



RUDOLPH W. GIULIANI
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
40 RECTOR STREET, 2ND FLOOR
NEW YORK, NEW YORK 10006 ♦ (212) 442-8833

GENE R. LOPEZ
EXECUTIVE DIRECTOR

Report of the Pepper Spray Committee of the Civilian Complaint Review Board

Hon. David Scott

Hon. Charles M. Greinsky

May 14, 1997

Report of the Pepper Spray Committee of the Civilian Complaint Review Board

Table of Contents

Discussion	3
Current NYPD Policy on OC Spray	5
Safety Concerns of OC Spray	6
Effectiveness of OC Spray	8
NYPD Training on Use of OC Spray	9
Recommendations	10
Statistical Analysis of CCRB Complaints Involving OC Spray	12

Appendices

1 Interim Order Numbers 92 and 93

2 OC Data Collection Sheet

The Board wishes to acknowledge Debra Silber, Esq. and Nelson Aponte, Esq., former board members at the CCRB, Gene Lopez, CCRB's Executive Director, and Andrew Case, a CCRB investigator, for their valuable contributions to this report.

Discussion

The New York City Police Department began to use Oleoresin Capsicum ("OC" or "pepper spray") in a limited capacity in February 1991, when its use was restricted to the Emergency Services Unit. Use of OC was expanded to the entire department in October 1994, since which time its use has been governed by Interim Order 92 of 1994.¹ The spray is designed for use as less-than-lethal force, adequate for incapacitating dangerous or violently resisting suspects. Intended results of the use of OC are inflammation and swelling of the mucous membranes of the eyes, nose, and throat and involuntary closure of the eyes. Known side effects include coughing, gagging, and hyperventilation. The National Institute of Justice ranks OC "just above hands-on pain compliance and immediately below the use of impact weapons" on the use-of-force continuum.²

The active ingredient in Oleoresin Capsicum is capsaicin, naturally present in the OC when derived from the cayenne pepper plant. When the stream spray was first introduced, the NYPD purchased a brand of canisters made by Defense Technology of America ("DTA"), which contained .63 ounces of a solution made up of 10% OC. The product had a maximum range of twelve feet, and was not meant to be discharged from closer than three feet. In January 1997 the NYPD switched to a brand made by MSI of Bennington, Vermont, which also features a 10% solution of OC, carried in a solution principally composed of water and propelled by compressed nitrogen gas.³ The canisters of the new product are much larger than the DTA canisters, holding 1.76 ounces and dispersing the

¹ Information about the time frame of OC usage, the product used originally and the product currently used, and training procedures has been drawn from a February 6, 1997 meeting between the CCRB, Dr. James O'Keefe, Director of Training for the NYPD, Inspector Thomas Belfiore, Commanding Officer of the Police Academy, and Chief Michael Markman, Chief of Personnel of the NYPD. Prior to the introduction of pepper spray, the NYPD used mace.

² Jami Onnen, "Oleoresin Capsicum," *Science and Technology*, published by the International Association of Chiefs of Police under a grant from the National Institute of Justice, June 1993, page 3. In New York State, pepper spray has been legally available to the civilian population since November 1, 1996.

³ Earlier, information on another product made by MSI, which utilizes citrus fibers in its delivery system, has been mistakenly stated to be the product the NYPD is currently using. According to Inspector Thomas Belfiore, the product the NYPD now uses contains no citrus fibers in its delivery system. The Marine Corps conducted a 1996 study on MSI products (though not the product chosen by the NYPD) which found them suitable for use (*Marine Corps Gazette*, volume 80 number 10, 10/96). Mr. Bernie Granie, the Vice President of Operations for MSI, stated on April 15, 1997, to the CCRB that there is one pending lawsuit against the company, from a consumer alleging that a canister improperly discharged. There are no pending lawsuits alleging injury by the targets of the spray.

OC through a stream system to a maximum range of fifteen feet.⁴ If fired from closer than three feet, not only is the efficacy of the product compromised, but the force of the stream delivery system could have a "hydraulic needle effect" on the eye of the person sprayed, thus causing possibly serious eye damage. The manufacturer recommends that the canisters be stored in a cool, dry place at comfortable room temperatures,⁵ and that canisters be shaken and tested weekly if not stored on the duty belt.

During 1995, 705 of the NYPD's 332,000 arrests involved the use of pepper spray; of these instances, 65, or 9.2%, resulted in complaints to the CCRB. Since this percentage is far higher than the usual percentage of arrestees who file CCRB complaints, the question of whether or not OC contributes to the likelihood of a complaint, and if so, why, is of importance. This report examines current NYPD policy regarding OC spray, safety and effectiveness concerns raised by recent studies, and training regarding use of OC in the NYPD. A series of recommendations regarding updates to the NYPD policy regarding OC will follow, as well as statistical information captured from the 80 complaints received by the Civilian Complaint Review Board from October 1994, when OC use was instituted department-wide, through the end of 1995.⁶ The CCRB recommends that the Police Department continue to use OC spray as a non-lethal physical force alternative particularly in light of its availability to the general population,⁷ while simultaneously recommending that certain aspects of the current policy be carefully examined or altered, especially when in direct conflict with the manufacturer's instructions for use.⁸

⁴The propellant is designed to carry the OC from the canister to the intended target. It is then designed to quickly evaporate which allows the OC to begin to work. Mike Doubet, (1996) The Medical Implications of OC Sprays, funded by PPCT Management Systems, Inc., Millstadt, Il., (page 8).

