 minorities (15 percent). This was done *in spite of the fact that agencies within the minority neighborhoods have expressed a reluctance to help recruit minorities for the Police Department because they've stated it would be detrimental to their image in the black community.* [emphasis in original]

In addition, Personnel will be working with S.E.R. to develop a training program under the CETA program to train minorities for the police entrance exams.

The report also doesn't indicate that the City's recruitment effort, although the primary responsibility of the Personnel Division, is a team

⁴¹ Urban League Statement, Feb. 15, 1979.

effort and the Police Department has sent their officers with Personnel Division staff to discuss the City's recruitment effort with minority agencies and youth.⁴²

The sheriff's department does not recruit at all. Capt. John Monahan said that the department has trouble getting good black officers because minorities do not apply. He also noted that the department preferred minority males to women because it felt protective of women.⁴³ Captain Monahan admitted that a minority above the rank of patrol officer would be beneficial in establishing mutual trust and understanding with the minority community.⁴⁴

Capt. Lyman Reese claimed that he could not recruit people for the department. He claimed they had to come through the civil service department, which requires 5 years of experience before it would consider an applicant for a detective position.⁴⁵ Captain Reese stated that he has not interviewed either a black or Hispanic for a job. He has not gone out and tried to recruit, he said, because he does not feel it is his job.⁴⁶ Capt. Charles Luetkie of the jail section said he did not contact minority groups either, although he needed a Spanish-speaking person for the jail to deal with illegal aliens who do not speak English.⁴⁷ He did not feel recruiting was part of his job.⁴⁸

The supervisor of the records section, Judith Fields, told the Advisory Committee that she had received no direction from the sheriff on affirmative action. She reported that she had called SER, the Wichita State University placement center, and the Kansas State employment office in search of applicants.⁴⁹

⁴² E.H. Denton, letter to CSRO staff, Sept. 5, 1979. The Marquette University consultants' evaluation of 1975 noted similar efforts by the police department and city personnel. (Witt, Robinson, and Krueger, Report . . . pp. 8-10.) The city has offered no evidence of changes in the personnel division's capabilities to recruit (E.H. Denton, letter to CSRO staff, Sept. 5, 1979), nor does it offer evidence of more than what was described in 1975 as "rather formal processes." (Ibid. and Witt, Robinson, and Krueger, Report . . . p. 10.) The city has not responded to the statements by both the Marquette consultants and police officers with recruitment experience that effective recruitment efforts are essentially one-on-one efforts. (Ibid.) The city manager's response does not indicate that such activity is undertaken by the police department. (E.H. Denton, letter to CSRO staff, Sept. 5, 1979.)

The two persons who were representing minority groups at the March 1979 meeting cited in the letter state that they told the city that they would cooperate but would not do the city's recruitment job for it. They did remember refusing to assist the city in finding "strikebreakers" during the city's dispute with its police officers (in early 1978). (Prentice Lewis, telephone interview, Sept. 26, 1979; Richard Lopez, telephone interview, Oct. 16, 1979.) Similarly, while the Rev. D. D. Miller, who represented the NAACP, agreed that he had told the city manager recruitment of blacks would be difficult, he stated that he also explained to the city manager that recruitment would be possible if the city showed good-faith efforts to hire

One former employee told Advisory Committee staff that the undersheriff had said he wanted to hire only older women because one younger woman had told him that the officers like to "hit on" the women.⁵⁰

In the 4 years 1975-78, of 158 persons recruited for the department, 8 were white females, 2 were black males, and 1 was an Hispanic male. Although the sources contacted by the civil service department are all inclusive, on paper, D.D. Miller, president of the local NAACP, claimed that he had never been contacted by the civil service department for applicants.⁵¹ The Wichita Urban League reported that the county also turned down the opportunity to have the Urban League run a minority recruitment program.⁵²

Selection Procedures

The appropriateness of both the Wichita Police Department's and the Sedgwick County Sheriff's Department's selection procedures has been questioned.

In 1975 consultants from Marquette University identified several aspects of the Wichita Police Department's selection procedures that were discriminatory and others that might be. Although the police department has made efforts to correct these, some of the problems reported in 1975 still persisted in 1979.

The Marquette consultants recommended that the long application form be shortened so as not to be unreasonably discouraging at the start of the selection process.⁵³ This change was made.⁵⁴

The written examination used in 1975 was the Public Personnel Association's Standard Police Ap-

and promote minorities and if it modified its policing policies so that they were not discriminatory. (D.D. Miller, telephone interview, Sept. 28, 1979.) At a meeting on Sept. 27, 1979, the city manager stated that he had asked Gene Jackson of Jackson Bros. funeral home whether he would encourage his children to be police officers and that Mr. Jackson said no. Mr. Jackson denies ever making such a statement to the city manager. (Gene Jackson, telephone interview, Oct. 2, 1979.)

At the meeting on September 27, the police chief commented that only one-on-one recruiting of minorities would be successful (Richard LaMunyon, interview in Wichita, Sept. 27, 1979), quite different from that now practiced by the city, but sometimes undertaken by the police in the past.

⁴³ Capt. John Monahan, interview in Wichita, Oct. 17, 1978.

⁴⁴ Ibid.

⁴⁵ Capt. Lyman Reese, interview in Wichita, Oct. 18, 1978.

⁴⁶ Ibid.

⁴⁷ Capt. Charles Luetkie, interview in Wichita, Oct. 17, 1978.

⁴⁸ Ibid.

⁴⁹ Judith Fields, interview in Wichita, Oct. 17, 1978.

⁵⁰ Henrietta Carson, interview in Wichita, Oct. 18, 1978.

⁵¹ Transcript, vol. I, p. 58.

⁵² Urban League Statement, p. 2.

⁵³ Witt, Robinson, and Krueger, Report . . . p. 25.

⁵⁴ Richard LaMunyon, interview in Wichita, Dec. 13, 1978.

titude Test. By 1975 this test had been ruled discriminatory in *Bridgeport Guardians v. Bridgeport Civil Service Commission*, 5 F.E.B. 579 (D.C. Conn., 1972).⁵⁵ The department introduced the International Personnel Management Association's (IPMA) Police Officer Test J:A-1(M).⁵⁶ While this has been validated for use by 87 agencies in California and Nevada, no validation study has been done in Wichita.⁵⁷ IPMA points out:

This, however, does not mean that our test is invalid for use by the Wichita Police Department. If a job analysis were conducted in the Wichita department and it was shown that job similarity existed between the police department of Wichita and those departments in the SCC study, then it would be logical to assume a transportability of test validity between the agencies in California and Nevada and the agency in Wichita. (Section 782 of Uniform Guidelines)⁵⁸

IPMA emphasizes: "A test that is shown to be valid in one jurisdiction may not automatically be considered valid for a job with the same title in a similar jurisdiction. . . . The responsibility for use of valid selection procedures, including thorough job analysis, rests with the using agency."⁵⁹

The polygraph portion of the selection process was used in 1975 and is still used, according to the applicant process description supplied by the department.⁶⁰

The application form used prior to 1975 has been abandoned, and with it some visible violations of Kansas and Federal laws have been eliminated. The Marquette consultants urged that disparate impact studies be done to ensure that the background check did not have an adverse impact.⁶¹

Dr. Hageman has pointed out that:

⁵⁵ Witt, Robinson, and Kruger, *Report* . . . p. 25.
⁵⁶ Ace Todd, Personnel Division, City of Wichita, interview in Wichita, Aug. 15, 1978.
⁵⁷ Karen Hunsberger, assistant to the director of assessment services, IPMA, letter to CSRO staff, Mar. 29, 1979.
⁵⁸ *Ibid.*
⁵⁹ International Personnel Management Association, *Catalogue of Personnel Tests* (Washington, D.C.: IPMA, November 1977), p. 4.
⁶⁰ Capt. Jordan Jones, letter to CSRO staff, Aug. 1, 1979.
⁶¹ Witt, Robinson, and Kruger, *Report* . . . pp. 26-28.
⁶² Transcript, vol. I, p. 81, lines 3-10.
⁶³ *Ibid.*, p. 98.
⁶⁴ *Ibid.*, p. 99, lines 1-6.
⁶⁵ *Ibid.*, p. 90.
⁶⁶ E.H. Denton, letter to CSRO staff, Sept. 5, 1979, p. 5.
⁶⁷ Capt. Jordan Jones, letter to CSRO staff, Aug. 1, 1979. The police department told Advisory Committee staff that the tests were not administered in strict accordance with the manual supplied staff. According to the department, the tests that are grounds for automatic rejection of

A lot of the physical tests are not job related. . . . There's a physical test of endurance, one of flexibility and one of muscular strength. Most of the testing that's done for women in most major police departments are. . . physical strength, knowing how to lift weight. That's still a trainable skill, just as learning how to shoot a gun is a trainable skill.⁶²

But Tim Kohl of the Wichita Personnel Division asserted that agility and strength tests are necessary.⁶³ He contended:

I don't think you can necessarily teach everybody how to climb a 5-foot fence and run and chase a suspect in a certain period of time and drag that body, you know, for that length; if you have an emergency situation, you have to do that.⁶⁴

Mr. Kohl admitted, however, that the written parts of the test were not validated.⁶⁵ The city manager admitted that none of the parts of the test were validated, but he stated that the personnel department maintained records to measure adverse impact.⁶⁶

Perhaps the most controversial portion of the test is the psychological profile administered by Associated Personnel Technicians, Inc. This is taken following the oral interview but prior to hiring. The purpose of this examination and its use in selection are not specified by the department in its description of the application system.⁶⁷

In developing the police applicant profile, the Wichita Police Department stated as its goals:

1. Develop and refine a system to select and train police recruits.

System when completed will:

applicants are the physical agility test, eye test, written test, or physical examination. But Colonel Stout, the deputy chief, reviews all records and makes the final decision to accept or reject applicants. The standards used by Colonel Stout were not specified. (Maj. E. J. Kuntz, interview in Wichita, Sept. 28, 1979.)
The city manager and chief of police asserted that the following statement by the city manager was important and should be incorporated into this study:
it has always been the principle of professional management and particularly city managers to have a central personnel office so that there are rules of entry, reception, training, testing, validation, records and security of records, background checks, that are all administered by persons outside the department, and I think it's a fairly well accepted principle of personnel administration and control. . . .
Transcript, vol. II, p. 212.
There is apparently some discrepancy between the city manager's explanation of police hiring procedures, cited earlier, and the description of what city manager believes to be appropriate hiring procedures, cited above.

a. Allow the department to eliminate undesirable applicants.

b. Allow the department to hire more qualified applicants.

c. Establish a "norm" for acceptable police applicants.

2. By accomplishing the above the department will:

a. Reduce attrition of younger officers who are not acceptable.

b. Reduce disciplinary problems by eliminating "trouble prone" or immature applicants.⁶⁸

The police applicant profile was developed by the department at a cost of over \$13,000, of which over \$8,000 was paid by LEAA through the State criminal justice planning agency.⁶⁹ The Advisory Committee has not been able to obtain from the city personnel office an explanation of the ways in which the test results on individual applicants are used.

In a letter to Commission staff, the Governor's Committee on Criminal Administration (GCCA) states:

In the opinion of GCCA, this validation report did not satisfy the 1974 guidelines for such reports; nor does it meet the current guidelines. The primary problems are with the content of the validation and more information from Mr. Barnabas may be able to remedy the situation. We have other concerns, but we are not prepared to say they make the selection procedure invalid.⁷⁰

GCCA cites a number of issues that are of concern to it in the validation process.⁷¹ Attached to the GCCA letter is an evaluation done for it by Thomas J. Morris, criminal justice planner for the Indian Nations Council of Governments in Tulsa, Oklahoma. He concludes that:

the original situation which prompted the chief of police to seek assistance has not been effectively resolved. There is no evidence presented to

⁶⁸ City of Wichita, Application for Grant to Governor's Committee on Criminal Administration, Mar. 1, 1973, p. 2.
⁶⁹ *Ibid.*, p. 4.
⁷⁰ Elaine M. Esparza, letter to CSRO staff, June 8, 1979.
⁷¹ *Ibid.*
⁷² Thomas J. Morris, *Evaluation of Selection Procedures Developed for the Wichita Police Department* (May 15, 1979), p. 6.
⁷³ Wilbur R. Brantley, Director, Office of Civil Rights Compliance, to Elaine Esparza, Civil Rights Compliance Office, Governor's Committee on Criminal Administration, Dec. 12, 1979.

indicate that the attrition level of new officer employees has been reduced.

