

**THE BILL BLACKWOOD
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The use of Oleoresin Capsicum Aerosol Spray as an Intermediate
Use of Force Option by the Village Police Department

A Policy Research Project
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ABSTRACT

The use of force is one of the most controversial aspects of modern law enforcement. The improper use of less than lethal force is an issue that could destroy a department's morale and public image. The purpose of this research is to examine the use of Oleoresin Capsicum (OC) Aerosol Spray as an intermediate use of force option. The sources used in the research include law enforcement journals, newspaper articles, manufacturers literature, and an executive brief and model policy from the International Chiefs of Police (IACP).

I have concluded that OC spray is a viable intermediate use of force option, and it is my recommendation that the Village Police Department adopt the use of OC spray as an intermediate use of force option. The Village Police Department Standards of Operations concerning both the Use of Force, and Prisoner Transportation should be updated. Finally, I have recommended that the IACP model policy Pepper Aerosol Restraint Spray be adopted as the Standard of Operation for OC spray use by the Village Police Department. Pepper Aerosol Restraint Spray be adopted by this department.

Introduction

On the use of force continuum there exists a large gap between verbal command/touching of a subject and the use of non-lethal impact weapons or deadly force. Historically, police departments have transitioned from hands on contact with a subject to the use of impact weapons such as nightsticks. An intermediate use of force option between hands on contact and resorting to striking a subject with a nightstick is a necessary step in the use of force continuum.

The purpose of this policy research project is to examine Oleoresin Capsicum (OC) Aerosol Spray (sometimes called Pepper Spray) as an intermediate use of force option for the Village Police Department. The following issues will be examined: the controversies surrounding OC spray including deaths of individuals after being exposed to OC spray, the effectiveness of OC spray, the benefits and liabilities of using OC spray as an intermediate use of force option, the training issues involved, and the adoption of a departmental policy governing the use of OC spray.

The intended audience of this policy research project is the Chief of Police and the Police Commission of the Village Police Department. The sources of information used in the research of this project include law enforcement journals, manufacturers literature, executive briefs and model policies from the International Association of Chiefs of Police (IACP) and other law enforcement agencies.

The intended outcome of this policy research project is to gain approval from the Village Police Commission for the inclusion of Oleoresin Capsicum Aerosol Spray in the Village Police Department Use of Force policy. This will allow the Village Police Department officers' an intermediate use of force option between verbal commands and the use of an impact weapon. It is further intended that this project will convince the Police Commission to provide department issued OC spray, and to adopt the IACP model policy concerning the use of OC spray.

Historical Context

Traditionally, police officers have not had a viable use of force option between physical control and impact weapons such as nightsticks. In fact, using a hand held weapon such as a stick is natural to man and has occurred since man began walking upright and grew opposable thumbs (Pilant 51). During the 1960's and 1970's, tear gas appeared to be a safe and effective means of control greater than physical control but less than impact weapons. Tear gas was offered as a means to allow an officer to gain control of a subject or situation without unnecessary risk or injury to the public, the subject, or the officer. Since then, the use of tear gas has become less popular with police departments because of it's perceived deficiencies (Gauvin 29).

Tear gas is most often delivered in a gaseous or very fine mist, and is easily dispersed or misdirected by prevailing air currents. There is always the strong possibility that air movement could cause contamination or incapacitation of the

officer. Also, the actual irritants in tear gas are very fine crystals. These crystals eventually settle out of the air, contaminating the area in which the tear gas was used. This can cause environmental problems when the tear gas is used inside of a structure, vehicle, or other confined space. Further, tear gas has not proved to be effective against some of the intoxicated or mentally unstable subjects that are the hardest segment of society for the police to physically control.

Without tear gas as a use of force option, police departments had to regress to a use of force continuum without a use of force option between physical control and impact weapons. Because of several highly publicized incidents by the press and electronic media, the public has developed a negative impression of police officers. Also, the public could easily be led by the media to believe that any use of force by a police officer is an example of excessive force (Katz 14-15).