⁵ As with any aerosol, the cannister may burst at extremely high temperatures and discharge may be slowed by storage at low temperatures.

⁶ The CCRB Semi-Annual Status Report for the period January - December 1995 reported 85 complaints alleging pepper spray. Upon review of the case files, it was found that in nine cases, no allegation of pepper spray was made and that the cases were miscoded. Additionally, upon review of the case files of twenty-four 1994 cases coded as allegations of mace, it was found that four in fact featured allegations of pepper spray, not chemical mace. This brings the total number of complaints of pepper spray during the survey period to eighty.

⁷As discussed below, documenting OC use and the conditions under which it was used may have value in any reconsideration of New York's legislation legalizing pepper spray for use by the general population.

⁸ For example, while the manufacturer stipulates that "medical attention and/or first aid must be rendered," and a "documented report must be filed" after each use, NYPD requires medical attention only when the subject requests it or when symptoms persist. No documented report is required of officers other than checking the "Chemical Agent" box on the on-line

Current NYPD Policy on OC Spray

In October 1994, the New York City Police Department issued Interim Order 92 (Appendix 1), which governs the circumstances in which OC spray can be used and the proper procedure for using the spray. The Interim Order states that OC “may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting emotionally disturbed person or mentally ill person into custody.”⁹ It also cautions that “pepper spray shall not be used on suspects who passively resist arrest,” or “on the elderly, young children, pregnant women, or persons with known respiratory conditions.” Officers must, “whenever possible, first attempt to de-escalate the situation” before resorting to using OC spray, and OC spray may only be used “in the . . . situations that would justify the use of physical force.”¹⁰ The Interim Order offers instructions on the procedure to follow after a subject has been sprayed; it specifies that the officer should “flush the contaminated skin area with profuse amounts of water and expose area to fresh air,” and prohibits touching the sprayed area or using “salves, creams, ointments, commercial eye washes, or bandages.” Officers are required to monitor the condition of the subject to determine whether medical attention is necessary, and to keep the subject either on his/her side or in an upright position “to promote free breathing. The subject should not be maintained or transported in a face down position. DO NOT SIT, STAND OR KNEEL ON SUBJECT’S CHEST OR BACK.” If a subject requests medical attention, or “if symptoms persist,” officers are required to transport him/her to the emergency room of the nearest hospital; if the subject does not request medical attention and the symptoms do not persist, the officers are allowed to use their discretion as to whether to take the subject to a hospital, call an ambulance, or administer no treatment. The Interim Order eliminates the “Mace Report,” which in the past was filled out in instances of uses of mace; instead, the “Chemical Agent” box on the on-line booking system arrest worksheet must be checked for those subjects who are arrested. In addition,

booking system arrest worksheet, completing a medical treatment of prisoner form in arrest situations and an aided report in non-arrest situations.

⁹It should be noted that, as shall be discussed below, OC often is not effective against emotionally disturbed or mentally ill people. A related procedure states that when dealing with emotionally disturbed people who do not pose an immediate danger to themselves or others, use of pepper spray should be deferred until a supervisory officer arrives on the scene (Patrol Guide Procedure No. 106-11).

¹⁰ The Interim Order states that OC “constitutes physical force under the New York State Penal Law,” which is consistent with the National Institute of Justice classification.

a Medical Treatment of Prisoner form must be completed for all arrested subjects, and an Aided Report must be completed for subjects not arrested. The American Civil Liberties Union of Southern California used Interim Order 92 in developing their own model policy, and recommended that this order "should be reviewed in detail by any agency developing an OC policy."¹¹

Safety Concerns of OC Spray

While the use of OC sprays has increased dramatically in recent years, there is a dearth of reliable, objective scientific data supporting its safety and reliability.¹² However, two recent studies commissioned by the National Institute of Justice shed needed light on the results of using OC in police encounters with civilians. The first, a 1994 study conducted by John Granfield, Jami Onnen, and Charles S. Petty, MD, examined in detail twenty-two reported deaths in custody which occurred after police sprayed someone with OC.¹³ The second is a March 1997 review by Steven M. Edwards, Granfield and Onnen of each of the 174 times members of the Baltimore County Police Department sprayed civilians with OC between July 1993 and March 1994.¹⁴ A 1995 report by the US Army summarizing the scientific literature also provides valuable information regarding the toxicity of

¹¹ The American Civil Liberties Union of Southern California, "Pepper Spray Update: More Fatalities, More Questions," June 1995, Appendix B, page 1.

¹² A study conducted by now former Special Agent Thomas Ward of the FBI in the late 1980s is considered to be compromised since Agent Ward pled guilty to criminal charges regarding his relationship with the manufacturer of the product while the study was going on. Though the FBI issued a memorandum in 1996 stating that despite the controversy, it believed Agent Ward's research to be sound, the CCRB considers the study compromised and has not used Agent Ward's study or its conclusions in conducting the present study. The manufacturer implicated in the Ward study is not and has no relation to the current supplier to the NYPD.