Some major questions regarding the ability of the selection procedures to withstand E.E.O.C. scrutiny and the substantial costs of continuing this procedure (\$2,500 per applicant) make evaluation of these procedures critically important.⁷²

A review of the test by LEAA concluded that the test had not been properly validated and that if adverse impact could be shown the test would be invalid. LEAA transmitted this information to GCCA.⁷³ GCCA asked the Wichita Police Department for data on impact.⁷⁴ LEAA did not propose to take any action on this.⁷⁵ (See appendix 2a for the report by LEAA.)

Dr. Mary Jeanette Hageman states:

There is no validity for some of it. The only part that is job related is the oral directions test; the other part is just test for testing sake. When these psychological tests were first developed, it was the custom to try and develop some kind of test. But we're in 1979 and we know a lot more about what tests are testing, and I think that it's time we started moving toward that direction.⁷⁶

At the request of the Advisory Committee, Marvin D. Dunnette and David A. Bownas of Personnel Decisions Research Institute reviewed the evidence presented by Associated Personnel Technicians. (See appendix 2 for the full review.) In their summary, Dr. Dunnette and Mr. Bownas state:

The original APT, Inc. validation study report, and information provided in and attached to APT, Inc. letters to Mr. Neumann dated March 16 and March 20, 1979 presented no evidence of the validity of the APT, Inc. battery's weighted deviation scores for selection of new police officer recruits. Information presented in the March 29 letter suggests that such validity may exist. A complete report, conforming as nearly as possible to the 1978 Uniform Guidelines documentation standards, should be written,

⁷⁴ Elaine Esparza, letter to CSRO staff, Jan. 18, 1980.
⁷⁵ Wilbur R. Brantley, letter to Elaine Esparza, Dec. 12, 1979.
⁷⁶ Transcript, vol. I, pp. 81-81. Dr. Hageman has added, in comment, that the evidence for her assertions can be found in Saxie and Reeser, "A Comparison of Three Police Applicant Groups Using the MMPI," *Journal of Police Science and Administration*, December 1979, pp. 419-25.

describing the followup study done with course grades as the criterion.⁷⁷

What remains unclear to the Advisory Committee is whether, aside from the validity problem, Associated Personnel Technicians, Inc., has provided sufficient technical assistance to the police department so that it can interpret correctly the test results and whether if the tests are valid, the police department uses the test results appropriately.

GCCA told Commission staff it would refer the materials to the LEAA Office of Civil Rights Compliance. GCCA stated:

If they reach the same conclusion as the GCCA, it will be necessary for the Wichita Police Department to conduct an acceptable validation study or alter its selection procedures.⁷⁸

The Marquette consultants were particularly concerned by the oral interview, which they found so unstructured as to present numerous opportunities for discrimination and of questionable reliability.⁷⁹ Subsequently the interview procedure has been structured.⁸⁰

The Marquette consultants stated that, "The random selection of employees from the eligibility list provides the WPD with a potent means for dealing with its minority employment problem." (This refers to the chief's power to choose anyone from an eligibility list for a vacancy, without regard to rank on the list.)⁸¹

The Advisory Committee was denied access to applicant flow data that would show the effect of selection procedures.⁸² Data that were provided show that while in 1975 the proportion of black males graduating from the academy (30 percent) was 10 times the proportion of black male applicants (3.4 percent), in 1976 the proportion was one-fifth (2.6 percent of graduates versus 10.9 percent of applicants) and in 1977 only 1-1/2 times the proportion of applicants (13.3 percent of graduates versus 9.9 percent of applicants). Black female graduates and all female graduates were consistently a smaller proportion of graduates than of applicants.⁸³

⁷⁷ Marvin D. Dunnette and David A. Bownas, "Technical Review of 'A Research Study to Improve the Selection of Applicants for Police Officers, Wichita Police Department', Associated Personnel Technicians, Inc., Wichita, Kansas, 1975" (Minneapolis, Minn: Personnel Decisions Research Institute, Apr. 3, 1979), p. 5.

⁷⁸ Elaine Esparza, letter to CSRO staff, June 8, 1979.

⁷⁹ Witt, Robinson, and Kruger, *Report*, p. 28-29.

⁸⁰ Capt. Jordan Jones, letter to CSRO staff, Aug. 1, 1979.

⁸¹ Witt, Robinson, and Kruger, *Report*, p. 29.

Selection for the sheriff's department involves a written examination, background check, and oral interview. There was no evidence presented to show that any of the tests were validated. The sheriff's department attorney argued that since no adverse impact could be shown, there was no reason to study validity.⁸⁴

However, the sheriff's testing procedure has been challenged by his officers. Tony Gallegos stated that the sergeant's examination he took had nothing to do with the work he would have done. He said the test answers did not coincide with what the sheriff's department did.⁸⁵

Upward Mobility

In 1973 the Wichita Police Department commissioned ranks included one black captain, one black sergeant, one black detective, five female detectives, and one female sergeant.⁸⁶ In September 1977, the *Wichita Eagle* reported that of 20 promotions since Chief LaMunyon took over, none had been of blacks.⁸⁷ As of February 1979, the department reported one white female captain, one female lieutenant, one white female master police officer 1, and three white female detectives. There were also two black male lieutenants (one temporary), one black male master police officer 11, and one American Indian lieutenant.⁸⁸ In short, the aggregate change for minorities and women between 1973 and 1979 was one additional black and two fewer females. Chief LaMunyon explained that:

There exists a situation within the Department which hampers the promotion of a large number of minorities. The problem is that, of the commissioned minorities in the Department, only five have greater than eight years of service and the remaining twenty-five have only four years or less. The real problem is in relation to the four year gap.

In recognition of internal and external factors which negatively influence affirmative action fulfillment, we have made extended efforts toward further improving the situation in general.

⁸⁴ E.H. Denton, letter to CSRO staff, June 14, 1979. The decision, the letter states, was on the advice of counsel in view of pending litigation.

⁸⁵ Data provided by the Wichita Police Department, on file at CSRO.

⁸⁶ Bruce Kirkpatrick, sheriff's legal advisor, letter to CSRO staff, Jan. 11, 1979.

⁸⁷ Tony Gallegos, interview in Wichita, May 7, 1979.

⁸⁸ City of Wichita, *Affirmative Action Plan*, 1973.

⁸⁹ *Wichita Eagle*, Sept. 7, 1977.

⁹⁰ Stout Statement, attachment 1.

We have actually tutored minorities in attempts to help them qualify academically. We have asked for outside help in addressing the issue through our request for the Marquette Study. Additionally, we have participated in cross-cultural communication sessions through Wichita State University.⁸⁹

Prentice Lewis, representing the Urban League, suggested another perspective:

We have had a black captain who has nobody under his command. We have presently, I think, on the police department a black lieutenant who alleges that he has no one under his command. We've had sergeants who had no one under their command. So when an individual looks at the police department and thinks of it as a career and he wonders where he goes from the beat officer, the opportunities have not been there for any kind of promotion of an equal basis where there are white coworkers.⁹⁰

Lt. (now Capt.) Floyd Powell told the Advisory Committee that one black officer was unable to get a training manual for the lieutenant's examination. This, he believed, made it harder to pass the examination. He stated that it was untrue that a black officer had been tutored for the lieutenant's examination. Lieutenant Powell stated, "In fact, the only thing an officer did was to come by and ask [a police lieutenant] a couple of questions about what could be on the test."⁹¹ The city has admitted the test is not validated and that there are no data to prove it is free of race and sex bias.⁹²

From January 1974 to January 1978 there were a total of 226 promotions, of which 3 went to black males and 4 to white females. On March 8, 1974, Charles Franklin was promoted from patrolman to sergeant; in 1975 Floyd Powell was promoted twice, from detective to sergeant on June 11, 1975, and sergeant to lieutenant on December 28, 1975. Floyd Powell had a bachelor of science degree while the majority of the white officers promoted had not completed their degree requirements. In 1975 three white females were promoted: Barbara Ray from sergeant to lieutenant on June 14, 1975; J. McCloud from patrol to detective on December 28, 1975; and

⁸⁹ LaMunyon Statement, p. 20.

⁹⁰ Transcript, vol. I, pp. 67-68.

⁹¹ Lt. Floyd Powell, interview in Wichita, Jan. 30, 1979.

⁹² *Colbert v. City of Wichita* (CA75-306-C6), Defendant's Answer to Interrogatories, July 14, 1976, question 47 m.

⁹³ Staff interview, Apr. 10, 1979.

⁹⁴ William R. Hannon, Statement to the Kansas Advisory Committee to

R. Cronce from patrol to detective on December 28, 1975. In 1976 there were no promotions for minorities or females out of a total of 51. In 1977 no minorities were promoted out of a total of 55 and only 1 female; Barbara Ray was promoted from lieutenant to captain, on August 6, 1977. In addition, by January 1978, an American Indian female, a white female, and a black male had been promoted to the rank of detective.⁹³

The 1978 affirmative action plan of the Wichita Police Department called for the promotion of 3 minorities or females to master police officer, detective, or investigator (15 percent of those promoted). In fact, 3 were promoted (19 percent of those promoted). The plan called for the promotion of 2 minorities or women to lieutenant (22 percent of those promoted). In fact, 2 minorities and 2 females were promoted (30 percent of those promoted).⁹⁴

Data supplied by the police department show that in 1978, 78 white males took the lieutenant's examination; 12 white males were promoted (15 percent of those who took the test). Three white females took the exam; 1 was promoted (33 percent). Three black males took the exam; none was promoted. One Hispanic male took the exam; none was promoted. During the same year 37 white males took the detective's exam; 16 were promoted (43 percent of those who took the test). One white female took the exam and one was promoted. Two black males took the exam and one was promoted (50 percent).⁹⁵

Subsequently, the city manager states, a black lieutenant, Floyd Powell, was promoted to be division captain of Baker-1. The city also states that a black lieutenant now commands 10 officers.⁹⁶ Further, it reports the introduction of an assessment center for promotions to captain and above.⁹⁷

The sheriff reported that while there were no minority command staff in his department, he was "attempting to promote, and just recently we have promoted officers on up, and they're progressing. I hope to make a minority person a sergeant just very shortly."⁹⁸

the U.S. Commission on Civil Rights, Feb. 15, 1979 (hereafter cited as Hannon Statement), p. 1; Transcript, vol. I, pp. 104-05.

⁹⁵ E.J. Kuntz, memorandum to Stan Issinghoff, Jan. 17, 1979.

⁹⁶ E.H. Denton, letter to CSRO staff, Sept. 5, 1979.

⁹⁷ *Ibid.*

⁹⁸ Transcript, vol. II, p. 59, line 25, to p. 60, line 13.

Affirmative Action Planning

Both the Wichita Police Department and the Sedgwick County Sheriff's Department have affirmative action plans. The Wichita Police Department plan began with *The City of Wichita 1973 Equal Opportunity and Affirmative Action Program for Employment Practices*.⁹⁹ This document states the commitment of the city to affirmative action, enunciates the basis for development goals and timetables, sets out goals for the next 5 years, assigns responsibility for implementation, and requires regular reports to the city commission.

