

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

A Proposal to Include Oleoresin Capsicum Spray as a Force Option
Available to Officers of the Colleyville Police Department

A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Management Institute

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November, 1996

#388

TABLE OF CONTENTS

| Section | Page |
|------------------------------------|-------------|
| Abstract | |
| Introduction | 1 |
| Historical and Theoretical Context | 2 |
| Review of Literature | 3 |
| Discussion of Relevant Issues | 7 |
| Conclusion / Recommendations | 11 |
| Bibliography | 13 |
| Appendices | |

ABSTRACT

For at least the last ten years the Colleyville Police Department has not authorized any chemical agents for use by its officers as a force option. Recently several officers have requested that consideration be given to the authorization of Oleoresin Capsicum (OC) Spray for this purpose. The officer who is assigned to the Colleyville Heritage High School has also asked that consideration be given to this issue, pointing out that it would be beneficial for use with violent young persons.

The purpose of this paper is to determine if OC Spray should be authorized, and if so, where this agent properly belongs in the use-of-force continuum. Suggestions may also be made in the areas of policy and training needed to implement changes in current policy and procedures.

A review of the available literature is presented with some attention directed to the opinions of experts and practitioners who have adopted OC Spray. This is needed to assure that the agent is safe and effective and to evaluate research that has been done to address health and safety concerns.

The conclusion of this research indicates that OC Spray is both safe and effective and that it should be adopted for use by the officers of the Colleyville Police Department. The expansion of the use of force continuum is recommended. If the officers can choose OC Spray as an option as soon as it becomes apparent that it is necessary, it might prevent injuries to officers and suspects as well. Some suggestions are made as to training and policy concerns needed to implement the recommended changes.

Introduction

The purpose of this research project is to determine if Oleoresin Capsicum (hereafter referred to as OC) Spray is an effective, safe and suitable agent for use by officers of the Colleyville Police Department. Assuming that the agent is recommended for selection, it must be determined where OC Spray belongs in the use-of-force continuum.

If such a recommendation is made, it will also be necessary to address what would need to be included in a new policy, or changes in current policy and procedure. In addition it would address training considerations, so that policy, or changes to existing policy could be implemented.

At the present time, officers of the Colleyville Police Department are not authorized to use any non-lethal weapon or agent other than the ASP Tactical Baton. It has been suggested that officers must choose between empty hand control methods or the impact weapon to control violent or potentially violent subjects. This could result in unnecessary injury to the officer or the subject, depending on the choice selected. OC Spray might be appropriate to fill that gap in the force continuum and prevent, or at least lessen, the chance for an unnecessary injury.

This project would serve as an issues and concepts paper to aid the Colleyville Police Department's management and staff in making changes to policy and procedure. It could also aid city administration in any review of such changes to policy, and serve to help develop training programs and materials to implement any such changes.

A review of journal and magazine articles, training manuals and materials, and other related literature will be included, to ascertain what others have learned or have

done in this area. It is anticipated that this proposal will recommend that the Colleyville Police Department adopt OC Spray as a force option for it's officers. Recommendations are also expected to address where the agent belongs in the use of force continuum. *

Historical, and Theoretical Context

Current Colleyville Police Department policy was issued in February of 1991 and does not authorize any chemical agent for use by the officers as a non-deadly force option (Colleyville Police Department 3). The reason no such agent was included is the wide spread belief that some earlier agents, such as chloroacetophenone (CN) and orthochlorobenzalmalononitrile (CS) tear gas formulations, were often ineffective in police confrontational use (Lawing 9; Onnen 1). Anecdotal information includes incidents where agents such as Chemical Mace resulted in little or no effect on suspects while substantially incapacitating the officers who were accidentally or coincidentally exposed (Rookwood).

There have been reports of injuries to officers and suspects with the CN and CS based agents (IACP Training Key 1). In addition, there were some anecdotal reports of officers and suspects having some lasting eye problems and even chemical burns following exposure to CN or CS based agents. A higher probability of severe allergic reactions is also present with these agents (Rookwood).