¹³ Though the study set out to investigate thirty reported deaths, in only twenty-two could the researchers obtain "sufficient information . . . to allow a thorough review of the incident so a reasonable conclusion as to the cause of death could be obtained." The researchers conducted:

1. A review of the incident reports of the law enforcement officials;
2. A review of the medical-legal investigative office (coroner or medical examiner) records, including investigations, reports, and autopsy reports, together with toxicologic information and conclusions as to the cause of death;
3. A comparison of all cases where complete details existed to determine what patterns were present in the nature of the confrontations. (John Granfield, Jami Onnen, and Charles S. Petty, MD, "Pepper Spray and In-Custody Deaths," Science and Technology (published by the International Association of Chiefs of Police under a grant from the National Institute of Justice), March 1997, page 2.

¹⁴ The source of citations in this report is a summary prepared by John Granfield, Steven M. Edwards, and Jami Long-Onnen in March 1997 based on the complete report "Pepper Spray Evaluation Project," published on June 21, 1995 by the International Association of Chiefs of Police, Daniel Rosenblatt, Executive Director. It should be noted that Baltimore County uses 5% solution (Bodyguard OC Spray 302, delivered from a fogger system), as opposed to the NYPD's 10% solution. This figure must be kept in mind in evaluating comparisons to the Baltimore County study both in terms of safety and effectiveness.

capsaicin, the active ingredient in OC spray.¹⁵ In rare instances ignition of OC spray has been documented, but such instances involved OC that was carried by an alcohol solution; the water-based solution in the product used by the NYPD eliminates this risk.

Granfield, Onnen, and Petty concluded that "in none of the twenty-two cases was OC considered to be a cause of, or a contributor to, the deaths." They found that "in eighteen of the twenty-two cases, positional asphyxia was the cause of death, with drugs and/or disease also being contributing factors," and that of the others, "three involved a drug (cocaine)-related death, and one involved a drug (cocaine)/disease-related death."¹⁶ Though the study was small and can by no means be considered exhaustive, it appears that in the reported deaths, conditions other than OC exposure resulted in fatalities. However, one would be wise to keep in mind the warning of the ACLU of Northern California, which cautions that these conditions "may become particularly acute when a suspect has been doused with a weapon designed to attack the respiratory system."¹⁷ The conclusion of the NIJ study of the Baltimore County Police Department, where every OC discharge must be followed up by a written report, is that only fourteen of 174 of the sprayed individuals "received any injuries, and all of these were minor, requiring no hospital treatment,"¹⁸ though one must keep in mind that seventeen subjects sprayed were not taken into custody and therefore any injuries or treatment would go unreported. There is growing concern, voiced most clearly by Mike Doubet in a 1996 study, that OC spray, while perhaps not dangerous to healthy, sober people, may "be a contributing factor" in deaths resulting from positional asphyxia or drug overdose by masking the symptoms of more serious conditions, a factor that may be minimized by immediate medical attention.¹⁹

¹⁵ H. Salem, E. J. Olajos, L. M. Miller and S. A. Thomson, Capsaicin Toxicology Overview, prepared for the US Army .

¹⁶ Granfield, Onnen, and Petty, page 2. The authors caution that a number of similarities exist in the positional asphyxia deaths, notably intoxicated subjects who are severely overweight (usually with "big bellies") who are placed face down and often bound by one of a number of questionable methods, including hog-tying (the binding of handcuffed hands to secured feet), which is prohibited by Patrol Guide Procedure No. 104-01, pages 11-12. Officers should be wary of the warning signs of positional asphyxia whether or not a subject has been pepper sprayed.

¹⁷ John M. Crew, Director of the Police Practices Project for the American Civil Liberties Union of Northern California, in a letter to The San Francisco Police Commission on May 2, 1996, page 4.

¹⁸ Edwards, Granfield, and Onnen, page 7.

¹⁹ Doubet (1996), quotes a number of sources, most strikingly the manufacturer of First Strike, a spray used in an incident in North Carolina that preceded an in-custody death: "Our contention has and will continue to be, that Robinson died because of a lack of proper medical attention. . . . Had he received proper medical attention, he most likely would have lived — no matter what the cause of the collapse was" (page 26).

The US Army study, however, does note a variety of dangers in capsaicin, the active ingredient in OC, including cardiovascular and pulmonary toxicity, and concluded that there "is a risk in using this product on a large and varied population." However, the bulk of the scientific studies supporting toxicity were conducted by introducing "chronic" doses of capsaicin into the internal organs of laboratory animals;²⁰ the US Army study notes that "in aerosol form, OC exposure causes debilitating eye and respiratory irritation," which is its intended effect.²¹ Further studies, in fact, cite capsaicin's medicinal value, principally when used in ointment as a painkiller in cancer patients.²² The US Army study raises serious concerns about the dangers of over-application of OC; officers should be trained to discharge a minimal amount of the substance, and excessive discharges should be monitored.²³

Effectiveness of OC Spray

The effectiveness of OC has also been called into question by the NIJ study of Baltimore County,²⁴ which found that eighteen of the 174 people sprayed were not sufficiently incapacitated to be handcuffed and of these, "the OC had no effect on seven suspects." All seven of the subjects on which the spray was ineffective were either mentally disturbed or under the influence of drugs or

²⁰ Consistent with scientific methodology, the studies reviewed by the US Army measured what doses of capsaicin would prove toxic by raising doses until the animals died. The chemical was introduced intravenously as well as by intragastric, dermal, intrarectal, and intratracheal methods (page 3).