Under the city manager's Executive Order No. 1 of December 8, 1976, the police chief was to be held accountable for the affirmative action efforts of his department with possible withholding of merit pay raises and, in extreme cases, dismissal as sanctions to ensure action.¹⁰⁰

Women who went through the training program directed by Capt. William Hannon, head of training and the department's equal opportunity officer, complained that he had not protected their rights.¹⁰¹ Similarly, it has been alleged that while Captain Hannon was chief of detectives a large number of white males became detectives without taking a promotional examination, excluding black officers who would have been eligible.¹⁰² Moreover, although one of his responsibilities is improving the climate for black officers, it is reported that there is widespread use of racial slurs against black officers.¹⁰³

Reporters for the *Wichita Eagle* stated: "A casual observer of the police banter at headquarters hears expressions such as 'nigger', 'black bitch' and 'black bastard' used there and under stress on the street. [Lt. Kerry] Crisp explained that such terms are used in a humorous vein and not truly meant."¹⁰⁴

Captain Hannon reported no action on this. Captain Hannon did report satisfaction with the progress made to implement the affirmative action program goals. He was particularly proud of his inservice training program.¹⁰⁵

The city manager and chief of police asserted that statements by the city manager were important and

⁹⁹ City of Wichita, *1973 Equal Opportunity and Affirmative Action Program for Employment Practices* (June 1973).

¹⁰⁰ E.H. Denton, Executive Order No. 1, Dec. 8, 1976.

¹⁰¹ Michele Foley, interview in Wichita, Jan. 31, 1979.

¹⁰² Floyd Powell, interview in Wichita, Jan. 30, 1979.

¹⁰³ *Ibid.*

¹⁰⁴ *Wichita Eagle*, June 27, 1979.

¹⁰⁵ Transcript, vol. II, pp. 217-18.

¹⁰⁶ Hannon Statement, p. 1.

should be incorporated into this study. The city manager said:

So in our performance evaluation for all departmental directors, as well as division heads that are included in the executive compensation plan, all include their performance in connection with the equal employment opportunity and their tenure, as well as their merit increases depend on their performance and yearly and EEO plans developed by the city, including goals, and each departmental director is evaluated and a separate report is submitted to me on their performance in their achievement of goals and either they have to achieve the goals or they have to give a good reason why they didn't achieve those goals in a year's time.¹⁰⁶

Evidently, the statement by the chief on the need for professionalism was viewed by the city manager as a sufficient explanation for the department's inability to meet its goals, since the Advisory Committee was not told of any other reason.

Although Sedgwick County has an affirmative action plan, this does not cover the sheriff's department nor does the county department of affirmative action have any authority over the sheriff's department.¹⁰⁷ The county plan was first adopted on February 8, 1978.¹⁰⁸ A draft plan for the sheriff's department, submitted to the Advisory Committee on January 11, 1979, stated a policy of nondiscrimination but does not provide any implementing mechanism or delegate responsibility for implementation. There were no goals and timetables.¹⁰⁹ As of February 1979 the plan still had no goals or timetables because most of the sheriff's department's employees are clerical workers in the records section, which is under the county plan. A manual for such workers was approved by the county board on February 8, 1978. It does not call for the records section to take any specific steps toward affirmative action. The county's plan does not contain specific requirements, goals, or timetables to be implemented by individual county agencies.¹¹⁰

¹⁰⁷ Tim Hamilton, county personnel officer, telephone interview, Apr. 6, 1979.

¹⁰⁸ Sedgwick County, *Sedgwick County Equal Employment Opportunity and Affirmative Action Manual* (1978).

¹⁰⁹ Hans C. Hanson, sheriff's legal advisor, letter to CSRO staff, June 12, 1979.

¹¹⁰ Sedgwick County, *Sedgwick County Equal Employment Opportunity and Affirmative Action Manual*, p. 17; Judith Fields, interview in Wichita, Oct. 17, 1978.

The sheriff's department reports that, "Steps are being made to draft a detailed implementation plan at this time."¹¹¹

Undersheriff Sam Davison told staff that responsibility for implementing the affirmative action plan rested with the staff of the civil service commission and the county equal opportunity officer.¹¹²

¹¹¹ Bruce Kirkpatrick, letter to CSRO staff, Jan. 11, 1979.

¹¹² Undersheriff Sam Davison, interview in Wichita, Oct. 2, 1978.

One former officer of the sheriff's department protested that racial slurs were commonplace and that the department commanders condoned them.¹¹³ According to one observer, the sheriff's department command staff persist in referring to black officers as "colored" or "boy."¹¹⁴

¹¹³ Henrietta Carson, interview in Wichita, Oct. 18, 1978.

¹¹⁴ Staff interview, week of Oct. 17, 1978.

8. Role of Reviewing Agencies Capable of Offering Remedies

Three Federal agencies can, on their own initiative or with no more than a general complaint, review the extent to which equal opportunity is available in the Wichita Police Department and Sedgwick County Sheriff's Department. The Equal Employment Opportunity Commission's authority derives from Title VII of the 1964 Civil Rights Act, as amended. The Office of Revenue Sharing, Department of the Treasury, can make reviews and issue orders based on the acceptance by local governments of Federal funds under the State and Local Fiscal Assistance Act. Finally, since both city and county law enforcement agencies receive Federal funds through the Law Enforcement Assistance Administration, Department of Justice, they become subject to Title VI (of the 1964 Civil Rights Act) enforcement activities and the Law Enforcement Assistance Administration's equal employment opportunity regulations.

Equal Employment Opportunity Commission

Under Title VII no employer of more than 15 persons may discriminate in hiring, promotion, termination, recruitment, terms of work, classification, or layoffs by reason of race, religion, sex, color, or national origin. Violations, if determined by the U.S. Equal Employment Opportunity Commission, and if conciliation is unsuccessful, may be the subject of Federal court action that may result in a judicially imposed remedy, award of damages, and award of attorney's fees. Under the revised EEOC

¹ U.S. v. City of Chicago (13 E.P.D. 11380), 1977.

procedures, "rapid charge processing" can result in very swift remedy for simple complaints where the employer is prepared to accept EEOC's recommendations. Under the EEOC's newly established systemic discrimination offices, local government agencies may be reviewed without prior complaint, and the investigation may result in recommendations for a systemic remedy.

Not only does Wichita receive funds under the State and Local Fiscal Assistance Act, but some of these are allocated to the police department. The Office of Revenue Sharing, Civil Rights Division, currently is reviewing a complaint about employment practices of the Wichita Police Department. If ORS finds discrimination, it can begin proceedings to terminate Federal funds. There is precedent for such action in the experience of the Chicago Police Department. Under court order, the Office of Revenue Sharing terminated all revenue sharing funds to Chicago because some of those funds had been used to fund discriminatory employment practices by the police. Only when a plan to end discrimination was approved and adopted were revenue sharing funds restored.¹

Law Enforcement Assistance Administration

Discrimination based upon race, color, religion, national origin, or sex is prohibited in programs funded in whole or in part under the Omnibus Crime Control and Safe Streets Act, and this prohibition extends to exclusion from participation in and denial

of the benefits of or employment in such programs.² LEAA is required to "review those recipients which appear to have the most serious equal employment opportunity problems or the greatest disparity in delivery of services. . . ."³ LEAA conducted a review of the Wichita Police Department's employment practices on December 14-15, 1977. That agency has yet to issue a report of its findings as to the extent of discriminatory practices, if any, and the necessary remedies.⁴

The Governor's Committee on Criminal Administration (GCCA) is funded as the Kansas planning agency under the Omnibus Crime Control and Safe Streets Act of 1969.⁵ GCCA is responsible for the allocation of Federal law enforcement assistance funds that are granted as State entitlements to both State and local agencies. It has a 20-member committee comprised of persons appointed by State officials to represent the various segments of the criminal justice community, both State and local. At the present time three blacks (two males and one female) and three women (two white and one black) are members. The Wichita area is represented by a Sedgwick County commissioner and a State district court judge.⁶

To implement the equal employment opportunity provisions, GCCA requires only that the grant recipient sign an assurance that it complies with Federal guidelines,⁷ which require that:

If a recipient (a) employs fifty or more persons in any classification; (b) has received grants totaling \$25,000 or more; and (c) has a service population with a minority representation of more than three percent, such recipient must have on file an equal employment opportunity program for minority persons and women.

If a recipient (a) employs fifty or more persons in any classification; (b) has received grants totaling \$25,000 or more; and (c) has a service population with a minority representation of less than three percent, such recipient must have on file an equal employment opportunity program for women.

If a recipient does not fully meet the criteria set forth in either of the two preceding paragraphs,

² 42 U.S.C. 3757, §518(c).

³ 28 C.F.R. 42.206.

⁴ Staff telephone interview, Apr. 11, 1979.

⁵ 42 U.S.C. 3723.

⁶ Elaine Esparza, interview in Topeka, Apr. 18, 1979, and Elaine Esparza, letter to CSRO staff, Sept. 12, 1979.

⁷ 23 C.F.R. 42.301.

such recipient is not required to have an equal employment opportunity program.⁸

GCCA does not deal with Title VI issues either by reviewing compliance or by processing complaints. It merely refers any complaints of discrimination against grantees or subgrantees to the Law Enforcement Assistance Administration, Office of Civil Rights Compliance, in Washington. GCCA states that it has not received any complaints against either the Wichita Police Department or the Sedgwick County Sheriff's Department. The Kansas City, Kansas, Police Department is the only agency in the State about which the Governor has ever been notified by LEAA that it was in violation of the civil rights requirements of section 518(c)(1) of the Omnibus Crime Control Act, case no. 57365-B, *Franklin v. Kansas City, Kansas, Police Department*. However, LEAA has also complained about the affirmative action plan of the Salina Police Department.⁹

GCCA reports that it has awarded \$119,269.22 in grants for various purposes to the Wichita Police Department in the period January 1, 1978, to June 30, 1979. During this period the Sedgwick County Sheriff's Department received a grant for a jail medical clinic director.¹⁰

Wichita Civil Rights and Equal Employment Opportunity Commission

The city of Wichita was the first city in Kansas to adopt the Kansas Act Against Discrimination¹¹ by reference. This act¹² provides enforcement authority for the local civil rights commission in the areas of employment, public accommodations, and housing. Although the Wichita Civil Rights and Equal Employment Opportunity Commission has identical investigative and remedial authority to that of the State commission, it chose not to investigate the systemic discrimination allegations made by 18 minority police officers against the Wichita Police Department.¹³ The local commission does not provide for the investigation of complaints where the allegation of discriminatory treatment involves the

⁸ Governor's Committee on Criminal Administration Form 18-1.

⁹ Elaine Esparza, letter to CSRO staff, Sept. 12, 1979.

¹⁰ Elaine Esparza, letter to CSRO staff, Apr. 19, 1979.

¹¹ K.S.A. 44-1001 et seq.

¹² Wichita City Ordinance No. 35-556, adopted May 12, 1978.

¹³ Jesse Rice, interview in Wichita, Dec. 12, 1978.

TABLE 8.1
Race and Sex Composition of Wichita Citizens
Participation Organization Area Councils

Council	Male	Female	Black	White	Hispanic	Other	Vacancies	
A	7	2	0	9	0	0	0	
B	4	5	0	9	0	0	0	
C	7	2	0	9	0	0	0	
D	4	4	0	8	0	0	1	
E	6	2	0	8	0	0	1	
F	4	5	0	9	0	0	0	
G	6	3	0	9	0	0	0	
H	6	2	0	8	0	0	1	
I	5	4	0	9	0	0	0	
J	6	3	2	6	1	0	0	
K	5	0	5	0	0	0	4	
L	6	2	1	7	0	0	1	
M	7	2	0	9	0	0	0	
N	5	4	0	9	0	0	0	
O	4	0	0	4	0	0	5	Total
	82	40	8	113	1	0	13	122

The percentage of females is 32.8% (40) and of ethnic minorities is 7.4% (9).

