

Use of Aerosol Weapons by Law Enforcement

A Research Paper

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April 13, 1998

RESEARCH TOPIC

The object of this paper is to examine the current use of chemical aerosol weapons by American law enforcement agencies, and to consider how the increased use of such technology has shaped current use-of-force practices. This paper will also assess the impact this increased use has had on citizen perceptions of police use-of-force, and conversely, the degree to which those perceptions have affected police use-of-force practices involving aerosol weapons.

POLICE USE OF AEROSOL WEAPONS IN THE HISTORICAL CONTEXT

Hand held chemical spray weapons (typically referred to as aerosol weapons, aerosol subject restraints, or ASRs) have been used by police in the United States since the late 1960's.¹ Initially, more traditional chemical mixtures, usually generically referred to as tear gas², were marketed in small aerosol cans for use by individual officers.

Early hand-held units were often ineffective, as the active ingredients – or agents – were really intended to be dispersed over a large area in an airborne cloud rather than sprayed onto an individual in a direct pattern. Sold under the brand name Mace™, these products rapidly gained a reputation amongst police officers of failing to control aggressive, resistive individuals. Instead, officers that used Mace™ were often so effected by the spray that they would refuse to use it thereafter. Use of handheld sprays generally fell out of favor.

During the late 1970s, a hand-held spray weapon containing oleoresin capsicum (OC), sometimes referred to as “pepper spray”, was developed for civilian policing, making inroads into the police arsenal during the 1980s. This product contains the active ingredient capsaicin, extracted from pepper plants. Because OC is chemically classified as an inflammatory agent (differing from the earlier tear gas products, which are chemical irritants)³, it produces a more severe effect in the targeted individual. The primary effects of exposure to OC include sharp burning sensations in the eyes and on the skin, as well as coughing and profuse mucous production. Generally, reflexive closing of the eyes, choking and shallow breathing lead to reduced mobility following exposure.⁴

Today, American law enforcement generally employs two types of aerosol weapons. Simple OC products, in varying strengths and concentrations of up to ten percent, make up the bulk of the aerosol market. Additionally, combination products, or blends, are also used. Typically, OC and more traditional CS tear gas (orthochloro-benzalmalononitrile) are “blended” to produce a pepper-fortified tear gas. These blend products have seen particularly widespread use and acceptance by law enforcement agencies in the State of Michigan.

LITERATURE REVIEW

Much of the actual research in the area of aerosol weapons use is actually not aerosol weapon research at all. It arises from two related fields; military use of

traditional chemical munitions such as CS and CN,⁵ and use of capsaicin based products in the food and pharmacological industries. Much of this information is dated, having originated several decades ago. While it should be given general consideration in any body of information regarding use of chemical agents as weapons, many questions remain regarding its applicability to the issues currently under consideration.

Military research examined the effects on individuals of exposure via an airborne cloud of chemical agent. Typically, this research (as released to the public) focused on issues such as the concentration of agent in a given volume of air (e.g., in an enclosed room) required to incapacitate or to kill. While these studies and other early civilian research were focused on short-term exposures, the real issue was a desire to determine the range within which enough chemical agent existed to incapacitate, without resulting in lethality. Issues regarding the speed of incapacitation were generally not analyzed.⁶

Research into the use of capsaicin in foodstuffs has typically considered the effects of chronic exposure in diet. Such issues as desensitization of the tongue and esophagus, and the effects of continued capsaicin exposure on the stomach lining, are of limited relevance when considering the acute effects of a one-time exposure to a spray weapon.

There is some anecdotal information available regarding the effectiveness of aerosol weapons by police. Much of this information is drawn from actual usage reports, completed by officers in the field. Some law enforcement agencies have compiled this information in an attempt to ascertain the operational impact of aerosol use. While much can be learned from these studies, fundamental questions remain regarding consistency of methodology and commonality of terminology.

Two additional facts that tend to prevent definitive use of data from these studies. First, many different brands of aerosols are involved, with differing concentrations of active chemical agents. It is extremely difficult to compare a study based on one product to a study based on a different product. This problem is exacerbated by a lack of commonality in the aerosol industry, in respect to terminology and product information.

Secondly, training of officers is non-standard throughout the law enforcement profession. Some officers have received viable training, while others have received minimal training or no training at all. It is difficult to determine the veracity of data reported by officers that are not trained in proper use of their aerosol weapons. A parallel issue is the general lack of information on training levels in departmental studies.