²¹ Dr. Woodhall Stopford of the Division of Occupational and Environmental Medicine at the Duke University Medical Center, in testifying as to the risks faced by instructors in the North Carolina Department of Corrections (where pepper spray is used in training new corrections officers), related that low-level exposure over a long period of time poses a number of health risks, including increased rates of cancer, liver damage, and kidney damage (Stopford, June 16, 1996). However, at the NYPD Academy, officers are trained using an inert substance, thus minimizing the risk for both instructors and trainees.

²² See Peter Jaret, in *Health*, volume 8, page 36+, in addition others.

²³ The study notes that "personal communication . . . indicated that twelve deaths have been reported following the use of OC sprays on people in police custody," but states that "there are no coroner reports available," and conducted no investigation into the cases (page 8). Dr. Stopford also reported that "asthmatics are more sensitive to the bronchostrictive effects of OC...with up to a 40% decrease in airflow." He also noted that OC may increase the risk of respiratory arrest.

²⁴ Doubet, 1996, cites a number of other studies conducted by other police departments. However, the Baltimore study is the most dependable since it is the only study among those cited where the analysis was conducted by an outside agency (in this instance the International Association of Chiefs of Police supported by a grant from the National Institute of Justice) rather than the department itself. The various studies result in an effectiveness that varies from 75% to 90%, depending on the sprays and how effectiveness is defined and measured. In addition to the studies Doubet cites, the Winnipeg police department conducted a 1994 study, finding that the spray had a 91% effectiveness but urging that decontamination procedures needed to be improved and that a use-of-force form ought to be filled out after uses of the spray.

alcohol, and the study warned that "individuals who are heavily intoxicated, drugged, or mentally unstable may be resistant or immune to OC's effects."²⁵ Further, most evidence indicates that if OC is not immediately effective, it will not be effective at all.²⁶ Though the condition of the subjects sprayed in Baltimore may have contributed to their resistance to the spray, in 102 of the 174 total discharges, officers used the spray from within two feet of their subjects, which may have limited its effectiveness. Firing from too close a range not only possibly limits effectiveness, but also can compromise safety: as noted above, firing a stream system from within three feet can seriously injure the eye surface. Officers should be carefully trained to use OC from the proper distance and to change tactics should OC not work immediately.

NYPD Training on Use of OC Spray

The NYPD implements a three-pronged training program to instruct officers on proper usage of OC. One day every twenty-four months, officers in the uniformed patrol participate in a training session that includes thirty minutes on the proper use and follow-up procedures for OC. Every six months, during firearms training, thirty minutes are devoted to OC. And, of course, during recruit training at the Police Academy, OC procedure is taught as part of firearms training, when a thirty minute class is required. During these sessions, officers are taught not only the circumstances under which use of OC is justified, as per Interim Order 92, but proper procedural usage for the spray. Officers are instructed to use verbal techniques to de-escalate the confrontation, if possible, before resorting to pepper spray. They are taught not to fire the spray from within three feet of subjects, not to use the spray on a windy day, and not to use OC in group settings or for crowd control; they are trained to fire a maximum of two one-second bursts of the spray. Officers are warned during training that the spray might not work on emotionally disturbed persons or on people under the influence of drugs or alcohol, and to be prepared to change tactics should the spray not work. They are cautioned that ineffectiveness is not a reason to escalate force used; rather the independent circumstances continue to dictate appropriate force, regardless of the effectiveness of pepper spray. Officers are

²⁵ Edwards, Granfield, and Onnen, 1997, page 6.

²⁶ For example, the NIJ study of Baltimore County found that "No data indicated that spraying more than one short burst produced better effects, if the subjects were given a 'good' burst the first time." There is some irony in the fact that OC seems to be least effective against the population of aggressors it is most likely to be used against. Nevertheless, on balance, it appears to be a desirable physical force alternative.

trained to look out for an allergic reaction, which takes place about one time in one hundred, to transport subjects who have been sprayed either on their sides or sitting up, and to flush the subject's eyes with cool water as soon as possible. Officers learn that the effects of pepper spray should dissipate in about forty-five minutes.

Recommendations

The CCRB recommends that the NYPD continue to use OC spray as a less than lethal physical force alternative, with a number of additional caveats as explained below.