Source: Wichita Citizens Participation Office.

use of force or differential treatment based upon race.¹⁴

Wichita Citizens Participation Organization

The city of Wichita has established a Citizens Participation Organization (CPO) that is intended to:

- Provide for an equitable citizen participation system improving access to the governmental decisionmaking process for all citizens.
- To strengthen citizen input in a comprehensive planning program for social and physical development.
- To serve as an advisory agency to the City Commission.
- To serve as a continuing source of information from citizens at a neighborhood level.
- To serve as a channel of communication from the City Commission and the City Administration to citizens.¹⁵

¹⁴ See: Kansas Commission on Civil Rights v. Howard (218 Kansas 248, 544, p. 2d. 791 (Dec. 13, 1975)) in which the Kansas Supreme Court rejected the KCCR contention that the police came within its mandate under the public accommodations clause, K.S.A., 44-1009(c)(3).

The organization has 15 nine-member neighborhood councils representing districts of equal population. Each area council is represented on a central council by a delegate elected from among its members. In comments on the preliminary draft, the CPO staff stated that:

the CPO members are elected by Wichita voters in regular elections governed by State and local regulations. It is impossible to guarantee a representative racial or sexual mix in any elective process. Vacancies that occur on the Neighborhood Councils between elections are filled by City Commission appointment, always, in practice, of the person nominated by the Council. Councils' criteria for new members are primarily experience, interest, and time available; race and sex have been secondary considerations.¹⁶

Table 8.1 shows the distribution of membership by race and sex. It is evident that blacks are underrepresented on the CPO, constituting most of the members of the area council serving the northeast, but

¹⁵ City of Wichita, *By Laws of the Citizen Participation Organization of the City of Wichita, Kansas* (Jan. 26, 1979).

¹⁶ Sarah Gilbert, CPO staff, letter to CSRO staff, Aug. 14, 1979.

only 7 percent of the total, as against a black population of more than 10 percent.

Evelyn Pittman, formerly assistant citizen participation coordinator of the CPO staff, told Advisory Committee staff that the CPO does have an impact on city policy, although it is not as great as it might be. She pointed out that it has raised the kinds of questions that were not asked before.¹⁷ Ms. Pittman also pointed out that the organization has the advantage of being ongoing.

At the time of the staff interview, Ms. Pittman told staff there had been no CPO involvement in police-community relations questions. She thought that this had been because there was not a community-wide concern about the problem. In the aftermath of the Herman Hill episode one of the predominantly white area councils (council D, which is in the

¹⁷ Evelyn Pittman, assistant director, CPO, interview in Wichita, May 8, 1979.

¹⁸ Ibid.

area of Herman Hill) started to discuss the problem. But the northeast council has yet to take up the matter. Ms. Pittman pointed out that the CPO is an avenue for minority citizens to make their points. As citizen members they can take action, assisted by CPO staff who can provide supportive data, arrange press conferences, and the like.¹⁸

In its comment on the draft report, the CPO staff indicated that police-community relations are now a matter of increasing concern to the area councils, which are awaiting a report from the board of crime and corrections on citizens review boards before taking action.¹⁹

The CPO does review the city manager's budget, but it did not address the decision to end funding of the northeast community service center.²⁰

¹⁹ Sarah Gilbert, letter to CSRO staff, Aug. 14, 1979.

²⁰ Ibid.

9. Summary

This report has focused on two law enforcement jurisdictions—the city of Wichita and Sedgwick County. In both, the proportion of black persons arrested far exceeds their share of the service population. The area's history of hostility to racial minorities, a tradition that the city manager suggests has continued into the present, makes these obvious targets for a review.

There are no precedents from the U.S. Court of Appeals for the Tenth Circuit to direct law enforcement agencies on the limits to the use of force. However, precedents from the Eighth Circuit, including *Landrum v. Moats*; cases decided by the Sixth Circuit; and other appellate decisions are suggestive of limits. Kansas has retained the fleeing felon rule in its original form, despite changes in the nature of felony and despite the availability of model standards endorsed by the International Association of Chiefs of Police and various organizations representing the legal community. Until recently there were virtually no limits to the degree of force an officer might use in apprehending a person reasonably suspected of a felony. Although Chief Richard LaMunyon told the Advisory Committee he would oppose any change in the State statute that would restrict his officers' right to use deadly force, he subsequently restricted it by department regulation. The new regulations make Wichita rules broadly similar to those of the Model Penal Code. The sheriff's department has not yet issued similar rules, nor has the State statute been modified.

Neither city police or county sheriff's deputies have been given clear instructions on the sequence of nondeadly force appropriate for specific situa-

tions, although models have been published by the International Association of Chiefs of Police. In consequence, law enforcement officers may do things in Wichita and Sedgwick County that would be illegal and/or improper in comparable cities and counties outside Kansas. Minorities and women have complained of police abuse that, while lawful in Kansas, might be unlawful elsewhere. The United States Attorney for the District of Kansas explained this dilemma clearly in his explanation of why he could not prosecute officers in the Espinoza incident.

Abuse of police discretion was charged by the Hispanic community, which complained that city officers were attempting to enforce Federal immigration laws in violation of a State attorney general's rulings and Federal law. Black citizens charged that black citizens were held to a different code of conduct than that expected of white citizens. A group of white citizens involved in the Herman Hill episode complained that the police had abused persons and failed to provide proper review of complaints that resulted from a crowd-control problem. Many authorities, including the National Advisory Commission on Criminal Justice Standards and Goals and the International Association of Chiefs of Police, have urged limits on police discretion. So far the city has been reluctant to recognize any reason to do so, although Professor Dae Chang, whose comments were inserted into this report at the behest of the city, pointed out that it is possible to reorient police discretion so that it focuses more on nonminorities who usually escape detailed surveillance.

Women complained that the police required them to take civil actions before they would accept a complaint of abuse or assault. While the police chief did not offer any explanation on this point, he pointed out that on some other points what appeared to be discretionary restrictions affected both men and women. Similarly, the city offered no explanation for the reluctance of the police to use their powers under K.S.A. 22-2401 to arrest when they have probable cause to believe a felony is about to be committed relative to spouse abuse.

The city manager, the chief of police, and the district attorney all contended that black and Hispanic citizens were content, in principle, with police services. Surveys conducted over the past 6 years, statements to the Advisory Committee by Senator Billy McCray, Professor Bernice Hutcherson, and Prentice Lewis and statements by a wide range of black citizens to the *Wichita Eagle's* reporters refute that contention. Since 1974 efforts by the black community, and more recently by the Hispanic community, to establish a dialogue with the police department have been rebuffed whenever the minority groups demanded improvement in the quality of service and an end to police abuse.

Experts respected by the city point to the need for community education to improve police-community relations. Current city efforts until recently were limited to a police-school liaison program and a one-person community relations unit in the northeast. Only with the appointment of a black police captain in Baker-1 have officers begun to walk the streets to become acquainted with the community and let the community become acquainted with them, although this was supposed to be the goal of the new "team policing" plan that was implemented in June 1978.

Experts respected by the city pointed to the absence of sufficient training in non-law enforcement activities that, one asserts, constitute the bulk of police work. The data show that 9 percent of academy training is devoted to these activities.

Although serious questions have been raised over the years about use of force, data provided by the police department showed that only about 2 of 640 hours of basic training were devoted to discussion of use of deadly force. Similarly, although crowd control was a problem in two recent episodes where police misconduct was alleged—Church's Chicken and Herman Hill—no training in this is scheduled.

The *Wichita Eagle* reports that abuse of citizens, especially minority citizens, is condoned by supervi-

sory personnel in both the police and sheriff's departments and tolerated in both departments. Indeed, the literature on police procedure and statements to the Advisory Committee emphasize that at the national and local levels internal review procedures are used to protect the law enforcement agency rather than to ensure justice. The International Association of Chiefs of Police has contended that a well-designed and well-publicized internal affairs procedure is one way to ensure justice and improve a department's credibility in the community. But the quality of the reviews conducted by the Wichita Police Department's internal affairs section has been challenged by persons who discussed it with the Advisory Committee and by others who discussed it with reporters for the *Wichita Eagle*. The police department contends that it does have an effective review procedure, despite the disparity between its procedures and those recommended by the International Association of Chiefs of Police. All suggestions for some external review procedure have been rejected by the police department. The sheriff's department has no formalized internal affairs unit. It assembles complaint boards on an ad-hoc basis.

The city of Wichita also maintains two other agencies with roles in police-community relations: the Wichita Grievance Office and the Wichita Board of Crime and Corrections. The former is staffed by a single person who can spend approximately 2 hours on each investigation. The latter has been declared to be useless by a management consulting firm and the chief of police. It has never received funding nor has its role been well-defined.

While the United States attorney can investigate and prosecute allegations of police abuse, he has pointed out that the present state of the law restricts the kinds of episodes in which he can expect to win a conviction. In several cases, he asserts, corroborative evidence and proof of specific intent were lacking.

Although the Kansas Attorney General investigated the Espinoza incident, he took no action and his role remains unclear.

The district attorney has broad powers to investigate and prosecute in police abuse cases. Although he agrees that there are some brutal officers and some instances of brutality, he states that some excessive force has been caused by harassment of police officers. The district attorney is responsible for the prosecution of any officer who kills a

civilian. All potential witnesses are encouraged to appear, the district attorney stated. He also said that police brutality could be prosecuted where it could be proved. He has not prosecuted such a case recently.

The Advisory Committee sought to explore the efforts of the police and sheriff's departments to increase minority and female representation so as to reduce what the National Advisory Commission on Criminal Justice Standards and Goals has called the "army of occupation" image a white male force has created. The data show that to this day both blacks and women are underrepresented by comparison with their share of the population. Although this could be corrected, the police records show that for the period 1970-78, 83 percent of those recruited to the Wichita Police Department were white males, 6 percent were black males, 4 percent were Hispanic males, and 4 percent were white females. Far greater efforts would be necessary to create a "balanced" force. Consultants from Marquette University suggested that this was possible, and indeed better performance was achieved in some years. Despite its failure to reach either national standards or local goals, the city insists it has been successful in recruiting minorities and women and that it operates a recruitment process that is as good as possible.

The city claims that the selection process of the department meets the highest administrative standards. Yet it admits that none of its tests are validated (although it reports that it keeps records on successful completion of each portion of the test by race, it refused to reveal those statistics, claiming pending litigation). Although the city manager claimed to be striving for a centralized personnel system in the city's personnel department, most responsibility except for recruitment is apparently delegated to the police department, including the right to make the final decision on who is hired for entry-level positions. The bases for weighing the portions of the entry testing have not been specified.

The city points with pride to its recent promotion of several minorities and women. Yet it admits that, because of past hiring practices, there will be a long pause before another group of minorities and women becomes eligible for promotion.

The city's affirmative action program sets out what purport to be clear standards and goals, and successful performance is supposed to be part of every department supervisor's review. Despite fail-

ure to meet goals, there is no evidence of any sanction imposed against the chief of police or the head of personnel. The data on goal accomplishments are somewhat confusing. For example, in 1977 the city reported that it wanted to hire 17 minorities and women for the police department and actually hired 14. But the police department reported only 6 minority males and 1 white female hired as officers during that period. In 1978 the department reported that out of 68 new hires, none were black males or females, 3 were white females, and 5 were minority males other than black. In 1979 the department reported hiring 1 black male and 1 American Indian male in the period through June 1979.

No one denies that it is difficult to obtain minority and female applicants for police jobs. But the record of the city in attempting to attract people from these groups shows that, when pushed and a sufficient effort is made, many can be recruited.

The efforts by the sheriff's department to obtain minority and female officers and its recruitment and selection procedures have been rudimentary.

The report notes the potential roles of the U.S. Equal Employment Opportunity Commission and the Civil Rights Division of the Office of Revenue Sharing. Although the Law Enforcement Assistance Administration is empowered to act on discrimination in employment and service, it has yet to issue a report on its findings on Wichita. The Governor's Committee on Criminal Administration, which serves as the State planning agency, has referred some aspects of the Wichita selection procedure to LEAA for review. It has received no report. The Wichita Civil Rights and Equal Employment Opportunity Commission stated that it has no jurisdiction in police abuse cases.

The principal, general purpose, citizen involvement agency is the Wichita Citizen Participation Organization. Its staff reports that up to now the body has not reviewed police-community relations, although they may now become a topic of concern.

