

life or to protect himself from serious bodily injury, but he is not permitted to use it to protect himself from assaults which are not likely to have serious results. . . Firearms may be used when it is necessary to apprehend or prevent escape of a known felon when the capture or recapture of the felon cannot be accomplished by any other means."

Mr. Olsen recognized the restrictive language of the Detroit Police Manual in a press release of February 26, 1963, when following a prior shooting by a police officer:

**RELEASE BY
SAMUEL H. OLSEN
PROSECUTING ATTORNEY OF WAYNE COUNTY**

TO ALL LAW ENFORCING AGENCIES

February 26, 1963

CAUTION CONCERNING USE OF FIREARMS BY POLICE OFFICERS

A police officer must not use his revolver except in extreme cases. He may use it when it is necessary to save his own life or to protect himself from serious bodily injury, but he is not permitted to use it to protect himself from assaults which are not likely to have serious results. That the officer may do in his own defense, he is authorized and required to do in defense of any citizen or a brother officer upon whom a dangerous assault is made in his presence or in defense of a prisoner whom he has in his custody. Firearms may be used when it is necessary to apprehend or prevent escape of a known felon, when the capture or recapture of the felon cannot be accomplished by any other means.

We have discovered that some police departments have not forwarded directives to their officers detailing the circumstances under which firearms may be lawfully used, and describing the limitations upon the discharge of weapons at prisoners and suspects. The careless use of firearms can result in a serious criminal offense and is to be vigorously discouraged. A police officer is not justified in indiscriminately shooting at every escaping prisoner. The law since early days has sharply differentiated between the right to fire at an escaping felon and the prohibition against shooting at one charged with a trivial offense. Michigan does not impose the death penalty for murder, and it will not tolerate summary execution of a minor offender by a police officer.

The lack of information on this topic seems to exist in some areas despite specific language in departmental manuals, and occasional refreshers can therefore be of significant value in preventing an officer from experiencing panic which may produce tragedy in a moment of crisis. With effective indoctrination, an officer faced with the necessity of making an immediate decision will not err in his judgment out of instinctive fear of being accused of neglect of duty if he does not use extreme measures to retain custody of a prisoner. It is possible that occasionally a prisoner held or sought for a misdemeanor will risk flight if he feels that an officer's fire will be withheld. Usually, however, his re-arrest can be quickly accomplished especially if his name, address or automobile license number is known. For this reason police regulations wisely warn officers not to fire their pistols at fleeing persons when the offense involved is trivial.

It must be recognized that positive measures are necessary to discourage flight from custody. It is for that reason that the policy is now here announced that upon apprehension, such escapes will be prosecuted for flight, and upon conviction the courts will be asked to impose the maximum sentence for that violation, which will be in addition to the punishment for the original offense. . . ."

Officer Spicher claimed that he knew Cynthia Scott was a prostitute. Even if she had become an escaping felon at the time she was shot, no facts are presented to indicate a need for shooting her. According to civilian witnesses, Miss Scott made a statement to officer Spicher that she would not submit to his arrest, and that she was going home. It would have been a relatively simple matter for Officer Spicher to obtain a warrant for arrest by proper proceedings and apprehend Miss Scott at her home or elsewhere. Shooting her was not justifiable, and the facts and circumstances of this case do not fall into the category of those extreme cases outlined by the Detroit Police Manual which justify taking a human life.

5. Your committee is appalled at what it believes to be a careless, inadequate, and biased investigation made by the office of the Wayne County Prosecutor in this matter. No effort was made in questioning the police officers to determine whether or not there was justification for the initial arrest of Miss Scott; nor was any effort made to have the officers fully give the details surrounding the shooting which would have helped arrive at a complete factual determination of this case.

Moreover, the questioning of civilian witnesses indicates a desire to obtain from them only such information as would support the position taken by the Detroit police officers and nothing more. This poor investigation can be the product of either incompetence or a desire to obtain an exoneration from the very outset. We believe the latter is the case, rather than the former.

6. The statement issued July 8, 1963, by Prosecutor Olsen totally fails to meet any of the crucial issues involved in this case. No attempt is made by Mr. Olsen to deal with the justification, if any, for the initial arrest of Miss Scott. No attempt is made to deal with the amount of force used by Officer Spicher in attempting to arrest Miss Scott after she sought to prevent the arrest. No attempt is made by Mr. Olsen to deal with Miss Scott's right to resist an unlawful

arrest. Instead, Mr. Olsen is content to merely dwell upon an appeal for a law which would ban the carrying of certain types of knives. When your committee sought to obtain Mr. Olsen's legal basis for his action, he stated that he would rely upon his statement already issued, and would make no further comment.

RECOMMENDATIONS

Your committee recommends the following action be taken by the Executive Board in this case:

1. The Board should write to and urge Wayne County Prosecutor, Samuel H. Olsen, to reopen this case, and to conduct a full, fair and impartial investigation.
2. The Board should urge the Detroit Police Department to suspend forthwith Officer Spicher and conduct a police Trial Board Hearing to determine whether any disciplinary action should be taken against him.
3. The Board should make a public statement criticizing the office of the Wayne County Prosecutor for a careless, superficial investigation of this case.
4. During the course of this committee's investigation, it was reported in the Detroit press that a young boy was killed by the Detroit police, who were chasing him in a patrol car for an apparent misdemeanor. We believe the total facts and circumstances of this shooting, coming hard on the heels of the Scott shooting, should be carefully studied and investigated and we ask power from the Executive Board to conduct such necessary investigation as may be required to present the full facts to the Board.

We urge the Board to prepare and bring a citizens' criminal Complaint in the Recorders Court for the City of Detroit, charging Officer Spicher with homicide in the case of Cynthia Scott.
5. The Lawyers Guild should urge Police Commissioner Edwards to appoint a Citizens' Committee to investigate and make recommendations in this case.
6. The Guild should urge other Bar Associations to join it in its effort to obtain a complete investigation of this case.

July 6, 1963
Detroit, Michigan

Respectfully submitted,
Nathan Conyers
Sheldon Otis