- Follow-up: When the NYPD switched to pepper spray from other chemical sprays in October 1994, the "mace report," previously prepared by an officer when a chemical spray was used, was eliminated. Instead, officers have been required only to check off a box on the on-line booking system arrest worksheet, fill out a medical treatment of prisoner form (if the subject is arrested) or an aided report form (if the subject is not arrested). However, since the Baltimore County study shows that minimal paperwork prepared after each use of OC spray can help protect officers as well as civilians (by contributing to determinations of how often and under what circumstances the spray may not function, and documenting the possibilities of inappropriate use and cross-contamination), the CCRB recommends that a simple form modeled on the Baltimore County Oleoresin Capsicum Data Collection Sheet (Appendix 2) be prepared whenever OC spray is used. The forms ought to be collected and filed in a central repository for information, so that researchers can access them in order to review effectiveness and safety concerns.
- Medical Attention: The current Interim Order requires officers to bring subjects to a hospital emergency room if the subject requests it or if symptoms persist, and otherwise leaves the subject's medical treatment to the discretion of the officer. However, the bulk of subjects who end up being sprayed with OC are sprayed because of irrational behavior, which can be the result of drug or alcohol intoxication, mental instability, or other unknown factors which can impair someone's judgment about whether or not he/she needs medical attention.²⁷ The

²⁷ MSI warns in its training materials that OC may mask the symptoms of other conditions. See MSI training manual.

CCRB therefore recommends that NYPD officers obtain medical attention for subjects sprayed with OC regardless of whether or not the subject requests it by either transporting the subject to the nearest hospital or calling for an ambulance. Adequate medical documentation will additionally help protect officers from claims of exaggerated injuries in complaints or civil suits filed following OC use and will serve to reduce and well document CCRB complaints. We further recommend that the NYPD study the effectiveness of pepper spray antidotes currently available, for possible use of carrying along with the pepper spray.

- Though NYPD officers are trained not to use OC as a crowd control device, there have been at least two recent documented instances in which officers sprayed pepper spray into a crowd or in a crowd control situation.²⁸ Not only is the stream propulsion system of minimal effectiveness against a crowd, the danger of cross-contamination of the wrong subject (including, possibly, the elderly, pregnant women, or young children) or the officer spraying the OC is increased. The CCRB recommends that Interim Order 92 be modified to reflect a prohibition against using OC against more than one subject at a time, and a prohibition against using OC as a crowd control device.
- A number of other aspects of proper OC usage, while included in the training, are not reflected in Interim Order 92. These include proper distance for using the spray (no closer than three feet), groups of people against whom the spray may be less effective (those intoxicated or mentally disturbed), and instructions that failure of the spray to work does not in itself justify escalating the level of force used. In addition to allergic reactions, officers should also be trained to look for respiratory or heart conditions, which may be aggravated by a subject's contact with OC spray. The CCRB recommends that Interim Order 92 properly reflect these aspects of the training program.

These recommendations are consistent with proper procedure, as reflected in the training materials provided by MSI, the manufacturer of the current product used by NYPD, and in keeping with what is known from the most recent scientific studies on OC spray as well as with the training

²⁸ Officers used pepper spray on a crowd during a disturbance at the Cavalry Church located in Queens, New York on August 20, 1995, as documented by the CCRB, and during the disturbance resulting from the Biggie Smalls funeral procession on March 18, 1997, as documented by media reports of the incident.

taking place at the Police Academy. Though more research clearly needs to be done in order to come to a definite conclusion regarding the safety and reliability of OC spray, following the above recommendations will keep the NYPD up to date with the current state of knowledge about the product.

Review of OC Complaints Filed with the CCRB

OC sprays have been used throughout the patrol force of the New York City Police Department since October 1994. Since this time, the number of CCRB complaints alleging the improper use of OC sprays as a non-lethal alternative to traditional physical force has increased dramatically. Indeed there were more than twice as many complaints arising from the use of OC sprays in 1995 than in 1994 when Chemical Mace was used by the Police Department through September 1994.²⁹ This statistic however, is counterbalanced by a concomitant decrease in various categories of other non-lethal force complaints. As the following table indicates, while complaints about OC spray increased, complaints alleging pushing, shoving and the use of night sticks and flashlights as clubs, have decreased.

²⁹The CCRB received twenty complaints in 1994 alleging the improper use of Chemical Mace prior to October 1994 when the Police Department switched to OC spray. As noted in footnotes 6 and 30, nine of the eighty-five complaints involving pepper spray received in 1995 were miscoded; Table 1A was adjusted to 76 complaints involving pepper spray which were received in 1995. One CCRB complaint during the study period involves someone who died in custody after being sprayed with OC. The case is still under investigation, but the medical examiner who performed the autopsy cited acute cocaine poisoning as the cause of death and stated that OC spray did not play a role in the death.

TABLE 1A

**FORCE ALLEGATIONS DISTRIBUTION
JANUARY THROUGH DECEMBER 1994 AND 1995**

	Number of Allegations		# CHANGE	% CHANGE	Percent of Allegations	
	1994	1995			1994	1995
Gun Fired	19	23	4	21.05	.61	.65
Beat	463	492	29	6.26	14.90	14.01
Pepper Spray	24	76	52	216.67	.77	2.16
Drag/Pull	195	260	65	33.33	6.28	7.40
Flashlight as Club	55	38	-17	-30.91	1.77	1.08
Push/Shove	977	904	-73	-7.47	31.45	25.74
Nightstick	124	89	-35	-28.23	3.99	2.53
Gun Pointed	179	244	65	36.31	5.76	6.95
Gun as Club	22	29	7	31.82	.71	.83
Radio as Club	27	28	1	3.70	.87	.80
Punch/Kick	399	403	4	1.00	12.84	11.48
Slap	97	88	-9	-9.28	3.12	2.51
Other	526	838	312	59.32	16.93	23.86
TOTAL	3,107	3,512	405	13.04	100.00	100.00