The Advisory Committee's findings and recommendations focus on the actions that might be taken at local, State, and Federal levels to remedy the problems identified in this report. The recommendations address the issues of use of force, police-community relations, resolution of complaints about police abuse, and employment and affirmative action.

10. Findings and Recommendations

Use of Force

Finding 1: The Advisory Committee finds that the State of Kansas laws governing the use of force by police officers are not similar to the model rules which have been adopted by five other States. The Advisory Committee agrees with Senator Billy McCray that the consequences of this are that officers cannot be certain in what circumstances deadly force is appropriate.

Recommendation 1: The Advisory Committee urges that the Kansas Legislature investigate present law on the use of deadly force and consider adoption of the American Law Institute Model Penal Code section 3a, which specifies that deadly force is to be used only in very restricted circumstances.

Finding 2: The Advisory Committee congratulates the Wichita Police Department and its chief for issuing regulations similar to those recommended in the Model Penal Code that limit the use of deadly force. The Advisory Committee notes that the Sedgwick County Sheriff's Department has no written rules on the use of deadly force.

Recommendation 2: The Advisory Committee urges that the Sedgwick County Sheriff's Department revise its rules on the use of deadly force to conform to the model rules published by the American Law Institute.

Finding 3: The Advisory Committee finds that neither the police nor the sheriff's department have established rules for escalation in the use of force by an officer or defined the circumstances in which each level of force is to be used.

Recommendation 3: The Advisory Committee recommends that the Wichita Police Department and

Sedgwick County Sheriff's Department adopt the model rules published by the International Association of Chiefs of Police relative to the escalation of force. (See appendix 4.) These rules should be publicized, using either public affairs space or, preferably, news columns or broadcasts.

Finding 4: The Advisory Committee notes that since 1974 and until December 1978 there had been no complaints filed with the district attorney against law enforcement officers for excessive or improper use of nondeadly force.

Recommendation 4: The Advisory Committee recommends that the district attorney hold frequent forums in minority neighborhoods and issue frequent press releases to educate the public as to its rights in circumstances where persons believe they have been victims of police abuse.

Police-Community Relations

Finding 1: The Advisory Committee concurs with the views of the experts commended by the police department who assert the community is ill-informed about what police do and how they do it and that this has a detrimental effect on police-community relations. The Advisory Committee does not see any evidence that either the city or the police department has launched a significant public relations effort to alter this situation.

Recommendation 1: The Advisory Committee recommends that the city provide the police department with sufficient funding to run an effective public relations campaign for at least 12 months. The purpose would be to inform the community what police are doing, how they do it, and how citizens

could have input. If this program succeeded in improving police-community relations, the city should make a permanent commitment to it.

Finding 2: The police-community relations center in the northeast, cosponsored with Wichita State University, was a significant element in improved police-community relations during its operation. The Advisory Committee finds that the city's refusal to continue funding that center was contrary to its stated purpose of improving police-community relations.

Recommendation 2a: The Advisory Committee recommends that the police-community relations center be reestablished, again with cosponsorship from Wichita State University, and that its funding be guaranteed by the city and the university for a period of not less than 5 years, with the promise of continued funding if evaluation shows the center makes an impact.

Recommendation 2b: The Advisory Committee recommends the center be governed by a board broadly representative of the city's diverse population.

Finding 3: The Advisory Committee finds that, until recently, there has been too little contact between the police and the community, despite the stated intention of increasing contact by instituting "team policing."

Recommendation 3: The Advisory Committee recommends that the police department require each division captain to issue orders that will result in frequent contacts on an informal basis between officers and the general public, following the example set in Baker-1.

Finding 4: The Advisory Committee finds that the police department has been willing to listen to the representatives of minorities and women only when they did not demand changes that would promote equal administration of justice. Examples of this are refusal to meet with the Committee of Concerned Black Residents in 1974, with D.D. Miller in 1974, and the Northeast Task Force of Concerned Citizens in 1978. This Committee recognizes that every public official can endure only so much confrontation, but it believes the limit of reasonable dialogue has not yet been reached between the police and the community.

Recommendation 4: The Advisory Committee recommends that the city manager require the chief of police to meet regularly with all segments of the community. It urges the city to ensure that some organizations are not excluded merely because they

raise issues that may be uncomfortable for police officials.

Finding 5: The Advisory Committee finds that contacts between the sheriff's department and minority communities to discuss relations between deputies and the public are nonexistent.

Recommendation 5: The Advisory Committee recommends that the county assist the city in funding the proposed community service center designed to serve as a link between the law enforcement community and the public and that the county require that the sheriff and his principal officers engage in regular discussions with the center's board and its constituency.

Finding 6: The Advisory Committee found little evidence of regular dialogue between either the police or the sheriff's department and women's organizations.

Recommendation 6: The Advisory Committee recommends that the law enforcement agencies establish regular channels of communication with such organizations, especially on issues of special concern to women.

Resolution of Complaints of Police Abuse

Finding 1: The Advisory Committee found that members of minority groups have very little confidence in the existing Wichita Police Department Internal Affairs and Inspection Section (IAIS) review of complaints alleging police abuse. In part this is because in some cases present and past chiefs of police have announced their officers were blameless before the completed report of IAIS had been submitted.

Recommendation 1: Chiefs of police should refrain from prejudging the results of internal affairs investigations until reviews are completed. Chiefs should allow sufficient time to ensure that all potential witnesses are contacted and should publicly and privately commit the department to an impartial review process.

Finding 2: The Wichita Police Department's Internal Affairs and Inspections Section does not have sufficient staff to conduct rapid, complete reviews of all complaints.

Recommendation 2: The IAIS should be expanded so that it has sufficient personnel to devote adequate time to all complaints and to fulfill its other duties.

Finding 3: The chief has stated that all complaints will be investigated until they are proved frivolous.

Recommendation 3: The chief should specify standards by which complaints will be determined to be without merit. These should be widely publicized so the general public can determine whether decisions on any specific case are within appropriate guidelines.

Finding 4: The sheriff's department has failed to establish an internal affairs unit.

Recommendation 4: The Sedgwick County Sheriff should adopt procedures and practices similar to those the Advisory Committee has recommended to the Wichita Police Department.

Finding 5: The police and the sheriff's department must make an effort to prove to minority groups within their jurisdictions that internal affairs procedures are not merely coverups. At the present, such confidence is lacking.

Recommendation 5: The two jurisdictions should establish a mechanism(s) that will give credibility to the internal procedure. One possibility is a civilian review board, based on the New York model. Another would be to strengthen the existing ombudsman's role. This could be done by establishing the office as the equal of other city departments (with the director receiving salary comparable to at least a deputy chief of police), providing it with adequate investigative staff, granting it subpoena power for all but the most confidential records, ensuring that independent legal counsel (not the city attorney) is available to it, and granting it the power to receive testimony under oath. The office should also be perceived as independent of "city hall." These procedures have been used with great effectiveness in Flint, Michigan, and Seattle, Washington. In Flint the grievance officer can require remedies for individual problems and recommend policy changes. Another alternative would be to implement the recommendation of the South Central Kansas chapter of the ACLU. Finally, it might be possible to restructure the Wichita Board of Crime and Corrections to provide a review component for the existing investigative procedures.

Finding 6: The role of the Kansas Attorney General in pursuing police abuse complaints has not been clarified by his involvement in the Espinoza episode. The minority community has no way of assessing what the office can do to pursue police abuse complaints.

Recommendation 6: The Advisory Committee advises the Kansas Attorney General to publicize the kinds of actions that office is prepared to take if

complaints of police abuse are filed with it. The attorney general should also clarify what would be regarded as prosecutable examples of police abuse.

Finding 7: The Advisory Committee noted an apparent disparity between the district attorney's perceptions of minority views of police-community relations and reality.

Recommendation 7: As an elected official, the district attorney should establish and maintain regular contacts with established minority, civil rights, and women's organizations to ensure awareness of community concerns before they become crises. This would enable the district attorney to recommend action by law enforcement agencies to prevent confrontation between police and citizens.

Employment and Affirmative Action

Finding 1: The Advisory Committee finds that the city and the police department have made some efforts to recruit minorities and women. At times these efforts have been well-directed and supported with commitments from the chief and city administration. At other times, the level of effort and commitment to hiring minorities and women has been open to question. The Advisory Committee notes that the police department and the city have not fully implemented the recommendations of the consultants from the Center for Criminal Justice Agency Organization of Marquette University, although it has had several years in which to do so. The Advisory Committee does not find the overall effort commensurate with that suggested as desirable by the National Advisory Commission on Criminal Justice Standards and Goals or with that declared possible by outside consultants or community representatives.

Recommendation 1a: The Advisory Committee urges the city to assign all recruitment functions to the police department, in keeping with the recommendation of the Center for Criminal Justice Agency Organization. To that end the city should fund at least one full-time position in the department so that an officer can actively recruit minority and female applicants on a one-to-one basis. Alternately, officers who successfully recruit minority or female applicants who begin the examination process should be rewarded with monetary benefits and/or special commendations useful in promotional decisions.

Recommendation 1b: The Advisory Committee urges the city to fund a significant public relations effort, well in excess of that currently underway, to

encourage minorities and women to join the police department. This might be done jointly with the sheriff's department, other local jurisdictions, or the Kansas Bureau of Investigation as part of the comprehensive effort to increase representation of minorities and women in all law enforcement agencies.

Recommendation 1c: The Advisory Committee urges the city to recognize that its past actions have contributed to disillusionment about police work as a career for minorities and women. It urges that the city review what kinds of assurances it can give to entry-level officers to guarantee a career structure.

Finding 2: The Advisory Committee finds the selection procedure is not in accordance with the best administrative traditions nor does it satisfy the requirements of the guidelines published by the Department of Justice to ensure a valid, unbiased, selection process. The discrepancy between the selection procedure recommended by the city manager as ideal and the city's practice is apparent. The absence of validated examinations has been admitted.

Recommendation 2: Responsibility for testing has not been centralized in the personnel division. While the Advisory Committee believes that this is not absolutely necessary, it does believe that the city should centralize selection either in the police department or in the personnel division.

Recommendation 2a: All portions of the selection process should be validated for bias.

Recommendation 2b: The role of each test needs to be specified clearly. The city should revise its selection manual to reflect the purpose and weight assigned to each element of the testing process.

Finding 3: The affirmative action program of the city as it applies to the police department has not been reviewed rigorously.

Recommendation 3: The Advisory Committee recommends that the city commission require the city manager to enforce his Executive Order No. 1 and review as unsatisfactory the police chief's and personnel manager's handling of recruitment and selection efforts if they do not meet 1980 goals. Appropriate discipline should be imposed on both until such time as the recruitment and selection process appears likely to achieve the goal of a representative police force.

Finding 4: The Advisory Committee finds that recruitment and selection processes of the county are wholly inadequate and that the county does not have an effective affirmative action program covering the sheriff's department.

Recommendation 4a: The Advisory Committee urges the county commission to adopt an effective affirmative action program for the sheriff's department that includes appropriate goals and timetables.

Recommendation 4b: The Advisory Committee urges the county to revise the selection process for sheriff's deputies to ensure that it does not discriminate against minorities and women.

Appendix 1

Remedies for Individuals

A. Remedies Available to Persons Who Believe They Have Been Discriminated Against in Employment

Persons who believe they have been discriminated against do have legal remedies. Under the Civil Rights Act of 1866, a person may sue for back pay if discriminated against on the basis of race. More recent, and more widely used is Title VII of the 1964 Civil Rights Act, as amended, which provides remedies for findings of employment discrimination through filing a complaint with the U.S. Equal Employment Opportunity Commission. There are also rights of complaint under Equal Pay Act of 1963, Age Discrimination Act, Crime Control Act of 1968, Rehabilitation Act of 1973 and Vietnam Veterans Readjustment Act of 1974. Under these, aggrieved individuals can take legal action to protect their own rights or those of a class of which they are a member.