Oleoresin Capsicum was introduced to law enforcement for use as a non-deadly force option in 1976 by CapStun (MSI 94 3; MSI 95 4). It was originally developed for use to ward off bear attacks (Lawing 3). In 1989, following three years of intensive

research, OC Spray was approved for use by the Federal Bureau of Investigation (MSI 94 3; MSI 95 4). Unlike the earlier agents, OC Spray has proven very effective when used by the police to control violent suspects. The Kansas City Missouri Police Department reported over 800 applications of OC Spray in a two-year period. Good to excellent results were reported. Where suspects were not immobilized, most were at least temporarily blinded making it easier and safer for officers to subdue the suspects (National Institute of Justice 1).

Theoretically, where officers choices of force options do not include a chemical agent, the probability of physical injury to the officer and the suspect increases. When an officer encounters a violent suspect, he or she must decide between trying to control the suspect with empty hand (weaponless) control and resorting to the use of an impact weapon (baton). If the decision is to use the hands, this may result in an injury to the officer or the suspect, that might not have occurred if the officer could use OC Spray. In some cases, both the officer and the suspect could suffer such an injury.

There is some evidence that the use of hands results in many more injuries than does OC Spray (LETN Video). If the officer does elect to use the baton, there is even a higher risk of substantial injury to the suspect. The baton often works as a threat and ends the confrontation. Where it fails to do this the officer has little choice but to strike the suspect with the weapon. Even if the officer is well trained, the suspect will probably not cooperate as well as the training partner or baton dummy does in the gym. The suspect's movement and the officers' reactions to the stress of the moment may lead to the officers improper use of the weapon, or "the little league technique" as

Smith & Wesson Academy Training Coordinator Bert DuVernay describes it (McCauley 39). OC Spray might be a better choice in many of these instances, and would thus serve to reduce the potential for injury in these cases.

The National Institute of Justice and International Association of Chiefs of Police studies showed that there is no correlation between the use of OC Spray by the police and in-custody deaths. Therefore the agent may be used with little concern about the safety of officers and suspects (Pilant 52). Without having the OC Spray as an alternative, there is a greater likelihood that officers may employ tactics that are inappropriate, excessive or that serve to aggravate or escalate a confrontation (IACP National Law Enforcement Policy Center 13). Overwhelmingly, the research approves the use OC Spray as a force option for police officers.

Review of Literature

A good deal of the available literature on OC Spray is written and/or published by persons or entities with the obvious agenda of promoting a product or related training course or materials. With this in mind, this material may still provide useful and relevant information. Some of the magazine and journal articles provide unbiased, though often somewhat opinionated, information, which may also be quite useful. Publications of organizations such as the International Association of Chiefs of Police and National Institute of Justice are perhaps the best source of unbiased information in this area.

Mace Security International, of Bennington, Vermont, approaches training issues in a highly professional manner, supplying a great deal of historical and scientific

information about OC Spray. Tested and proven information is also provided on the methods of use and related legal issues (MSI 94; MSI 95; MSI PepperFoam; MSI Video). Information from the Defense Technology Corporation article cited primarily addresses the nature and formulation of OC Spray products (DuBay 1).

Much of the literature reviewed deals with the sudden in-custody death of individuals who were exposed to OC Spray, during the arrest or at the detention facility. The International Association of Chiefs of Police and the National Institute of Justice studied 30 incidents of this nature in significant detail. Their conclusion was that the exposure to OC Spray was incidental and not the cause of any of these 30 deaths. One fact that was noted during the study was that in most of these cases the OC Spray was somewhat less than completely effective (Granfield et al. 2).

The Mace Security International Training Division developed a training course on Sudden In-Custody Death Syndrome (SICDS), partially as a result of the information reported by the IACP / NIJ research. One element of this course was the development of a SICDS Risk Assessment Scale. One of the significant risk factors included, is the apparent ineffectiveness of OC Spray (MSI SICDS 11).

The IACP executive brief of June 1993 speaks, in part, to the legal and medical risk issues related to the use of OC Spray. While no lawsuits specific to OC Spray were noted, the cases that did involve other chemical agents such as Chemical Mace, had rulings that were overwhelmingly favorable for law enforcement. This article also noted significant reductions in injuries to officers and suspects in agencies where OC Spray was used, with corresponding reductions in liability claims for use-of-force

incidents. No significant injuries or problems were attributed to the use of OC Spray, even where asthmatic suspects were involved (Onnen 2).