Despite these problems, some information can be gleaned from these reports. In most case studies, injuries to both citizens and officers are reduced significantly, while complaints against police for excessive force are also reduced. Portland, Oregon, police noted an 83% reduction in subject injuries and a 61% decrease in officer injuries when OC is used. This was coupled with a 43%

reduction in complaints of excessive force.⁷ A study of OC use in the Baltimore County, Maryland, Police Department noted that officers were injured in only 11 % of incidents where aerosol was used, and that most injuries were very minor. A suspect injury rate of 8% was also noted. Pre-OC data were insufficient to make a comparison, but the study concluded that these numbers represent a significant reduction based on trending analyses. A reduction in complaints against officers of 53% paralleled other data.⁸

Morabito and Doerner (1995) reviewed use of force reports in the Tallahassee, Florida, Police Department, for a 20 month period prior to December 31, 1995. They found significant reductions in subject and officer injuries when OC was employed, compared to use of an impact weapon. Officers were injured 24.6% of the time when impact weapons were used, but only 3.6% of the time when OC was used. Similar figures existed for suspect injuries; 25% of the time when impact weapons were used, and 5.1% of the time with OC use.⁹

A study by the International Association of Chiefs of Police (IACP) reported a 90% OC effectiveness rate.¹⁰ Other research by the same body indicates that while aerosols may have been employed in arrest situations which eventually resulted in the death of the suspect, very limited evidence (if any) links the use of OC with the cause of death.¹¹

Some researchers have identified potential problems with the use of OC spray by law enforcement. Doubet (1996) identified possible medical implications in the use of OC by police, and cautioned against use in response to low levels of suspect resistance.¹² However, a study of aerosol use in North Carolina found that, out of 2,912 officers sprayed in training and 1,451 citizens sprayed during arrest or detention situations, only eight injuries were reported, and all were minor irritations of the skin or eyes (Craig, 1994).¹³

Messina (1993, 1996) cautioned against replacing competent defensive tactics training with OC spray, as spray may be ineffective against highly motivated, goal oriented individuals.¹⁴ More traditional control methods may be necessary, and officers should still be trained in their use.¹⁵ At least one police officer has been killed, with his death attributed to inappropriate training (Merrick, 1995).¹⁶ Training with aerosols should be as realistic as possible, ideally involving simulated combat scenarios and full facial spray "hits" (Ashley, 1996).¹⁷

Various special interest groups have collected data which, based upon each group's assessment of meaning, indicates that use of aerosols leads to an unacceptably high risk of death or serious injury. The most notable collection of information is presented by the American Civil Liberties Union (ACLU), with the Southern California Chapter being the most active and vociferous.¹⁸ It is difficult to consider these data collections "research" (for many of the same reasons stated above, with respect to studies based on usage reports), however, publication of these and similar compilations have brought significant pressure to bear for changes in law enforcement aerosol usage.¹⁹

LAW ENFORCEMENT'S LESS THAN LETHAL PRACTICES

Because police officers are charged with enforcing the law and maintaining public order, they are frequently placed in situations where they must attempt to manage or control an otherwise free citizen. Whether an encounter leads to an actual arrest or merely a temporary detention for questioning, these intrusions are often unwelcome. It is not uncommon for such police intervention to be resisted by the citizen or citizens involved. When this happens, officers frequently need to use forcible means to control and perhaps arrest the persons in question. Traditionally, officers have had limited technology at their disposal. Beyond empty-hand defensive tactics or boxing, officers could utilize striking instruments (such as nightsticks, billy clubs or blackjacks) or they could use a firearm.

Clearly, striking someone with a club or stick represents a high level of force, with significant potential for injury. Of course, shooting them represents an even higher level of force. While such high levels of force are sometimes justified by a citizen's aggressive, resistive behavior, the opposite is far more common.²⁰

In those situations where high levels of force cannot be justified, officers were, and are, often at a disadvantage, facing a significant possibility of being injured themselves. The need to control certain violent individuals, while at the same time being refused the availability of the only weapons they possess, has resulted in many officer injuries while making arrests for relatively minor violations of the law.

As society's expectations matured regarding reasonable levels of force, police needed a control method that possessed less potential for injury than a "club" or a gun. For roughly the last decade, that method has increasingly been aerosol subject restraints.²¹

During the late 1980's, the Federal Bureau of Investigation (FBI) conducted tests on OC based products, in order to determine their effectiveness, and the degree to which they could be deemed safe to use. The FBI test report (1989)²² was one of the first pieces of research that could truly be judged to be independent of manufacturer's potential influence. Until that time, and excepting research done on earlier tear gas products in the late 1960's and early 1970's, the only data available as to efficacy and suitability for use on humans came directly or indirectly from the manufacturers themselves. Coupled with this lack of independent research, most training available in the use of aerosol weapons also originated with the manufacturers.