Persons who feel they have been discriminated against within the terms of the Civil Rights Act of 1866, 1972, 1974 can use a private attorney. If they cannot afford one, they may be eligible for legal aid from:

Legal Aid Society of Wichita
Douglas Building
Wichita, Kansas
(316) 265-9681

Persons who feel they have been discriminated against within the terms of the Equal Pay Act of 1963, Civil Rights Act of 1964 and 1972, Age Discrimination Act, Rehabilitation Act of 1973 may use a private attorney. But they may also complaint to:

U.S. Equal Employment Opportunity Commission
1150 Grand Avenue
Kansas City, Missouri 64106
(816) 374-6104

Kansas Commission on Civil Rights
212 South Market
Wichita, Kansas
(316) 265-9624

or

Wichita Civil Rights and Equal Employment Opportunity
Commission
City Hall
Wichita, Kansas
(316) 268-4487

These agencies take action based on a complaint and may represent the complainant if they find probable cause that the complaint is justified.

B. Remedies Available to Persons Who Believe They Have Been Abused by the Police or Sheriff's Officers

Complaints can be filed with the internal review unit of the Wichita Police Department:

Internal Affairs and Investigations
Wichita Police Department
City Hall
Wichita, Kansas
(316) 268-4256

But such complaints can also be filed with any Wichita police unit commander.

Complaints can be filed with the sheriff or any of his command staff.

If you believe your constitutional rights have been violated, you can file a complaint with:

United States Attorney
401 North Market
Wichita, Kansas
(316) 267-6311

You can also complain to:

Wichita Grievance Officer
City Hall
Wichita, Kansas
(316) 268-4547

If your complaint involves a Wichita officer.

Complaints about any officer may be filed with:

Attorney, District 18
County Courthouse
Wichita, Kansas
(316) 268-7536

or:

Office of Civil Rights Compliance
Law Enforcement Assistance Administration
U.S. Department of Justice
Washington, D.C. 20531

or:

Civil Rights Division
Office of Revenue Sharing
U.S. Department of the Treasury
Washington, D.C. 20226

On both employment and abuse complaints be prepared to put your complaint in writing. Where possible supply the exact dates and exactly what happened as well as the names and addresses of witnesses.

Appendix 2

Technical Review of "A Research Study To Improve
The Selection of Applicants for Police Officers,
Wichita Police Department", Associated Personnel
Technicians, Inc., Wichita, Kansas, 1975

Marvin D. Dunnette

and

David A. Bownas

Personnel Decisions Research Institute
2415 Foshay Tower
821 Marquette Avenue
Minneapolis, Minnesota 55402

3 April 1979

The report by Associated Personnel Technicians (APT) describes procedures used to develop a selection battery for police patrol officers for the Wichita Kansas police department. The paper has several technical problems, including:

1. The criterion measures include two ranking tasks. In one of these tasks, training department personnel ranked approximately 90 officers who had completed a 14-week training program at various times. Though trained at different times (i.e., in different classes), the average length of time since training was completed was 1½ years before the ranking was performed. It is unclear under what conditions and instructions the training performance ranking were made. The second ranking was made by the officers' supervisors within each shift, and the data were combined across shifts. No estimates of the reliabilities of these rankings were reported. Instead, both training and supervisory personnel within each shift were required to reach a consensus in their rankings. Additional criterion measures consisted of ratings on 6-point checklists. For these, no means, standard deviations, reliabilities were reported, and no scaling properties described. Extremely vague definitions are given for these rating dimensions on the rating form, and the report does not document the relevance of these rating factors to effective police performance. These ratings probably yielded little more than merely supervisors' overall impressions of the officers being rated. Such overall evaluations are frequently confounded with personality differences or similarities, personal attitudes not related to job performance, and other such errors of perception. None of these factors were evaluated or dealt with in the APT report. No studies of the dimensionality of performance ratings and rankings were performed; correlations between performance measures were not reported; factor analyses were not done. Because of all the problems mentioned above, it is virtually impossible to evaluate or even to obtain a crude estimate of the relative adequacy of efforts to describe or measure police officer effectiveness. In other words, we know almost nothing about the adequacy of the criterion measures used in this study.
2. Description of the sample is unnecessarily vague, especially in relation to the removal of 13 officers from the sample. The reasons for removing 13 officers from the study ["(Prime supervisors) did not want any more recruits of this type"] are confusing. These were precisely the officers who should have been retained in the study. The sample size varies throughout the report and is not always reported. Thus, it is impossible to know when these 15 officers are included and when they are excluded from a particular analysis.
3. Additional descriptive information should have been provided for the 11 tests and inventories used in the experimental predictor battery. The three measures published by the author, and the "special norms" for the Bennett Mechanical Comprehension Test especially need to be explained more fully. At a minimum, citations of the publishers and test users' manuals, and to articles or reports describing scale development, should be given.

4. The report gives cutoff scores for all 11 tests; yet, the report also states that cutoff scores can be justified for only two of the tests! The cutoff scores should not have been presented for the other 9 tests. Presenting them in this way could easily mislead test users into thinking they should be used, and such use would be inappropriate.

5. Correlations presented in the table on page 8 are almost impossible to interpret. First, most of the correlations have been "corrected" for range restriction in the predictors. In some cases this is justifiable, but the Uniform Guidelines require that uncorrected statistics also be provided. It is true, however, that this requirement was not explicitly stated in the Guidelines which were in force in 1974 when the report was written. On the other hand, the American Psychological Association's 1974 Standards for Educational and Psychological Tests state:

"E8.2.1. Where correlation coefficients are corrected for attenuation or restricted range, full information relevant to the correction should be presented. If such corrections are made, significance tests should be made with the uncorrected correlation coefficients."
(Essential)

It is, therefore, inappropriate to report significance levels of corrected coefficients. Thus, it is impossible to interpret the correlations shown on page 8. Furthermore, given an apparently high, but unreported, degree of correlation between the six criteria, and a likely high mean predictor intercorrelation, it is impossible to ascertain whether the number of even uncorrected correlations which might be found to be significant could occur by chance alone. In short, the report fails to demonstrate a pattern of correlation between predictors and criteria beyond that to be expected by chance.

6. In the "Frequency distributions and cutting scores" beginning on page 9, the author indicates high and low cutting scores for 11 predictor measures, and refers to these scores as "significant findings." The term "significant" here is misleading, since an unsophisticated user might infer that statistical significance is intended. Furthermore, the "hit rates" (proportion of accurate placements of "successes" and "failures" above the higher and below the lower cutoffs) are based on extremely small numbers of officers, and have very low statistical stability.

The cutoff scores, based as they are on an extreme four or five percent of the development sample must be cross-validated with a separate sample before they can appropriately be used for selecting officers. In addition, it is very questionable whether cutting scores should be set to discriminate between the top and bottom halves of a ranked distribution when considerably more than half the officers obviously were performing acceptably in their jobs. For these reasons, the cutoff scores described on pages 9 and 10 for the 11 predictors frequency distributions shown on pages 11 to 21 cannot be considered to be demonstrably valid for selecting police officers from a group of applicants for police work.

7. The "weighted deviation" procedures described on pages 22-24 were, again, developed by isolating extreme scorers on a composite of predictor measures. While such a composite is likely to be somewhat more reliable than individual test scores, the procedure still capitalizes on within-sample predictor-criterion covariance, and is definitely subject to shrinkage when applied to a separate sample. The validity of .50 reported on page 23 is based on a scoring key developed to maximize predictability within the sample. Because the "weighted deviations" were specifically developed to maximize their correlation with mean rank, the correlation computed from such deviations cannot be interpreted as a normal Pearsonian coefficient. Thus, it cannot be properly evaluated for statistical significance. The scoring procedure's validity in a new, independent sample will be considerably lower than .50, but it is impossible to estimate just how much lower it will be.

8. In discussing analyses based on the "thirteen rejects," the author states, "As can be seen graphically, the thirteen rejects scored significantly below the average of the "success" group (p. 30)." The charts on the following page, however, do not support this conclusion. For most predictors, there are small differences between the "reject" and the "success" means (typically much less than one standard deviation), and the amount of overlap between the two distributions is large. Unfortunately, the report does not provide sufficient information to allow one to evaluate the significance of the "success-failure" mean difference. In short, the predictor tests do not appear to differentiate the 13 failures from the 78 successes to any appreciable degree. Furthermore, the author repeatedly cites "significant" differences between "success" and "failure" group means, without presenting information to document the statistical significance of the differences. Based on the information provided, the graphic plot of the mean scores of the "reject" group do not offer support for the validity of either the individual predictor measures or the predictor composite.

9. The most serious shortcoming of this study is its use of a large number of predictors with a rather small sample of subjects, the ratio of predictors to subjects is greater than one to three, and no cross-validation effort is reported. Such a large number of predictors in relation to the sample size creates a situation wherein empirical keying procedures capitalize very heavily on sample-specific predictor-criterion covariation, which would only very rarely be expected to generalize to a separate applicant sample. For this reason, the correlation of .50 between Weighted Deviation scores and performance measures is not an accurate index of the battery's validity in an independent sample; in fact, it is very likely a gross over-estimate. Because the method used to derive the weighted deviation scoring procedures cannot be expressed as a mathematical formula, it is impossible to estimate the procedure's cross validity by using any known correction-for-shrinkage formula. Formulas do exist, however, for estimating the cross-validity of a multiple correlation coefficient, such as that reported on page 32 of the report. In his paper attached to APT, Inc.'s letter of 20 March 1979, to Mr. Neumann, Dr. C. Robert Borresen

CONTINUED

1 OF 2

applies one such formula to the regression coefficient, and estimates the cross validity to be approximately .38. Dr. Borresen, unfortunately, used the Wherry formula, which estimates a different parameter than the one of interest in this case. Schmitt, Coyle, & Rauschenberger (1977) explain why the Wherry formula is not appropriate for estimating the cross-sample validity of a sample-based regression equation. They recommend using either of two alternative formulas, one developed by Lord and Nicholson and the other developed by Darlington. Rozeboom (1978) discusses some additional issues relevant to the Schmitt, Coyle, & Rauschenberger article, and recommends a third formula as the best estimate of the parameter of interest in this case. All three potentially appropriate formulas (the Lord-Nicholson, the Darlington, and the Rozeboom formulas) estimate the cross validity of a regression equation based on 93 people, and 33 predictors, with a multiple correlation of .666 to be zero. That is, the predictor composite identified by the multiple regression analysis would be expected to have zero validity for use in screening actual police applicants. While this estimate of zero cross validity applies only to the multiple regression equation, the report gives no reason to believe that the weighted deviation profile would fare any better.

In a 16 March 1979 letter to Mr. Neumann, APT, Inc. offers two additional, but largely irrelevant, pieces of information regarding these issues. First, the letter describes 27 officers who were terminated from the Wichita department, 21 of whom had high weighted deviation scores. Unfortunately, no information is provided about the numbers of acceptable officers who had scores as high as or higher than these 21 officers. Consequently, no inference can be drawn about the usefulness of the battery. Second, the letter seeks to illustrate the usefulness of a validity coefficient of .50, to counter our contention that the weighted deviation procedure's validity was not established by its correlation of .50 with a performance measure. We are familiar with the Taylor-Russell tables, and we agree that an actual validity of .50 would be very useful indeed. Our contention, however, to which we still adhere, is that the .50 correlation between weighted deviation scores and performance measures could very well be expected to hold only within the development sample, and that the report shows no evidence that weighted deviation scores would correlate at all with performance in a new sample of applicants. Hence, the validity coefficient of .50 has no relevance whatever beyond the development sample in which it was observed. It is simply wrong to use this value to estimate the usefulness of the weighted deviation procedure for selecting officers from new samples of applicants. The crucial issue is one of the relative statistical stability of the coefficient which was reported, and it is our contention that the value of .50 is spurious. No one would argue that a value of .50 would not be highly useful in selection. But to be useful, it is imperative that the investigators show it to be a stable and proper estimate of the validity to be expected when predictors are used with applicants.

10. Similar difficulties are apparent in the discussion of "Background Information" on pages 34-40. The report does not demonstrate that these questions provide valid information about the likelihood of successful police performance, based on the data presented in this report.