A Concord, North Carolina case is mentioned in a few articles. To date, this is the single case where OC Spray has been cited as a factor contributing to the death of an individual. Ed Nowicki, an acknowledged leader in OC Spray training, points out that the deceased, Angelo Robinson, has many of the common characteristics, or risk factors, found in SICDS victims (McCauley 37). It should be noted that the medical examiner's report indicated a failure to consider positional asphyxia, one acknowledged factor in many such deaths, as a possible factor in this case (Lawing 27-28).

Most of the additional literature addresses use-of-force policy and training issues. Particular attention is given to the proper placement of OC Spray in the use-of-force continuum. Some experts recommend expanding this continuum so that OC Spray may be used within policies, prior to hands-on techniques. For example, where it is obvious that the suspect involved will violently resist efforts to control or subdue him, or when he threatens to do so. In addition, OC Spray would be placed on the continuum a second time, prior to the use of impact weapons. For example, in those instances where empty-hand control fails to control or subdue the suspect, OC Spray could be used (Hunter 24-25). One article was included that addresses the appropriate use of deadly force in cases where the suspect uses OC Spray to assault or interfere with an officer (Rapaport 10).

Discussion of Relevant Issues

There are two key issues to be addressed by this research project. The first is the question of whether the Colleyville Police Department should adopt OC Spray for use by the officers as a force option. There are several reasons to suggest that this should be done.

The issue of cost is always a factor. In the case of OC Spray, these costs should be viewed in contrast to the cost of a single lawsuit where a suspect has been injured by an officer. This is particularly appropriate for comparison if the injury may not have occurred if the officer had the option of using OC Spray. The costs of a successful defense of one such lawsuit, let alone the costs of losing such a case, might far exceed the cost of the OC Spray, related equipment, supplies and training for several years.

The equipment consist of the individual unit which is to be carried by each officer. The cost of each such unit is approximately \$15.00. These units will last for at least a full year, unless the unit is damaged or a substantial portion of the contents are expended in use. The carrier or holster for one of these units will cost approximately \$15.00. These may be expected to last with only minimal care and upkeep for several years.

Training may also be accomplished at a minimal expense. The Colleyville Police Department already has two certified instructors on the staff. The cost to maintain Mace Security International factory certification is about \$75.00 per year if that company's video instructor recertification training course is used.

These instructors can provide training for the officers on an in-house basis at little cost. There would also be some minor additional costs for inert training spray units and factory certification fees. These additional costs would be about \$5.00 per officer per year.

Some additional minor costs of this program include providing a supply of paper towels and water for decontamination purposes. It is recommended that sealed one gallon containers of bottled water be carried in the patrol vehicles. While tap water would work just fine, and may be used if it is available, the sealed bottles of water are not expensive and would eliminate charges that something other than water was used. Tap water could be used in the jail booking area, the other place that such decontamination efforts would be expected to occur. Some of these supplies would also be expended for training purposes.

Another reason OC Spray should be adopted is that it affords protection from injury to both officers and suspects. The proper application of OC Spray will bring most violent suspects under control in only a few seconds. Because oleoresin capsicum is an inflammatory agent, it causes rapid swelling in the mucous membranes of the eyes, nose and mouth. At the very least, this interferes with vision and respiratory functions, in addition to the painful, burning sensation on skin exposed to the agent (Morgan 22). As Gregory Rookwood, formerly an instructor trainer for Mace Security International, explains, "Who wouldn't prefer to fight a blind man?" (Rookwood).

There does not seem to be any evidence to support a decision to not adopt OC Spray. Early concerns about in-custody deaths were put to rest following the the International Association of Chiefs of Police and National Institute of Justice studies (Granfield 4). In actual use of OC Spray, most of the concerns related to asthmatics and other persons with respiratory difficulties have failed to produce any problems (Onnen 2). While there are some reports of OC Spray failing to completely incapacitate a suspect, there are very few such reports which claim that the agent had no effect. OC Spray has resulted in the reduction of injuries and the reduction of use-of-force complaints. Because the potential for permanent or long-lasting physical impairment is unlikely, and less than with some hand-on techniques or impact weapons, there seems to be no rationale for not adopting OC Spray.

If the potential for injury is less than it is for such hands-on techniques as pain compliance or take-down measures, it would seem that OC Spray would be a better choice where there is good reason to believe that a suspect will resist efforts to arrest or control him. Every veteran officer has dealt with an arrestee who threatened to fight, or who displayed such obvious physical cues as closing his hands into fists or “blading off” in preparation to fight.