Status of Complaints

Eighty CCRB complaints which involved the alleged improper use of OC sprays were reviewed for this report. Four complaints were filed with the CCRB during 1994 and seventy-six were filed in 1995.³⁰ Thirty-three of the eighty cases were fully investigated and submitted for review and disposition by Board panels.³¹ Board panels exonerated police officers in their use of OC spray in seventeen cases (51.5%), unfounded the allegation that OC spray was improperly used by police officers in five cases (15.2%), found insufficient evidence to prove or disprove the alleged improper use of OC spray in ten cases (30.3%), and substantiated the allegation that a police officer improperly used OC spray in only one case (3%). In all cases involving multiple officers which were fully investigated, it was determined that only one officer used the OC spray in all instances except one.³² Thus, the substantiation rate for alleged improper use of pepper spray appears to be lower than in most categories of complaints.

Years of Service of Subject Officers

A total of 151 officer were involved in complaints which alleged the improper use of pepper spray. However, in all but one case, as mentioned above, only one officer was alleged to have improperly used the pepper spray. Of the total 151 officers involved, the number of years of service could be determined for ninety-six. Of these, fifty-four (56%) had been in the Police Department for fewer than five years, and twenty-eight more (29%) had been in the Police Department fewer than ten years. Though the groups of officers complained about for their use of OC were not among the

³⁰A total of twenty-four complaints involved the alleged improper use of mace and pepper spray were received in 1994. Upon review twenty of those complaints involved the alleged improper use of Mace; the four remaining complaints involved the alleged improper use of pepper spray after NYPD distributed pepper spray canisters to its personnel and issued Interim Order 92 governing the use of pepper spray by police officers on October 6, 1994. In addition, after review nine of the eighty-five cases received in 1995 as reported in Table 1A, *infra*, which alleged the improper use of pepper spray were miscoded; these complaints did not allege an improper use of pepper spray and were not considered in this study.

³¹Three cases are still under investigation, forty-three cases were closed administratively without being investigated because the complainants did not appear for their scheduled interviews, and one case was closed because the complainant was uncooperative in continuing the investigation.

³²Five cases involving multiple subject officers were closed administratively without being investigated.

youngest members of the service, there is a disproportionate number of officers with fewer years of experience who receive complaints for the use of OC.

Complaints by Precinct

The 44th (Bronx), and 25th (Manhattan) precincts logged the greatest number of OC complaints during the period October 1994 to December 1995. In descending order, OC complaints from the eight borough commands were distributed as follows: Brooklyn North - 20 complaints, Bronx - 19, Manhattan North - 13, Queens South - 9, Manhattan South and Brooklyn South each with 6 complaints, Queens North - 4, and Staten Island - 3 complaints. In descending order, OC complaints from each of the five boroughs were distributed as follows: Brooklyn - 26, Manhattan and Bronx each with 19, Queens - 13, and Staten Island - 3.

Type of Occurrences

The bulk of known occurrences to which officers responded and used OC which resulted in CCRB complaints were Domestic Violence disputes, though, since such a high number of complaints were administratively closed, it is unknown what the cause was in half of the occurrences; the small number of incidents that remain provide little that can be interpreted clearly, due to the small size of the study group.

TABLE 4

TYPE OF OCCURRENCE #	
Unknown Occurrence	40
Domestic Dispute	19
Traffic Violations	8
Drug or Alcohol Related Stop	4
Fight or Riot	4
Noise Disturbance	2
Other	3
Total	80

Medical Treatment

Of the eighty complaints lodged with the CCRB regarding OC spray during the study period, the type of medical attention received by the person sprayed can be seen below:

Type	Number	Percent
No medical attention	64	60.9
EMS/ eyes flushed	7	6.7
Hospital treatment for OC	11	10.5
Hospital treatment for other injuries	4	3.8
Hospital treatment — emotionally disturbed	2	1.9
Unknown	17	16.2
Totals	105	100

Though nearly 61% of those who were sprayed required no medical treatment whatsoever, nearly 23% were treated at hospitals or by EMS for their exposure to pepper spray. Though one could argue that the relatively high percentage of medical treatment is a reflection of the sample group, which is made up only of those who filed complaints regarding being sprayed, the number is high enough to merit reconsideration of the current policy, which does not require officers to bring the subject to a medical facility unless the subject requests it. Since the NYPD had no tracking device in place regarding incidents using OC, the numbers obtained by the CCRB cannot be compared to any Police Department statistics.

Conclusion

The growing body of information on OC has gone a long way to help show that, if used within careful guidelines, and if subjects sprayed are carefully monitored and given speedy medical treatment, the spray can be a useful alternative to traditional non-lethal force.³³ Adoption of the

³³The CCRB has observed a marked decrease in complaints involving more serious force. However, the CCRB cannot empirically or statistically relate the decrease in force complaints to the increased use of pepper spray.

above recommendations regarding the use of OC spray will assure the public regarding its safe and effective use by the NYPD.