In sum, the procedures described in the APT, Inc. report do not conform to the 1974 Standards of the American Psychological Association. They do not meet the standards prescribed in the 1978 Uniform Guidelines on Employee Selection Procedures, although they do not directly violate the requirements of the 1970 Equal Employment Opportunity Commission guidelines, which were in force in 1974. Largely because the researchers employed statistical procedures which capitalize on within-sample predictor-criterion covariance without estimating cross-sample validity, it is unsafe to generalize the study's results beyond the development sample.

An attachment to a 29 March letter, however, offers one small hopeful sign that the weighted deviation scores might usefully predict some aspects of police performance. The attachment indicates that weighted deviation scores correlated .34 with police training course grades for a sample of 117 officers. This represents the first evidence to date bearing on the cross validity of the weighted deviation scores. Thus, this information should be documented more thoroughly. Specifically, APT, Inc., should carefully describe the sample of 117 trainees, including race and sex characteristics, and other information pertaining to its representativeness of the applicant population as a whole. In addition, the training evaluation process should be described with full documentation that course grades in training are valid indicators of actual on the job police performance.

Moreover, it is important to demonstrate that the training personnel who made the course evaluations did not have access to and were not influenced in any way by trainees' weighted deviation scores when they assigned course grades. If the first step shows the 117 trainees to be reasonably representative of the applicant group as a whole, and if the second two steps can be successfully accomplished, the resulting study would provide reasonably good evidence for the battery's validity.

Summary

The original APT, Inc. validation study report, and information provided in and attached to APT, Inc. letters to Mr. Neumann dated 16 March and 20 March 1979 present no evidence of the validity of the APT, Inc. battery's weighted deviation scores for selecting new police officer recruits. Information presented in the 29 March letter suggests that such validity may exist. A complete report, conforming as nearly as possible to the 1978 Uniform Guidelines documentation standards, should be written, describing the follow-up study done with course grades as the criterion.

References

- Rozeboom, W. W. Estimation of cross-validated multiple correlation: a clarification. Psychological Bulletin, 1978, 85, 1348-1351.
- Schmitt, N., Coyle, B. W., & Rauschenberger, J. A. Monte Carlo evaluation of three formula estimates of cross-validated multiple correlation. Psychological Bulletin, 1977; 84, 751-758.

Appendix 2a

URC

university research corporation

October 31, 1979

Mr. Robert K. Burkhardt
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
425 Eye Street, N.W.
Washington, DC 20531

Dear Mr. Burkhardt:

Subject: Wichita, Kansas Police Department

Pursuant to your request, I examined the above referenced file. Here are my observations and opinions.

Summary of Facts

The Wichita Police Department received a grant from the Kansas SPA for the purpose of developing a model police selection procedure. Wichita, through a subgrantee, Personal Management Associates, has conducted a study using a battery of sociological tests and performing correlational type of analysis with certain measures that purported to be job performance specific. One of the evaluated purposes of the grant, in addition to the benefit to Wichita, was that the methodology, if successful, should serve as a model for other police departments to use. The question that has been raised relates to whether or not this procedure meets the requirements and standards of the Uniform Guidelines on Employee Selection Procedures. Implicit in this question is whether or not Wichita's use of the system as developed is proper; and secondly, whether or not this model could be used by other police departments with reasonable expectations that they would comply with existing civil rights regulations and guidelines.

Disparate Impact

It is not clear from the documents I have reviewed whether there is disparate impact on the basis of race and/or sex. If there has been no disparate impact, then there is no validation obligation of the part of Wichita Police Department, and the question of validity becomes moot, except as it is likely to affect other jurisdictions that might use the same procedure. In my opinion, it is almost certain that the procedure described would produce disparate impact on almost any of the

5530 Wisconsin Avenue, NW • Washington, D.C. 20015 • (301) 654-8338

Mr. Robert K. Burkhardt
October 31, 1979
Page 2

protected classes, singularly or as a group. The reasoning for this prognosis is basically that the battery components are themselves instruments which have had disparate impact in other jurisdictions and have been found to be non-job related or valid predictors of job performance in other police departments. Specifically, the MMPI component is notorious for its parallel to middle class norms. The types of vocabulary and arithmetic tests involved generally disadvantage blacks, Hispanics; and all of the vocational interests elements, depending on their interpretation, are potentially disadvantageous to women.

Therefore, it is our belief that the validity issue is central in terms of any possible usage of the system by other jurisdictions.

Transportability

The methodology for the purported "validation" virtually precludes any transportability. Since the "validation" is then dependent upon various kinds of supervisory ratings utilizing unspecified criteria, presumably the existing norms of police behavior in Wichita are the operational elements. There is no legal or scientific way that these same norms could be presumed operational in any other jurisdictions. If the Wichita validations were properly done and met the requirements of the Drifom Guidelines and professional quality standards, other jurisdictions wishing to use the system would still have to repeat the validation, because a validation study could be successful in one jurisdiction and unsuccessful in another. While some methodologies lend themselves to extrapolations, the one that is selected herein does not. However, the likelihood of the outcome of the validation attempt in other jurisdictions is, in part, dependent upon the outcome of the validation attempt in Wichita.

The Wichita "Validation"

Based on the information in the file, the studies that have been done thus far do not begin to meet the requirements of a proper validation, and if Wichita were to be in a situation where disparate impact exists and they had to use this study as their proof of validation, they would almost certainly fail in any court within a competent jurisdiction. I will articulate some of the specific reasons for this without going into the details of the underlined study. In other words, there may well be subtle deficits in the methodologies, instrumentality, criteria, or procedures that were used. However, even if you give the study the benefit of the doubt, and all of these issues assume that everything that appears in the study has been validly done, the validation still

university research corporation

Mr. Robert K. Burkhardt
October 31, 1979
Page 3

fails to meet an acceptable standard. Specifically:

- The vast majority of the data that is purported to establish the correlation between performance and the battery is based on data obtained in a training experience. While in their letter, the subgrantees alleged that as a result of the Washington vs. Davis case it is sufficient to show a correlation with a training experience; this is clearly contrary to the interpretation of law and operating policies of most civil rights enforcement agencies. Specifically, Washington vs. Davis was decided under Constitutional standards and any issue at this time would certainly be a Title VII case.
- The subgrantees admit that their procedure regarding restricted range does not meet the currently acceptable procedures. The fact that it met a particular standard, at one point in time, does not seem to be particularly relevant today. It merely means that the validation (were it not for all the other deficits) would have been acceptable for people who are hired during the time that the validation methodology was acceptable.
- There seems to be an inappropriate mixture of statistical methodologies used. Specifically, the correlation technique is parametric and makes certain assumptions regarding the distribution of the variables involved. The criteria seemed to be ratings in the forms of ranks, and unless there is some additional data regarding the distribution of the ranking, it would appear that nonparametric techniques of analysis would have been more appropriate.
- In the report the correlation seemed to reside with components of the battery rather than the battery as a whole. If the methodology of selection is based on the battery, then component correlations are not relevant.
- The correlations that purport to be statistically significant are relatively meaningless in terms of predictability. For example, in the initial study, the highest correlation was .45 which would, at best account for approximately 20 percent of the variance. Crudely put, only 20 percent of the performance might be predictable according to the criteria (and the performance we are talking about is training performance). Most of the correlations are of the order of under .25. These explain less than 7 percent of the variance. In this sense the study has the same defect as the purported Los Angeles height standard validation.

university research corporation

Mr. Robert K. Burkhardt
October 31, 1979
Page 4

I reiterate that this analysis gives the study the benefit of the doubt on such things as the rating and ranking system, the propriety of the procedures, ignoring the potential economic vested interest of the researchers, and the like.

Recommendation

In our opinion, LEAA should quickly be sure that all other agencies are notified that neither OCRC nor other branches of LEAA or the Justice Department particularly endorse, support, or sanction this particular validation. Other jurisdictions should not be encouraged to use the methodology for, even in the remote possibility it is determined to be a legal validation, it would certainly not be good administrative practice of public policy to use a battery of this kind.

With respect to Wichita, it should be determined whether or not there has been disparate impact. Absent a finding that there has been disparate impact (the result of this particular battery), the issue of validation of the battery is critical of the jurisdictions possible use thereof.

In a sense, this is a preliminary opinion we have rendered based on limited information. If more formal analysis is needed, we would want to examine a much larger data base than the letters and single study we were provided.

Sincerely yours,

Lewis D. Eigen

Lewis D. Eigen, Ph.D.
Executive Vice President

LNE/hw
Attachment
cc: Winnie Dunton

university research corporation

Appendix 3

Model Penal Code Rule on Deadly Force

§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 if his apprehension is delayed.

(3) Use of Force to Prevent Escape from Custody. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

Model Penal Code §3.07 (1962).

Appendix 4

Model Rules for Law Enforcement Officers: A Manual on Police Discretion
Copyright 1974, I.A.C.P.

§3.03. Under normal circumstances, only the methods or instrumentalities listed below may be used to apply force. These methods are listed in ascending order from the least severe to the most drastic. It is the officer's responsibility to first exhaust every reasonable means of employing the minimum amount of force before escalating to a more severe application of force.

- (a) Physical strength and skill.
- (b) Approved mace, gas or noxious substance.
- (c) Approved baton, sap or blackjack.
- (d) Approved service revolver or other approved firearm and approved ammunition.

Section Four - Use of Non-Deadly Force

§4.01. Non-deadly force may be used in instances where a police officer must take aggressive physical action to achieve a lawful objective, as enumerated in Section 1.01.

§4.02. Whenever a police officer finds it necessary to use non-deadly force to achieve a lawful police objective, it shall be incumbent upon that officer to exhaust every reasonable means of employing the least amount of force to effect the purpose before escalating to the next, more forceful method. However, nothing in this rule shall be interpreted to mean that an officer is required to engage in prolonged hand-to-hand combat or struggle rather than resort to that method which will most quickly and safely bring the arrestee under control.

§4.03. Chemical mace may be used when the officer, while performing his official duties, is required to use physical force, either to protect himself from assault or to subdue a person engaged in unlawful activities. Chemical mace shall not be used if the resistance is minor, not hazardous to the officer (or a third party), or if the resistance can be overcome by the officer's physical prowess, or by several officers acting together.

§4.04. The baton (short or long) may be used by an officer to subdue a violently resisting subject or in self defense or defense of a third party if lesser methods have failed or if circumstances warrant the immediate use of the baton.

- (a) Blows from the baton capable of inflicting permanent injury must be avoided.
- (b) The baton should not be used as a club or bludgeon and it shall not be raised above the head to strike a blow to any person.
- (c) Blows delivered with a baton shall be short and snappy and shall be delivered only to the vulnerable areas of the body which will render the opponent temporarily incapacitated but will not cause serious bodily harm.

§4.05. The baton may also be used as a barricade or repelling device in crowd control situations, or to ward off blows from an assailant.

Section Four - Commentary

Fortunately, while an officer may have to resort to use of non-lethal force fairly frequently, situations requiring the use of deadly weapons are relatively infrequent.

The definition of non-deadly force, Section 2.02, includes the specific instruments normally available to an officer. Physical strength or skill, mace or the baton is neither "likely" nor "intended" to cause great bodily harm if properly used. No one, however, will dispute the fact that the improper and unreasonable use of any of the above methods or instruments could cause severe injury and even death.

Section 4.01 calls attention to the fact that law and sound police practice recognize the need to apply reasonable non-deadly force where necessary and practical. However, if the circumstances are such that non-deadly force would be ineffective, or its use would not prevent great bodily harm to the officer or a third party, it would be justifiable to use deadly force.

In an effort to minimize the possibility of unnecessary force, these rules establish an escalating scale of force. The lowest, least drastic method of a police officer using force would be physical strength and skill (holding, throwing, restraining, pushing, pulling, singly or with help from other officers. Physical prowess is a reasonable method of overcoming the resistance of a person who is unarmed or simply failing to abide by the officers lawful command to submit.

