

**THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE**

The Use of Non-Lethal Weapons on College Campuses

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

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April 1998

#587

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## **Abstract**

The San Jacinto College District Police Department policy manual has no provision to arm its officers with a secondary weapon capable of less-than-lethal force. All major Harris County law enforcement agencies have adopted Oleoresin Capsicum spray as a secondary weapon. Oleoresin Capsicum spray has been thoroughly tested by the Federal Bureau of Investigation Firearms Training Unit and the U.S. Army Chemical Research and Development Center in a two-year study. This study found no long-term health risks associated with the use of Oleoresin Capsicum spray.

Oleoresin Capsicum spray is an inflammatory agent that causes immediate swelling of the eyes and breathing passages. Additionally, there is intense burning sensations of the eyes, throat, and sprayed areas of the skin. When the agent is inhaled, the respiratory tract is inflamed and breathing is restricted and limited to shallow and short breaths. Physical effects include involuntary closing of the eyes, coughing, choking, a lack of upper body strength and coordination, and nausea. Psychological effects are disorientation and fear. The cumulative physical and psychological effects of Oleoresin Capsicum spray render the spray serviceable for use on intoxicated or combative individuals (Onnen 2).

Amending the college policy manual to include Oleoresin Capsicum spray will increase the officers' ability and safety when confronted by violent or combative individuals. The amended policy manual will have to be expanded to include Oleoresin Capsicum spray training and certification. A use of force continuum must be implemented to show at what point during a confrontation the Oleoresin Capsicum spray is to be deployed.

## **Introduction**

A serious complaint against police departments in the 90s is excessive force. This complaint is made in almost every instance when police officers use their weapons resulting in serious injury or death of a suspect they are trying to arrest. The San Jacinto College Police Department has no policy allowing officers to carry a less-than-lethal weapon. This research project will define the need for a policy change to allow properly trained officers to add a less-than-lethal weapon to their equipment.

Police officers working for the San Jacinto College Police Department are presently armed with side-arms. When confronted by a violent or combative suspect, the officers must overcome the suspect with physical strength and skill or resort to deadly force. The presence of a weapon capable of less-than-deadly force such as a baton or pepper spray (Oleoresin Capsicum spray) would give the officers an intermediate force option.

The list of weapons capable of less-than-deadly force consists of pepper spray, tear gas, baton, taser, capture nets, and many others. All of these less-than-deadly force weapons have certain limitations. Some of the less-than-deadly force weapons are not effective; some are difficult to carry and deploy. The one item that appears to suit the purpose both from a position of effectiveness and portability is pepper spray. Pepper spray is light, easy to carry and has a good shelf life.

Pepper spray originally was used for the Border Grizzly Project, a research group affiliated with the University of Montana, to be used as a bear repellent. The spray was tested in

this capacity for six years. There were two positive results:

- (1) The pepper spray always repelled the bears.
- (2) None of the bears were permanently injured.

The next documented testing of pepper spray was by the FBI in a report completed in 1989. Their tests were conducted over three years. The result of this report is pepper spray works to subdue combatant suspects. The spray does not always incapacitate the combative suspect but at the least it causes temporary blindness and thereby makes the suspect easier to subdue. The extensive testing conducted by the FBI found no fatality from the use of pepper spray since 1976.

The intended audience for this research project will be the San Jacinto College administration and Board of Regents. Once submitted to the college administration, it will be used to determine if a new policy concerning use of force is needed.

The sources of information contained in this project are journals from the Texas Attorney General's Office, crime surveys from the Texas Department Of Public Safety, International Journal Of Police and Management, a thesis on Campus Police Departments in the State of Texas, and U.S. Department of Justice.

The desired outcome of this project is the adoption of a new or expanded policy allowing San Jacinto College police officers to carry a secondary weapon of less-than-deadly force. The project will also outline the training requirements and assist in determining where on the use of force continuum the secondary weapon should be.

## **Historical And Legal Context**

The San Jacinto College District is located in Harris County, Texas. This college district has three campuses with a total area of 406 acres. The three campuses are utilized by approximately 20,000 students. All security and law enforcement functions are provided by the San Jacinto College District Police Department which was established in September 1966. The Police Department consists of 19 officers and supervisors which are divided into three units. Each unit is assigned to a campus. The Police Department functions under a College Policy Manual written in March 1981 and a Police Department General Orders Manual implemented in August 1991 which dictates all operational procedures. These manuals currently only authorize the college police officers to be armed with pistols.

The complaint of excessive force has caused other area police departments to expand their officers' arsenal of weapons to include secondary weapons capable of less than lethal force. Non-lethal weapons are described as coercive devices and agents that will subdue a suspect without substantial risk of permanent injury or death (Stewart 23).