C:\gene\Pepper11.wpd



INTERIM ORDER

NUMBER	REF. PG *
92	116-48
DATE	
10-6-94	

Misc. 1953-C (4-91)-02

TO ALL COMMANDS

Subject: USE OF PEPPER SPRAY DEVICES

1. Use of Oleoresin Capsicum (O.C.) cayenne pepper spray constitutes physical force under the New York State Penal Law. Use of pepper spray is proper when used in accordance with Article 35 of the Penal Law and Department procedures. O.C. Spray may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting EDP or mentally ill person into custody. In most cases, pepper spray will reduce or eliminate the need for substantial physical force to effect an arrest or gain custody. It will also reduce the potential for injuries to members and suspects that may result from physical restraint and it should be regarded as an alternative to such force and restraint. Pepper spray shall not be used in situations that do not require the use of physical force.

2. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been effective in overcoming physical resistance. When consistent with personal safety, a verbal warning should be given before using pepper spray against an unarmed subject.

3. Pepper spray shall not be used on suspects who passively resist arrest. (e.g., going limp, offers no physical resistance). Do not use pepper spray on the elderly, young children, pregnant women or persons with known respiratory conditions.

4. Whenever possible, first attempt to deescalate the situation by the use of calming language and by trying to reason with the subject, before resorting to the use of pepper spray or other force. The following techniques should be employed:

- a. Act and speak in a calm, deliberate manner.
- b. Maintain a safe distance from the subject.
- c. Listen to the subject and request his/her cooperation.
- d. Explain the consequences (e.g., additional charges) of the subject's behavior if he/she does not cooperate.
- e. Request assistance of patrol supervisor and additional members, if available.

5. Pepper spray devices may be used in the following situations that would justify the use of physical force:

- a. Assault on a police officer or any other person.
- b. Physical threat against a police officer or another person actually present and an officer reasonably believes it is necessary to prevent an imminent assault.
- c. Resisting arrest by using physical force to prevent an officer from effecting custody.
- d. Fleeing or attempting to flee from arrest or custody.

6. Pepper spray may also be used effectively in controlling dangerous animals, to deter attack and prevent injury to all persons and other animals present. Pepper spray should be used as an initial defense against vicious dogs. Firearms should only be used as a last resort.

7. The existing MACE REPORT (PD465-150) will be eliminated effective immediately. In addition, the NON-LETHAL RESTRAINING DEVICE/RESCUE EQUIPMENT REPORT (PD320-150) will no longer be prepared in cases where pepper spray is used. Instead, the "chemical agent" box and related captions shall be checked in the use of force section of the OLBS (PD244-159) worksheet.

8. The only pepper spray authorized for use is the type issued to all members through the Firearms and Tactics Section. Any member still in possession of an old mace device should immediately contact their Patrol Borough command for issuance of a new O.C. pepper spray device.

9. When performing duty in uniform, the pepper spray shall be carried in its holster attached to the non-shooting side of the gun belt. When performing enforcement duty in civilian clothes the pepper spray must be carried, either in the holster attached to a belt or in another appropriate manner. Undercover officers may opt not to carry the pepper spray. The pepper spray device may be carried during off-duty hours by members of the service.

10. The following procedure will be followed in circumstances when O.C. pepper spray may be discharged and to record instances when pepper spray has been discharged, intentionally or accidentally:

PURPOSE

To inform uniformed members of the service of circumstances under which pepper spray may be discharged intentionally and to record instances where pepper spray has been discharged, intentionally or accidentally.

PROCEDURE

When necessary to use pepper spray device:

UNIFORMED
MEMBER OF
THE SERVICE

1. Discharge pepper spray only in situations where, performing official duty, use of physical force is required to protect self or others from assault or to arrest a person or subdue an EDP, or dangerous animal.
2. Effect arrest of criminal suspect against whom pepper spray was used and charge with crime which initiated use of the chemical agent.
 - a. Add resisting arrest charge, when appropriate.
 - b. "Release of Prisoner" procedure (Patrol Guide 110-7) will be utilized if it is determined that arrested person did not commit the crime or that no crime was committed.
 - c. EDP procedure (Patrol Guide 106-11) will be utilized, when appropriate.
3. Flush the contaminated skin area with profuse amounts of water and expose area to fresh air. If necessary, repeat flushing at short intervals until symptoms subside.
 - a. DO NOT rub or touch skin of contaminated person as the initial effect of pepper spray does not dissipate for 15 - 20 minutes.
 - b. DO NOT use salves, creams, ointments, commercial eye washes or bandages.