Following the FBI tests, which found OC based products safe to use, and generally effective,²³ many law enforcement agencies began to adopt the technology for routine patrol use. There was commensurate development of non-brand specific training programs, although much of the available training still emanated from the manufacturers and vendors of aerosol weapons.

Concurrent with the movement toward aerosol weapons, law enforcement began to adopt other less-than-lethal technologies. Expandable police batons, which could be worn on the officer's belt (as an alternative to the traditional nightstick, which was often left behind in the patrol car when needed), became the "impact weapon" of choice. Different versions of the standard police flashlight, engineered so as to substitute as an impact weapon when necessary, were also available, although concerns were raised as to increased legal liability in such circumstances. Alternative restraint methods were developed, supplementing and sometimes supplanting standard issue, chain-link handcuffs.²⁴

Each of these new developments required specialized training, as well as additional procedural guidelines in order to reduce the risks inherent in technological change. Such procedures and training were not always implemented, with the results that new control methods and tools often led to increased liability costs, and a parallel increase in the number of officer injuries.

As municipal managers and insurers increasingly take notice of this undesirable and contradictory trend, law enforcement executives have sought to reduce risk through adoption of procedures and training programs. Today, many of the negative results arising from these initial problems have been overcome, although some departments still lag behind the rest of the law enforcement profession in their risk reduction efforts.

JUSTIFYING THE USE OF AEROSOL WEAPONS

It has been estimated that the majority of law enforcement officers in the United States carry an aerosol weapon. While most officers have a basic understanding of how to use their aerosols, the question of when to use them is less well understood. In fact, there are differing opinions among police administrators and theoreticians as to when aerosol use is operationally appropriate. Concerns regarding this question are embodied in several basic philosophies for the timing of aerosol use.

The first of these philosophies is to use aerosols when faced with minimal levels of resistance, such as verbal non-compliance or aggressive posturing. Justification for use at such a low level hinges upon the potential for officer injury – and the commensurate increased likelihood of injury to the involved citizen – if an officer moves in to control the resistance physically, and begins fighting with the individual. Essentially, it's thought to be better to spray early rather than face this increased risk of injury to both parties.

Another operational philosophy is to not spray unless faced with a fairly high level of resistance, such as would otherwise justify the use of a striking weapon. The reasoning for delaying the use of sprays until greater justification is present involves concern that use of the aerosol could result in a severe physical reaction that might, in fact, be life threatening. This philosophy tends to place heightened emphasis on avoidance of legal liability in such circumstances.

A third, and perhaps the most defensible philosophy, is to use aerosols – and for that matter any weapon – when such use can meet the test of “objective reasonableness”, as required by caselaw based upon federal constitutional standards under the Fourth Amendment to the United States Constitution.²⁵ One way of stating this is that use of any weapon is justified when an officer reasonably believes that such force is necessary to stop an individual’s aggressive or resistant behavior, and that lesser levels of control would be unsafe or ineffective.

The Supreme Court of the United States has further indicated that reasonableness should be determined based upon a reasonable officer’s assessment of four factors; the nature of the crime at issue, whether the suspect is an immediate threat to the safety of the officer or others, whether the suspect is attempting to evade arrest through resistance or flight, and the degree to which the situation is tense, uncertain and rapidly evolving. This last point acknowledges that officers must act with little time to analyze and consider circumstances, rather than with the luxury of 20-20 hindsight.²⁶

Officers using weapons or control techniques of any type must be prepared to articulate their need for the use of such force. The use of force to maintain order, to protect citizens and to enforce the law must be balanced against the cost to society in reduced freedom of movement and in increased intrusion into the lives of society’s members. The outcome of this balancing test will determine the legal acceptability of each individual use of force.

CITIZEN PERCEPTION OF AEROSOL WEAPONS AND POLICE USE OF FORCE

There was a time when mainstream America gave little thought to the routine use of force by police officers. Unless a citizen had been arrested, or lived in a high crime area, such things were generally out of sight, and out of mind. When it did come to the attention of the public, use of force was often deemed to be necessary for the greater good. Only in the case of inappropriate use of deadly force did one see very noticeable public reaction, and generally even those cases did not result in an overall damning of the law enforcement profession. This is no longer the case.