The need for non-lethal weapons in police departments was recognized because of special crowd control problems posed by racial disturbances and student riots and violence in the 1960s. The search, therefore, for a non-lethal weapon was initiated in 1972 by the U.S. Department of Justice in conjunction with the National Science Foundation at a co-sponsored national conference on research needs for a non-lethal weapon (Sweetman 1).

In June 1986, United States Attorney General Edwin Meese convened a conference to determine the progress of less-than-lethal weapon development and expand the search for a non-lethal weapon to address a range of law enforcement needs. The term "less-than-lethal" was

defined as an agent used to induce compliance with law enforcement without substantial risk of permanent injury or death to the subject (Sweetman 17).

After extensive testing, the less-than-lethal weapon selected was Oleoresin Capsicum spray also known as O.C. spray. Oleoresin is a mixture of essential oil and resin found in nature. Capsicum is a solanaceous plant of the genus capsicum such as *C. Frutescens*, the common pepper which grows in varieties ranging from mild to hot. To produce the components of O.C. spray, the manufacturer extracts capsicum from the cayenne pepper as the active ingredient. Capsicum is a thick and heavy substance which must be combined with a carrier before it can be aerosolized into a product and sprayed from a canister. The two most common types of carriers are an isopropyl alcohol-based liquid which uses a gas as the propellant and a non-alcohol liquid carrier that utilizes freon as the propellant. Alcohol-based carriers are flammable and can only be used in areas where a spark or flame will not ignite the spray. The manufacturer of the isopropyl alcohol carrier states that this carrier works best in all weather conditions making the active ingredient atomize better and aids in opening skin pores and removing skin oil causing the O.C. spray to take effect more quickly (Onnen 6).

To legally establish a law enforcement officer's course of action, we should first consider what the courts have decided in previous cases. The issue of retreating from resistance can be traced to the 1918 case of Loveless vs Hardy and is very consistent up to and including a 1976 decision in Redding vs Medina. The courts emphasized an officer attempting to make a lawful arrest for a misdemeanor is under no obligation to retreat or retire to avoid the necessity of using extreme measure to prevent receiving great bodily injury. The court stated that it is the duty of the officer to press forward for the accomplishment of his purpose (Lawing 31).

The issue of type and level of force is addressed in a previous court decision. In the case of People vs Barite, the court stated “an officer making an arrest is not limited to that force which is necessary to overcome the person arrested but may also use such force as necessary to ensure his own safety while making the arrest.” This theory stipulates an officer has the right to escalate the level of force used to the level necessary to overcome the resistance encountered.

The 1993 case of Johnson vs Glick provides a set of guidelines to determine excessive force. These guidelines are:

- (A) The need for the application of force
- (B) The relationship between the need and the amount of force used
- (C) The extent of injury
- (D) The application of force in good faith

A court decision in Wise vs Bravo in 1981 has given police a set of constitutional guidelines. Force is considered unconstitutional if:

- (A) The use of force causes severe injury.
- (B) Injury was grossly disproportionate to the need for action under the circumstances.
- (C) The action was inspired by malice rather than merely careless or unwise excess of zeal where the force amounted to abuse of official power that shocks the conscience.

In 1989, the U. S. Supreme Court addressed the issue of non-lethal force. The court evaluated standards set previously for officer conduct in the Johnson vs Glick and Gilmore vs City of Atlanta cases. In the 1989 case of Graham vs Conner, the Supreme Court held that a central issue in physical force cases is the issue of whether the officer’s actions are objectively reasonable in light of the facts and circumstances at the time of incident (Lawing 33).



Every decision by a police officer has the potential consequences of civil liability. According to a 1992 legal opinion by Trimmer of the North Carolina Justice Academy, there is a complete absence of reported appellate court cases fixing liability for excessive force in the proper use of Oleoresin Capsicum spray. He further stated that Oleoresin Capsicum spray has no history of permanent injury to a person thereby lessening the legal basis of a significant bodily injury allegation (Trimmer 61).

An elective brief from the International Chiefs of Police Association in June 1993 indicated that no lawsuits specific to Oleoresin Capsicum spray have been filed. There are, however, other lawsuits involving chemical agents such as chemical mace which had rulings overwhelmingly favorable to law enforcement. The research has found that there has been a reduction in injuries to officers and suspects in agencies where Oleoresin Capsicum spray was in use and also noted a corresponding reduction in the liability claims derived from use-of-force complaints.

### **Review Of Practice**

A study by the Britain, Connecticut, Police Department disclosed 360 uses of Oleoresin Capsicum spray on combative suspects. The spray was effective 95% of the time (Novicki, 1993).