Another option is martial arts type training to allow officers the ability to more easily defend themselves and control subjects without using an impact weapon. One of the negatives of martial arts as a use of force is the time and training necessary to develop and retain those skills at a high competence level. Another negative aspect of any hands on physical control technique is that the officer must be within reach of the subject being controlled. Being within reach of the subject may allow the subject the opportunity to attempt to take the officer's handgun or to strike or otherwise injure the officer, decreasing officer safety. With the decrease of officer safety, the potential costs

to the department need to be realized. In addition to any psychological impact to the department of an officer being killed or injured in the line of duty, the department should consider the economic costs involved. There is the cost of officers missed time, medical expenses, and workers compensation claims. Generally, when an officer is injured during a confrontation the subject is often injured as well (Kalk 13).

More recently some police departments have begun using OC spray as an intermediate force option. Oleoresin Capsicum Spray was developed in the early 1960's by veterinarians at the University of Georgia. The spray was packaged as HALT, and was marketed as a product to be used by mail carriers and the like to repel attacking dogs (Orrick 7). Oleoresin Capsicum is obtained through an extraction process from chili peppers. Selected peppers are dried and ground into fine powder. The oleoresin in the powder is generally extracted with the addition of an organic solvent. The solvent in the solution is removed, and the remaining oily substance is raw oleoresin capsicum (DuBay 1).

Since 1987 OC spray has been promoted as an intermediate use of force option by the Federal Bureau of Investigation Firearms Training Unit (FBI FTU). However, this endorsement by the FBI FTU has been tainted by recent developments concerning the relationship of the chief chemist of the FBI FTU and a manufacturer of an OC spray that was purchased by the FBI (Orrick 1). The use of OC spray has also been questioned by the American Civil Liberties Union of Southern California (ACLU-SC). In spite of this negative publicity, it appears that OC spray is a viable

intermediate use of force option that should be available to law enforcement (Katz 16). Inspector Patrick Carroll, commander of the emergency service unit in New York City stated " I like to think of the Rodney King incident. If those guys could have used a couple of douses of the spray there wouldn't have been a riot" (Berger 2).

Review of the Literature

A review of the current literature suggests that OC spray has overcome the several controversies surrounding it to be an accepted use of force tool for law enforcement in modern society. In 1995 the ACLU-SC issued a policy paper concerning the use of OC spray. In this report the ACLU-SC identified 26 deaths among people that were exposed to OC spray between January 1, 1993 and June 1, 1995 in California. However, none of these deaths were attributed to OC spray by the medical examiners performing the autopsies. Although the use of OC spray is questioned by the ACLU-SC as possibly being used by the police to administer "street justice", the report does not call for a ban on the use of OC spray (ACLU-SC i). In fact, the ACLU-SC has published model policies for the use of OC spray by both law enforcement and corrections officers (ACLU-SC B1-B7).

Another controversy surrounding OC spray was the promotion of OC spray by FBI special agent Thomas W. W. Ward, the chief chemist of the FBI FTU. On February 12, 1996, special agent Ward resigned from the FBI and pled guilty to taking \$ 57,500.00 in kickbacks from the creator of Cap-Stun, Luckey Police Products of

Fort Lauderdale, Florida (Orrick 1).

Regardless of these controversies, OC spray appears to be an effective use of force tool, and has had a success rate of up to 85% in actual field usage. A study of the use of less than lethal force by the Portland Police Department was conducted by Lt. Russell J. Gauvin, and reported an 85 % success rate by OC spray (Gauvin 30). The report examined the use of force reports and citizen complaints for the three year period prior to the use of OC spray by the Portland Police Department, and the two year period since it's issuance. The Portland Police Department had 226 reported uses of OC spray during the first two years of issuance (Gauvin 30). The study found that during the two years that OC spray was used by the Portland Police Department, there was a reduction of injuries to arrested subjects of 83%, and a reduction of officer injuries of 61% in cases where OC spray was used (Gauvin 31). During the same time period the department had a 43% reduction of excessive force complaints (Gauvin 31). Further, the Portland Police Department had a reduction of workers' compensation claims of 16% (Gauvin 32).