The proliferation of information, coupled with society’s ability to capture and rapidly distribute images and ideas, has dramatically changed the law enforcement landscape in America. There is an increased belief in the pervasiveness of brutality and excessive force on the part of law enforcement officers by the American public. Widespread and repeated broadcast of sensational footage of excessive force incidents, coupled with endless analysis and discussion of events by commentators, has resulted in a virtual expectation that the police will use more force than is necessary.

Despite this trend, in many jurisdictions where aerosol weapons are properly used and managed, complaints against officers for excessive force have declined by as much as 50 to 60 percent. It is generally believed that this is due to the short-term nature of the effects of aerosol exposure.

Physically fighting with a suspect, and perhaps using a striking implement such as a nightstick or baton, carries with it a significant potential for harm. Injuries ranging from scrapes and sprains to deep bruises and broken bones are often the result. These injuries leave marks on the human body which often remain for days, if not weeks or months. Occasionally medical treatment may be required, sometimes resulting in time off from work for the involved citizen. These situations frequently give rise to complaints that the force used was excessive, and often are accompanied by threats of legal action.

When viewed in this context, the relatively short-lived effects of an aerosol exposure, albeit extremely painful and debilitating, seem preferable. Usually, the most extreme effects wear off in approximately 20 to 30 minutes, and the exposed person can then be said to be “functionally recovered”.²⁷ Residual effects, such as reddening of the skin, bloodshot eyes, heightened respiratory sensitivity, and a mild burning sensation, can last anywhere from several hours to several days. In a very few cases, there may be some peeling of the outer layer of the skin (as if recovering from a mild case of sunburn).

Unfortunately, high profile cases such as the recent demonstration in Humboldt County, California, wherein officers applied OC directly to the eyes of apparently peaceful anti-logging demonstrators, are widely broadcast by the national media. In such cases, debate ensues as to the appropriateness and necessity of aerosol use, giving rise to statements equating use of aerosol weapons to “torture”.²⁸ Following such incidents, some jurisdictions rethink their use of aerosols, and sometimes ban further use by local police.²⁹

On balance, it appears that routine use of aerosol weapons by police leads to reductions in complaints of excessive force, while high profile, individual cases often give rise to general discontent with use of force practices in the effected jurisdictions.

CONCLUSION

Societal pressure to find less injurious methods of controlling behavior led to the development and increasing adoption of aerosol spray weapons during the 1970s and 1980s. Once products began to appear, law enforcement agencies began to seek the most effective aerosol weapons from both a liability reduction and officer safety standpoint.

As of this writing, the majority of law enforcement agencies in the United States are routinely using aerosol spray weapons. In most states, a high percentage of those departments are equipped with oleoresin capsicum (OC) products. In some areas, blends (most notably of OC and CS tear gas) are used. Michigan is one of those areas.

Increasing pressure from citizen’s groups and the media has encouraged law enforcement administrators to develop appropriate procedural guidelines for

use of aerosol weapons, and to develop and implement training programs in aerosol weapon usage. Increasing levels of documentation and supervision of incidents have resulted from ongoing public scrutiny of use of force situations.

In jurisdictions where appropriate policies and procedures are in place, supported by thorough training and adequate supervision and management, reductions in officer and suspect injuries, as well as fewer complaints of excessive force, continue to be reported. Occasional aberrant incidents receive widespread publicity, fueling public perception that police in general use excessive force.

THE NEED FOR FURTHER RESEARCH

While a large amount of information exists on capsaicin, much more research is needed into the long-term effects of OC aerosol weapon exposure. Specifically, more research is needed into the long-term effects on vision and respiratory health. More definitive study is needed into any possible connection between use of aerosol weapons and in-custody deaths.

There is an almost total lack of research into the effects of blend (CS/OC) based aerosol weapons. The completion of future research into use of blends is particularly important for those regions of the country (such as Michigan) where blends are the dominant weapon used.