During a six month trial period in British Columbia where officers used Oleoresin Capsicum spray 104 times, the Oleoresin Capsicum spray was totally effective 93% of the time.

The Kansas City, Missouri, Police Department reported 800 incidents in which officers used Oleoresin Capsicum spray during a two-year period with good to excellent results. The subjects were temporarily blinded or immobilized with no long-term or permanent injuries reported (National Institute of Justice).

The Federal Bureau of Investigation conducted testing on 828 individuals using aerosol Oleoresin Capsicum sprays which contained 1% and 5% solutions. This test was conducted in both open and closed environments. The test subjects were sprayed in the face with Oleoresin Capsicum spray for time periods ranging from 10 to 45 seconds. All subjects experienced respiratory congestion, coughing, shortness of breath, gagging, and skin irritations consisting of burning sensations, and redness. None of the test subjects experienced any long-term effects.

The Firearms Training Unit of the Federal Bureau Of Investigation conducted a survey of 42 law enforcement agencies including 39 police departments and 3 correctional institutions. These agencies reported the following number of incidences where they had used Oleoresin Capsicum spray during the years of 1987 and 1988.

Number of times used	Number of agencies
1 - 5	27
6 - 15	8
16 - 25	1
26 - 40	3
41+	3

None of the agencies reported any medical problems by the subjects they had sprayed with Oleoresin Capsicum spray. The agencies used Oleoresin Capsicum spray to subdue violent subjects under the influence of drugs and alcohol and, on two occasions, subdued mentally ill persons who were violent and resisted officers when they tried to place them in protective custody. Interestingly, 13 agencies reported using Oleoresin Capsicum spray to control or subdue aggressive or attacking dogs (U.S. Department of Justice).

In 1993, the Pasadena (Texas) Independent School District Police Department was confronted by a riot of more than 40 students fighting in a school cafeteria. The combatants were

sprayed with Oleoresin Capsicum spray. The fight was stopped and all parties involved were taken into custody with no injuries. There were no civil complaints toward the officers, and the community reaction was one of total support and praise for a job well done.

After thousands of incidents of use by law enforcement officers, all indications are that Oleoresin Capsicum spray is an effective alternative for law enforcement agencies to use. Officers are able to maintain a safe distance from violent suspects and subdue them without taking unnecessary risks. There are few problems associated with the transporting of subjects who have been sprayed with Oleoresin Capsicum spray. The Oleoresin Capsicum spray residue dissipates very quickly. Oleoresin Capsicum spray is the most effective of the less-than-lethal force options and has no permanent injuries.

Oleoresin Capsicum aerosol spray should not be issued or allowed to be utilized in the field without a complete comprehensive training program. The proper implementation of Oleoresin Capsicum spray requires the officers to be appropriately trained in the use of the spray and in the decontamination of subjects after it is used. Through proper training, the use of Oleoresin Capsicum spray is greatly improved and the level of protection provided for both officers and agencies is better in litigation if there are allegations of improper use. The training will expand into the use of force continuum, the spray techniques, and the symptomatic effects produced by rapid physiological and sociological reactions. The right first aid and decontamination procedures to be employed after a subject is sprayed is also a critical part of the training. The correct after-incident report to document the events where the spray was employed will be the final step of the training.

The Houston Community College System in Houston, Texas, offers an eight-hour

Oleoresin Capsicum spray certification course that is approved by the Texas Commission On Law Enforcement Officer Standards and Education. This course includes all the necessary steps to properly train Texas Peace Officers.

Officers also need a use-of-force continuum to indicate at what point in a confrontation the spray should be deployed. Different police agencies across the nation have established a use-of-force continuum to guide officers in the correct implementation of force against persons who are violently resisting arrest. A typical model in use by the Concord, North Carolina, Police department is:

First level	Verbal commands
Second Level	Soft hands
Third level	Oleoresin Capsicum spray
Fourth level	Hard hands
Fifth level	Striking weapons
Sixth level	Deadly force (pointed only)
Seventh level	Deadly force used

Many law enforcement agencies place Oleoresin Capsicum spray between verbal communication and the assaultive stage involving impact weapons such as the Pr24 , baton, or flashlight. McCauley said that Oleoresin Capsicum spray is low on the use of force continuum because it does not show a propensity for serious bodily injury (McCauley). The Federal Bureau of Investigation, the largest federal law enforcement agency in the United States, has allowed its agents to carry Oleoresin Capsicum spray in the field and use it before hands-on or other physical control techniques (Norwicki 25).

### **Discussion of Relevant Issues**

The purpose of this project is to develop the best less-than-lethal weapon policy to be implemented by officers when they are confronted with a violent, hostile or combative person.