The issue of deaths associated with the use of OC spray, such as those raised by the ACLU-SC are a valid concern and need to be addressed. The possibility of OC spray causing or significantly contributing to the death of a the sprayed subject has caused the International Chiefs of Police to study OC spray as an intermediate use of force option. After a detailed study the IACP issued an executive brief in March 1994. The study stated that the subject deaths reported by the ACLU-SC did not

appear to be caused by the OC spray, but were due to other medical factors called sudden in-custody death syndrome(1-4). In September 1994 the IACP issued a model policy concerning the use of OC spray (1-2).

The concerns expressed about sudden in-custody death of suspects while in police custody were addressed in the executive brief. There are four different conditions that appear to be the cause of the majority of the sudden in-custody deaths. These four conditions are positional asphyxia, cocaine intoxication, excited delirium, and nueroleptic syndrome (2). A sudden in-custody death can occur from one of these medical conditions regardless of whether OC spray was used. Officer awareness and training in the recognition of the risk factors for these conditions is necessary for all law enforcement departments, whether OC spray is authorized for use by that department or not(Gallagher 27). Inspector Patrick Carroll, commander of the emergency service unit in New York City says his officers often tried to learn whether people they were planning to subdue might have respiratory or cardiac problems or whether they used illegal drugs.

Relevant Issues

The inclusion of OC spray as an intermediate use of force option leads to other relevant issues. The first is a decision to merely authorize the use of OC spray, or to have the OC spray issued by the department to the officers. Issuance of OC spray

will allow the department to control the type and potency of the spray used by it's officers'.

After the decision is made to include OC spray as an intermediate force option, specifications of the OC sprays available should be researched. The factors used to determine which product to authorize or issue should include: the potency of the OC, the flammability of the product or it's aerosol propellant, and the type of spray pattern. The potency of OC spray is expressed in percentage of OC in the chemical solution, or as Scoville Heat Units (SHU's). SHU's were determined by a panel of persons judging the potency or relative heat of different food peppers. Bell peppers were rated at 0 SHU's and jalapeno peppers were rated at 6,000 SHU's. The typical OC spray available to law enforcement contains between 2% to 10% oleoresin capsicum and is rated at 500,000 to 2,000,000 SHU's (DuBay 1). A water soluble chemical solution will be non flammable, as will an inert compressed gas propellant. Some OC sprays available contain OC in a flammable or carcinogenic chemical solution, or have a compressed gas propellant that is flammable.

The two types of spray patterns available are mist and stream. The mist is designed to be breathed into the subject's lungs as well as affect their vision. However, there are potential dangers associated with this type of spray pattern. For example, subjects that have circulation problems, are asthmatic, or have other respiratory problems. The second type of spray pattern is the stream. The stream pattern is designed to be sprayed into the suspect's eyes, and disrupts their activities by

affecting their vision. Some of this spray may enter their mouth or nasal passages and will cause breathing discomfort, but not to the extent that a mist delivery system would. Also, the stream delivery system works at a longer range than a mist, and is less affected by atmospheric conditions (Gauvin 30).

The all natural food grade products are easier to contend with after use. The exposed person is easily decontaminated by washing the OC residue from their skin and eyes, and clothing is allowed to air dry. In addition confined spaces should be ventilated for approximately thirty minutes. If surface areas are contaminated, the OC residue can be washed away with soap and water (DuBay 2).

The next decision to be made is which point along the force continuum that OC will be applied. The benefit of using a less than lethal force option that is likely to have no lasting effects, is that the force can be used earlier in a confrontation. The earliest application of the maximum amount of authorized force can lead to successful control of the subject while reducing the possibility of injuries to the subject or officer(Kalk 12-13).

Conclusions/Recommendations

The purpose of this policy research project is to examine Oleoresin Capsicum Aerosol Spray as an intermediate use of force option for the Village Police Department. Because of the media attention to several perceived incidents of excessive force and the potential legal liabilities of the use of force, this is a

on their stomach. The IACP Pepper Aerosol Restraint Spray model policy should be adopted by this department.

The inclusion of Oleoresin Capsicum Aerosol Spray in the Village Police Department use of force continuum has the potential to reduce the risk of subject and officer injuries in a confrontation. The adoption of the IACP model policy, along with the changes to the Village Police Department use of force and prisoner transportation policy will further protect against unnecessary injuries. These changes will enable the Village Police Department serve it's citizens more effectively and more efficiently.

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