The Federal Bureau of Investigation teaches their agents to apply OC Spray before touching a suspect that has displayed signs of resistance (Lawing 14). Ed Nowicki and Bert DuVernay both concur that OC Spray may be used at a lower level in the force continuum, although DuVernay suggests that an “escort position” might be attempted first, pointing out that many people will comply once they realize that an

officer is serious about arresting them (McCauley 39).

Most use-of-force continuums, or ladders of force considerations, begin with the professional presence or image a officer presents when he arrives at the scene of an incident (See Appendix A). Most officers have observed that many people cease fighting or even arguing when an officer appears at the scene.

The next level of force is that of rhetoric. Dr. George J. Thompson, Ph.D., founder and president of the Verbal Judo Institute of Tijeras, New Mexico, believes that 97% of all police encounters with citizens may be handled with no more than the skillful use of verbal skills, coupled with good professional presence.

From this point, most continuums progress to empty-hand control methods.. these include simple escort positions, pain-compliance techniques and take-down methods, such as choke holds. Most trainers do not suggest using strikes unless an officer has extensive martial arts training and practices these skills regularly.

The next higher level usually includes the use of chemical agents, such as OC Spray. This is closely followed by impact weapons. Of course, the final and highest level of force is deadly force, usually meaning the issue sidearm (TCLEOSE 16).

Some experts now recommend expanding the force continuum to allow for the use of OC Spray at two points (Hunter 24-25; McCauley 39). This would authorize OC Spray prior to any of the pain-compliance techniques. OC Spray would remain an option after empty-hand control had failed, or in those instances where there was good reason to believe it would not be sufficient. Such an example is where the suspect is substantially larger than the officer.

Conclusion / Recommendations

The purpose of this research project is to determine if OC Spray should be authorized as a force option for officers of the Colleyville Police Department. If this recommendation is made, it will be necessary to recommend where the agent belongs in the use-of-force continuum (See Appendix B). Further, some suggestions as to policy and training issues should be made.

This is relevant, in that several officers have asked that OC Spray be authorized so that they can use it for control of violent suspects with less probability of injury and thereby less exposure to civil liabilities (Lawing 36). In addressing these concerns, this research examined the safety and reliability of OC Spray, as well as how others have used the agent and their experiences with OC Spray as a force option.

Specific recommendations are that OC Spray should be authorized for use by officers of the Colleyville Police Department. Officers who elect to carry OC Spray should first complete a course of training that is selected by the department, and for which factory certification is available. The department should specify the type of delivery systems and formulations to be authorized, with attention being given to reliability, liability coverage and factory certified training.

It is further recommended that the use-of-force continuum be expanded to include the option to utilize OC Spray at an early point. For example, when it becomes obvious that professional presence, rhetoric and simple escort techniques have failed or will not be sufficient to overcome resistance, OC Spray would be appropriate. The

present step in the continuum, referred to as "Police Toys" should be changed to read "Authorized Chemical Agents" and should remain between empty-hand control and impact weapons in the continuum. Training should give particular emphasis to this two-stage approach to the use of OC Spray.

Finally, it is recommended that policy and training give special attention to the issues of reporting the use of OC Spray and decontamination of persons exposed to the agent. Proper use of OC Spray must include documentation articulating the reasons it was used and the effects that it had. It is also necessary to document the decontamination efforts and success of these efforts. Even though OC Spray has an excellent safety record, it is also necessary that persons who have been exposed are monitored for any other the signs associated with Sudden In-Custody Death Syndrome. In addition, medical attention must be provided to any person who does not find rapid relief from the decontamination efforts, or who displays any respiratory problems.

1

Appendix A

Colleyville Police Department

Force Options for Police Officers

- 1. Professional Presence**
- 2. Rhetoric**
- 3. Empty Hand Control**
- 4. Police Toys**
- 5. Impact Weapon**
- 6. Deadly Force**

Appendix B

Colleyville Police Department

Proposed Force Options for Police Officers

- 1. Professional Presence**
- 2. Rhetoric**
- 3. Escort Techniques**
- 4. Authorized Chemical Agents**
- 5. Empty Hand Control**
- 6. Authorized Chemical Agents**
- 7. Impact Weapons**
- 8. Deadly Force**

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