The San Jacinto College Police Department has historically dealt with an aggressive suspect by using fists or firearms. The need for a less-than-lethal weapon has been created because the general public will no longer tolerate excessive violence or force by police officers. The quest for a better way has resulted in the development of Oleoresin Capsicum spray making the subduing of suspects possible without serious injuries to suspects or officers.

The San Jacinto College District will benefit by having its police officers equipped with Oleoresin Capsicum spray. The officers' capability will be expanded in that they can stop fights, disburse violent crowds, and stop riotous conduct with a limited amount of personnel and equipment with no serious or long-term injuries. The age-old police method of "strumming heads" might have been acceptable in a bar fight between mutual combatants but not on a college campus where the participants are generally students.

Oleoresin Capsicum spray is a law enforcement tool and is encumbered with required regulations to control misuse. Without adequate training and a proper use-of-force continuum to give guidance in the rules for escalating force, the officers will not know the exact sequence of steps to take.

Oleoresin Capsicum spray has been associated with several in-custody deaths. These accounts were misleading because the deaths were from other reasons besides Oleoresin Capsicum spray. Only one of these fatalities was linked directly to the use of Oleoresin Capsicum spray. The evidence has conclusively proven in all other incidents where a suspect died after being sprayed with Oleoresin Capsicum spray the cause of death was inevitably from some other causes. Most of the in-custody deaths were from drug overdoses involving cocaine, methamphetamine, and PCP. Some other in-custody deaths could be contributed to positional asphyxiation. These include

suspects who were under the influence of narcotics, were involved in violent resistance to arrest, or were restrained by hog tying and placed in a face down position. These subjects are often overweight and have previous instances of heart or respiratory problems.

The only in-custody death medically linked to Oleoresin Capsicum spray occurred on July 11, 1993, in Concord, North Carolina. The Concord Police Department arrested Angelo Robinson, a 24-year old African-American male who weighed in excess of 300 pounds, after he was involved in a disturbance at a local restaurant. Angelo Robinson was verbally combative and physically resisted arrest. Mr. Robinson was sprayed with Oleoresin Capsicum spray and then secured with a four-point restraint. He was then placed in a patrol car and transported to the police station. Upon arrival, Mr. Robinson was found to be unresponsive and was later pronounced dead. On August 26, 1993, the office of the Chief Medical Examiner of Chapel Hill, North Carolina, released an autopsy report which was completed by Lisa M. Flannagan, M.D. In this report, Dr. Flannagan reported the decedent to have abrasions of the right lateral abdomen, right shoulder region, right wrist, left medial elbow, and lateral left arm. There were no fractures, or internal hemorrhage, or trauma. There was no evidence of airway obstruction and no natural disease was identified. The decedent postmortem alcohol determination was 140 mg/dl (0.14 on the intoxilizer scale). The medical examiner's opinion was based solely on the temporal relationship with the decedent who was sprayed with Oleoresin Capsicum spray, the apparent respiratory compromise, and the rapid demise of the decedent (Flannagan 15).

The cost to implement a policy change to expand the personal equipment of officers to include Oleoresin Capsicum spray will be expended in two areas. The first area is training with the initial training used to familiarize the officers with the Oleoresin Capsicum spray and to obtain the

basic certification. The basic certification course offered by Houston Community College has a cost of \$25.00 per person. The second expense will be the purchase of equipment which includes the spray canister containing Oleoresin Capsicum spray and a defense spray case to carry the spray on the officer's duty belt. The First Defense brand Oleoresin Capsicum spray costs \$15.00 per 3-ounce unit and has a four-year shelf life warranty. The defense spray case costs between \$15.00 and \$20.00 depending on the type of duty belt worn by the officer. The Oleoresin Capsicum spray will have to be replaced as it is used and a small inventory will be necessary to have the additional spray available as needed.

#### **Conclusion/Recommendation**

This research project is being prepared to provide the Board of Regents of the San Jacinto College District with the necessary documentation to formulate an expanded weapon policy which will include a less-than-lethal weapon alternative. Law enforcement agencies throughout the world have recognized the need for a method to subdue a hostile, violent or combative person without causing serious injury. Federal, state and local law enforcement agencies have conducted tests on various less-than-lethal devices and chemical sprays for the past twenty years. Oleoresin Capsicum spray was tested more thoroughly and has the highest success rating. Oleoresin Capsicum spray is currently used by the larger and more progressive Harris County law enforcement agencies.

The University of Houston Police Department, Rice University Police Department, and Houston Community College Police Department have all implemented Oleoresin Capsicum spray as their less-than-lethal weapon of choice for their patrol officers. The general consensus of opinion is Oleoresin Capsicum spray is the best less-than-lethal weapon available on the market today.

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