ENDNOTES

- ¹ Bunker, R., Ed. (1996). Nonlethal Weapons: Terms and References, INSS Occasional Paper 15. Colorado: USAF Institute for National Security Studies, USAF Academy.
- ² "Tear gas" is technically incorrect. All of the chemical agents discussed in this paper are actually microparticulate solids. The term "tear gas" is of unknown origin.
- ³ Onnen, J. (1993, June). Oleoresin Capsicum [Bulletin]. International Association of Chiefs of Police.
- ⁴ National Institute of Justice Technology Assessment Program, (1994). Oleoresin Capsicum: Pepper Spray as a Force Alternative [Bulletin]. Washington, DC:U.S. Government Printing Office.
- ⁵ Chloroacetophenone, one of the earliest riot control agents available to civilian police. A refined version of CN (phenylchloromethylketone) was used as the active ingredient in Mace.
- ⁶ Jones, E. (1976), Law Enforcement Chemical Agents and Related Equipment. Santa Cruz: Davis Publishing Co.
- ⁷ Gauvin, Russell J., (1995, May-June). Oleoresin Capsicum Spray: A Progress Report. The ASLET Journal, pp. 29-32.
- ⁸ Pepper Spray Evaluation Project: Results of the Introduction of Oleoresin Capsicum (OC) into the Baltimore County, MD, Police Department [Bulletin]. International Association of Chiefs of Police, 1995.
- ⁹ Morabito, E.V., & Doerner, W.G. (1995). Police Use of Nonlethal Force: Oleoresin Capsicum (OC) Spray. Tallahassee, Florida: School of Criminology and Criminal Justice.
- ¹⁰ Use of Pepper Aerosol Restraint Spray (Oleoresin Capsicum or "OC"), Training Key #462. International Association of Chiefs of Police, 1995.
- ¹¹ Granfield, J., Onnen, J., & Petty, C.S., MD. (1994, March). Pepper Spray and In-Custody Deaths [Bulletin]. International Association of Chiefs of Police.
- ¹² Doubet, M. (1996). Medical Implications of OC Spray. St. Louis: PPCT Management Systems.
- ¹³ Craig, H.W. (1995, August). Is OC Spray a Safe, Effective, Less-than-deadly Use of Force? Police Law Journal, Offprint.
- ¹⁴ Messina, P. (1996, May-June). The Evolution of OC Training. The ASLET Journal, pp. 20-22.
- ¹⁵ Messina, P. (1993, January-February). Trainers, Salespersons, Deterrent Sprays, and Pinocchio's Nose. The ASLET Journal, pp. 15-17.
- ¹⁶ Merrick, J. (1995, Spring). Pepper Sprays are not "Magic Bullets". The Tactical Edge, pp. 61-62.
- ¹⁷ Ashley, S. (1996, March). Managing Aerosol Issues. Law and Order, pp. 35-37.
- ¹⁸ Pepper Spray: A Magic Bullet Under Scrutiny [Bulletin]. American Civil Liberties Union of Southern California. (1993, Fall).
- ¹⁹ Pepper Spray Update: More Fatalities More Questions [Bulletin]. American Civil Liberties Union

of Southern California. (1995, June).

- ²⁰ Hall, J. (1997, October). Police Use of Nondeadly Force to Arrest. FBI Law Enforcement Bulletin, pp. 27-32.
- ²¹ Hunter, J. (1994, May). Focus on Use of Force: Pepper Spray. FBI Law Enforcement Bulletin, pp. 24-26.
- ²² Federal Bureau of Investigation, (1989). Chemical Agent Research: Oleoresin Capsicum. Washington, DC: U.S. Government Printing Office.
- ²³ The FBI report was eventually discredited in April of 1996, when Special Agent Thomas Ward, the Agent responsible for supervising the FBI's OC research pled guilty to accepting money from the OC manufacturer whose product he eventually recommended for purchase. Despite this fact, the report has never been withdrawn, and very little publicity was noted regarding the conviction. Few police agencies have acknowledged this fact, and many continue to cite the report as evidence of the safety and efficacy of OC sprays.
- ²⁴ Ashley, S. (1996, January 12). [Lecture presented to the American Society of Law Enforcement Trainers International Conference].
- ²⁵ *Tennessee v. Garner*, 105 S.Ct. 1694 (1985)
- ²⁶ *Graham v. Connor*, 109 S.Ct. 1865 (1989)
- ²⁷ Archambault, T & Rookwood, G. (1994) OC (Oleoresin Capsicum) Instructor Training Manual. Bennington, Vermont: Mace Security International Training Division.
- ²⁸ Police Use of Pepper Spray – Tantamount to Torture [News Release]. Amnesty International News Release AMR 51/67/97. (1997, November 4).
- ²⁹ Chow, M. (1997, July 24). City and Police Clash Over Pepper Spray. Daily Californian.

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National Institute of Justice Technology Assessment Program, (1994). Oleoresin Capsicum: Pepper Spray as a Force Alternative [Bulletin]. Washington, DC:U.S. Government Printing Office.

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Tennessee v. Garner, 105 S.Ct. 1694 (1985)

Use of Pepper Aerosol Restraint Spray (Oleoresin Capsicum or “OC”), Training Key #462. International Association of Chiefs of Police, 1995.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of an incident, it will not eliminate all possibility of an incident.

Further, as always, the reader is encouraged to consult with an attorney for specific legal advice.