There are few situations where an officer should resort to any force greater than physical prowess. Escalating this type of force may mean simply bringing in more officers. It should be remembered that good police procedure dictates that, on potentially hazardous calls for service, more than one officer should be automatically assigned and reinforcements should be called upon, if necessary. The key to restraint and diminishing resistance is superiority of manpower, and no officer should ever be faulted for requesting assistance. The officer who enters a bar room brawl or domestic disturbance alone, unless absolutely necessary or when a cover unit is not available, is in need of retraining. The theory behind superiority of manpower involves not only the protection of the officer, but also the protection of the person to be taken into custody. One man may not have the ability to effectively control a subject and must therefore resort to a degree of force greater than if two officers simply restrained the individual. Although both forms of force may constitute lawful violence in that they were reasonable under the circumstances, the latter is by far a more effective and superior police tactic.

Section 4.03 refers to the use of chemical mace in rendering the resistor incapable of further resistance. Chemical mace should be used only if physical strength and skill are ineffective or impractical. Although mace can be used effectively in most cases, there have been instances where mace has simply not been successful or has further angered the subject, resulting in increased aggression.

In instances where physical strength and skill or mace are ineffective or their use might constitute a danger to the officer or a third party, the officer is justified in using the baton or sap to overcome resistance and to end the conflict.

The application of the baton is considered the most drastic form of non-deadly force. It must be used judiciously and only if lesser methods have failed or their use would be impractical.

Appendix 5



COUNTY COURTHOUSE, WICHITA, KANSAS, 67203

COUNTY OF SEDGWICK

SHERIFF
JOHNNIE DARR
Room 255

SAM DAVISON
UNDERSHERIFF
PHONE 268-7285
LYMAN REESE
CAPTAIN OF
INVESTIGATION DIVISION
PHONE 268-7604
JOHN MCNAHAN
CAPTAIN OF
ROAD PATROL DIVISION
PHONE 268-7315
BOB STRONG
CAPTAIN OF
JUDICIAL SERVICES
CHARLIE LUTKIE
CAPTAIN OF JAIL
LARRY RIEDLINGER
DIRECTOR OF CORRECTIONS
KATHLEN GRAGG
SHERIFF'S SECRETARY
PHONE 268-7264

August 16, 1979

Mr. Benjamin H. Day
Chairperson
Kansas Advisory Committee
Central State Regional Office
Old Federal Office Building
911 Walnut Street, Room 3103
Kansas City, Missouri 64106

RE: Draft of the Kansas Advisory Committee's Report on Police
Concerns in Wichita.

Dear Mr. Day:

After careful consideration of the above designated draft, I have reached the conclusion that the draft is, in many respects, either erroneous or, at the least, misleading.

Further, in some instances, the draft appears to rely upon the uncorroborated testimony of one individual. It also is evident no effort was made to ascertain the validity of these assertions. In this respect, the draft bears an appalling similarity to the "witch hunts" conducted during the McCarthy era in the 1950's.

Unfortunately, the methodology utilized in compiling the draft lends credence to and perpetuates factual inaccuracies. For these reasons, I would respectfully disagree with many of the statements contained in the draft.

Yours very truly,

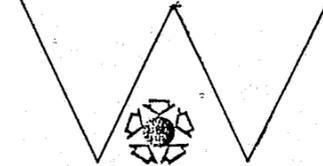
A handwritten signature in cursive script that reads "Hans C. Hansen".

Hans C. Hansen,
Sheriff's Legal Advisor

/dh

Appendix 6a

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER
CITY HALL - THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351

September 27, 1979

United States Commission on Civil Rights
Central States Regional Office
Kansas Advisory Committee
Old Federal Office Building
911 Walnut Street, Room 3103
Kansas City, Missouri 64016

Attention: Mr. Melvin L. Jenkins

Subject: Kansas Advisory Committee's Report on Police Concerns in Wichita

Following frank discussions with Messrs. Malcolm Barnett and Tony Lopez today, it is my position that the report:

- (1) Contains many inaccuracies as documented by my letter of September 5, 1979,
- (2) Omits much testimony which would add balance and objectivity to the report, as suggested in my letter of September 5, 1979,
- (3) Requires major redrafting to serve the goal of providing a basis for improving communication among various persons and groups in the community,
- (4) Tends to inflame and divide rather than analyze and lead toward solutions.

Several alternatives are suggested that have already been shared with your representatives:

- (1) Shorten the report to an executive summary, relying on the great mass of data available for support, or,
- (2) Lengthen the report by adding testimony of University, City and County administrators and law enforcement personnel to provide balance,

WICHITA

Mr. Melvin L. Jenkins
September 27, 1979

- (3) Include all corrective data previously provided and review the report for tone and balance without further consultation with the City,
- (4) Accomplish work in Number 3 above, and furnish the second draft to participants for further review and possible concurrence.

The City was open and cooperative with the Committee. We expected fairness, balance and accuracy. My staff and I were disappointed in the first draft.

Further work together on the draft seems pointless at this time unless:

- (1) Some willingness is shown to correct the inaccuracies and omissions already noted in writing,
- (2) Participation is invited in reviewing the corrected draft and, or,
- (3) Advice and comment is invited by the Advisory Committee on the findings, conclusions and recommendations.

The Advisory Committee is scheduled to meet September 29, in Wichita. It is my hope that you and the Committee will provide us some basis and assurance of corrective action being taken in the first draft which will justify further effort on our part.

The future progress of all people, and the improvement of the quality of life for all Wichita residents is most important to me. Let our mutual efforts lead toward achieving these goals.

Sincerely,

E. H. Denton
City Manager

EHD:mp

Appendix 6b

UNITED STATES COMMISSION ON CIVIL RIGHTS

CENTRAL STATES REGIONAL OFFICE
Old Federal Office Building
911 Walnut Street, Room 3103
Kansas City, Missouri 64106
Telephone: (816) 374-5253

September 28, 1979

Mr. Eugene H. Denton
City Manager
City Hall
455 North Main
Wichita, Kansas 67202

Dear Mr. Denton:

I have received your letter of September 27, 1979. I regret that you have decided not to complete your comments on the Advisory Committee's draft report, despite your statement in your letter of September 5 and in a telephone conversation with me on September 11 that you were prepared to do so.

I particularly regret your refusal to specify the inaccuracies, innuendoes and "oversimplified accounts of complex socio-economic community problems" to which you take exception. Your reluctance to do so makes it impossible for either my staff or the Advisory Committee to review these.

My staff gather from your letter of September 5 and your comments to them on September 27 that the city's primary concern involves the use of newspaper accounts. However we feel that it is acceptable to use newspaper accounts along with other information to illustrate police-community relations in Wichita especially as the newspaper accounts corroborate information provided to the Advisory Committee and included in the report.

As you were told, my staff went to great lengths to incorporate the city's views and correct errors identified by the city in your letter of September 5. Specifically:

1. It is impossible to know what you consider in the draft promotes "unity rather than division" (p. 1) unless you tell us. You have refused to do so.
2. A comment reflecting the city's view on recreational facilities and job opportunities has been incorporated into the draft at page I-3.
3. The error noted in our description of the Freida White killing at page II-5 and elsewhere has been corrected, and the distance of the officer's retreat noted.

Mr. Eugene H. Denton
September 28, 1979
Page 2

4. The fact that officers allege that they could not know the race of the individuals prior to arrest and the failure of four separate investigations to find any reason to "withdraw" the justification of use of deadly force has been noted.
5. The lack of witnesses who had a clear and complete view/hearing range in the Jacobs episode has been included in the report as has your statement concerning the NAACP.
6. The fact that two of the persons arrested in the Wheatshocker episode were later convicted has been noted as has your statement about the roles of Lt. Stewart and U.S. Air Force Sgt. Delmar Gillespie in the subsequent investigation.
7. At page II-9 the extent of discipline to each officer has been incorporated.
8. The city's statement about police training as it affects family crisis intervention has been incorporated.
9. While we see no implication in the draft report that anyone has been killed because of inadequate Wichita Police Department firearms training, the report has been further revised to remove any potential implication we could find.
10. The city's assertion that its firearms regulations are more strict than required by State law is incorporated.
11. The statement complained of at page V-7 is deleted.
12. The comment requested in the appendix is incorporated.
13. The addition of a black captain is noted, as is the change in supervisory responsibilities. Apropos, kindly send us an organization chart, as previously requested, which shows this new pattern.
14. Your comments on efforts by the city to increase minority and female participation, despite what you describe as hostility, have been incorporated.
15. The facts that the city maintains records on validity and have established an assessment center have been included.

I and my staff indicated to you that all comments by all parties would be incorporated, where these raised substantial points. This was specified to both you and the police chief at our initial meetings, it was reiterated by my staff to senior police officers, and it was reiterated to you and all participants who were asked to comment on the draft report. Further, as I indicated to you on September 11, as my staff indicated to you on

Mr. Eugene H. Denton
September 28, 1979
Page 3

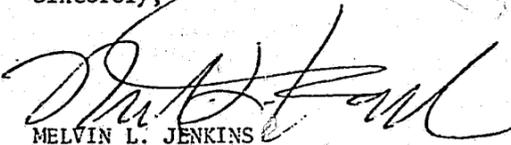
September 27 and as I indicate above, all of your specific points have been incorporated in the draft report. As we agreed on September 11, the meeting of September 27 between my staff and you and your staff was to review the draft report line by line to explore inaccuracies and provide you another opportunity to add substantive comments. I was surprised at your failure to carry out our agreement of September 11.

Although you told my staff you had not seen the transcript (one was supplied to the police chief as soon as it became available and you quoted from it in your September 5 letter), you insist that comments by yourself, the chief and Prof. Chang be added. You have not been willing to specify at which points you wish these inserted.

You and the chief were invited to assist in the drafting of the Advisory Committee's findings and recommendations as demanded on page 2 of your letter of September 27. The chief told my staff at a meeting in your presence on September 27 that he refused to do so.

Given your refusal to honor past commitments to me, and your demand for opportunities that have already been granted and declined, I can only assume your letter is an attempt to further delay the completion of this report. (Please note, at your request the city was granted an extension of five days beyond the September 1 comment closing date to file appropriate comments and corrections. No other participants requested an extension of time.) Under the circumstances, I must reiterate my staff's request that you fulfill your promise in your letter of September 5 and, in your telephone conversation with me to supply additional comments to explain and provide a complete list of illustrations for your general complaints of September 5 and September 27. Given the many opportunities to comment the city has been granted, I will expect to receive your list not later than 5:00 p.m. on Wednesday, October 3, 1979.

Sincerely,


MELVIN L. JENKINS
Acting Regional Director

Appendix 6c

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER
CITY HALL - THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 265-4351

October 1, 1979

United States Commission on Civil Rights
Central States Regional Office
Kansas Advisory Committee
Old Federal Office Building
911 Walnut Street, Room 3103
Kansas City, Missouri 64016

Dear Mr. Jenkins:

Your letter to me of September 28, 1979, regarding the Advisory Committee's draft report is acknowledged.

The corrective action taken on the report in response to our specific comments and your stated plans to further balance the content of the report are appreciated.

However, your letter leaves the impression that somehow the City of Wichita is responsible for the shortcomings and discrepancies contained in the report. Our commitment to your office to make factual information available is reiterated but the accuracy and factualness of the completed report are your responsibility.

It is our feeling that you should be able to provide such a report with the voluminous information available to you, which includes the manuscript, testimonies, court records and the City's previous written response as well as the verbal comments of the City administrators participating in the study.

Contrary to your statement, this office has no wish to delay the report. Therefore, we urge you to draw upon the reservoir of information you have to complete and publish the report. We will, of course, be glad to help should you need any further assistance in interpreting the data which you have on hand.

Again, it is my hope that the final report will serve as a tool to help resolve problems rather than to divide this community.

Sincerely,

E. K. Denton
City Manager

EHD/fpd
cc: Richard LaMunyon, Chief of Police (w/a)
John Dekker, Director of Law (w/a)

OCT 05 1979

END