UNIFORMED
MEMBER OF
THE SERVICE
(continued)

4. .Observe condition of subject after application of pepper spray and determine whether subject needs treatment at a hospital emergency room.
5. Position subject on his/her side or in a sitting position to promote free breathing. The subject should not be maintained or transported in a face down position. DO NOT SIT, STAND OR KNEEL ON SUBJECT'S CHEST OR BACK.
6. Transport prisoner/aided to emergency room of the nearest hospital, if requested or if symptoms persist.
 - a. Windows of vehicle used to transport should be kept open.
7. Transport prisoner to precinct of occurrence if hospital treatment is not required.
8. If necessary, request EMS ambulance to respond to assist in flushing the subject's face and to evaluate physical condition.
9. Prepare MEDICAL TREATMENT OF PRISONER form (PD 244-150) for a person who is arrested to alert Central Booking and Department of Correction.
 - a. Indicate type of treatment rendered or refused medical aid (RMA), as appropriate.
10. Prepare AIDED REPORT (PD 304-152) if pepper spray is used on a person who is not arrested, e.g., EDP.
 - a. Indicate on AIDED REPORT type of treatment rendered or refused medical aid (RMA), as appropriate.
11. Enter on AIDED REPORT or ON LINE BOOKING SYSTEM ARREST WORK-SHEET (PD 244-159) the time, doctor's name, and diagnosis under "Details" caption, when applicable.

RELATED
PROCEDURES

Aided Cases - General (P.G. 106-1)
Aided Cases - Mentally Ill or Emotionally Disturbed Persons (P.G. 106-11)
Arrests - General (P.G. 110-2)
Release of Prisoner (P.G. 110-7)
Hazardous Material (P.G. 116-39)
Hostage/Barricaded Persons (P.G. 117-12)
Loss or Theft of Department Property (P.G. 125-15)
Lost or Damaged Uniform (P.G. 120-21)
Medical Treatment of Prisoner (P.G. 110-02)

11. Patrol Guide procedure 116-48, "Use of **Mace Devices**" is suspended.

12. Any provisions of the Department Manual or other Department directives in conflict with this order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands

INTERIM ORDER NO. 92



INTERIM ORDER

NUMBER	REF. PG
93	116-48
DATE	
10-6-94	

Misc. 1953-C (4-91)-02

TO ALL COMMANDS

Subject: CONTROL, DISTRIBUTION, AND REPLACEMENT OF PEPPER SPRAY DEVICES

1. The Commanding Officer, Firearms and Tactics Section will maintain a record of the model and serial numbers of each pepper spray device, the number of devices issued, the number returned, and the command to which devices were issued. Patrol Borough commands will distribute replacement pepper spray devices and will maintain a record indicating:

- a. Model and serial numbers of devices received from Firearms and Tactics Section.
- b. Name and command of members returning a device for replacement and its model and serial number.
- c. Name and command of members receiving a replacement device and its model and serial number.

2. When returning defective or empty pepper spray devices to the Outdoor Range, Patrol Borough Commanders will prepare transmittal forms indicating the number of devices being returned and their serial numbers.

3. Patrol Borough Commanders are responsible that pepper spray devices are safeguarded in the borough office and must ensure that an adequate number of devices are on hand at all times. Devices are to be stored in a cool location away from direct sunlight.

4. When a pepper spray device is not functioning properly or when there is less than 20% of its contents remaining, a brief report, signed by the Commanding Officer of the member concerned, requesting replacement of the device will be delivered with the defective device to the Patrol Borough command. Each time a pepper spray device is replaced for any reason, the serial number will be changed on the member's FORCE RECORD (PD 406-143). When a device is lost, the procedure entitled "Loss or Theft of Department Property" (Patrol Guide 125-15) will be followed and a copy of the required report plus a request for replacement device will be forwarded to the Patrol Borough command. In addition, defective holsters or holsters damaged in the performance of police duty will be repaired or replaced by the Department (see Patrol Guide procedure 120-21). Pepper spray holsters that are damaged as a result of misuse or neglect will be replaced by the uniformed member at his/her own expense. Replacement holsters may be purchased at the Equipment Section.

5. Any provisions of the Department Manual or other Department directives in conflict with this order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands



IACP/Baltimore County Oleoresin Capsicum Data Collection Sheet



CC# _____ Date _____ Time _____

Name _____ Precinct/Function _____

NATURE OF INITIAL CONTACT

BCPD Situation Found Code _____

USE

Indoors Outdoors In Vehicle

WEATHER CONDITIONS IF OUTDOORS

Sunny Cloudy Windy Rainy Snowy Other _____

SUSPECT INFORMATION

Name _____ DOB _____

Race _____ Sex _____ Height _____ Weight _____

Body Frame: Small Medium Large

SUSPECT BEHAVIORAL CONDITION AT ENCOUNTER

Calm/Passive Intoxicated Drugged Mentally Ill Belligerent

Other (describe) _____

FORCE OR THREAT OF FORCE AGAINST OFFICER

Firearm Knife Physical Force Other (specify) _____

OC INFORMATION

Application point on body _____

Distance sprayed _____ Number of sprays _____

Describe actions of suspect after application. _____

Was suspect incapacitated enough to ease arrest? (explain) _____

INJURY

Officer: Yes No Suspect: Yes No

If yes, describe injury. _____

First Aid Administered: Yes No

If yes, describe. _____

DECONTAMINATION NEEDED

Yes No

If yes, describe. _____

ANIMAL USE

Animal Type _____ Distance Sprayed _____

Animal Behavior: Attacking Threatening

Animal Size: Less than 25 lbs. 25-50 lbs. 50 lbs. plus

ADDITIONAL COMMENTS _____

(Continue additional comments on reverse side if necessary.)

Shift Comm. Review Sign. Date _____

Pc Comm. Review Sign. Date _____

