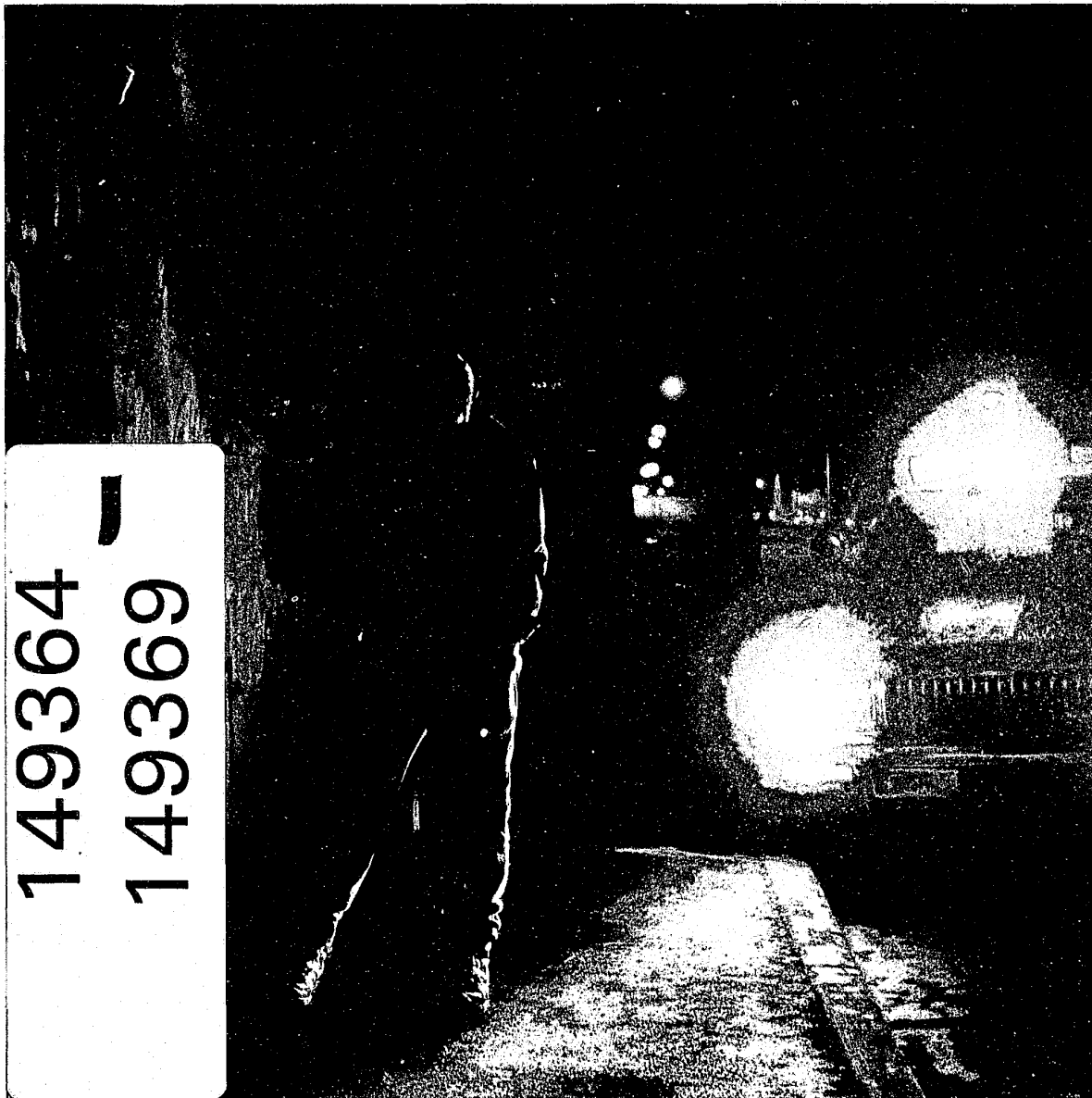


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Kathryn E. Sulewski

Art Director

John E. Ott

Associate Editors

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Darlene J. Butler

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FBI Law Enforcement

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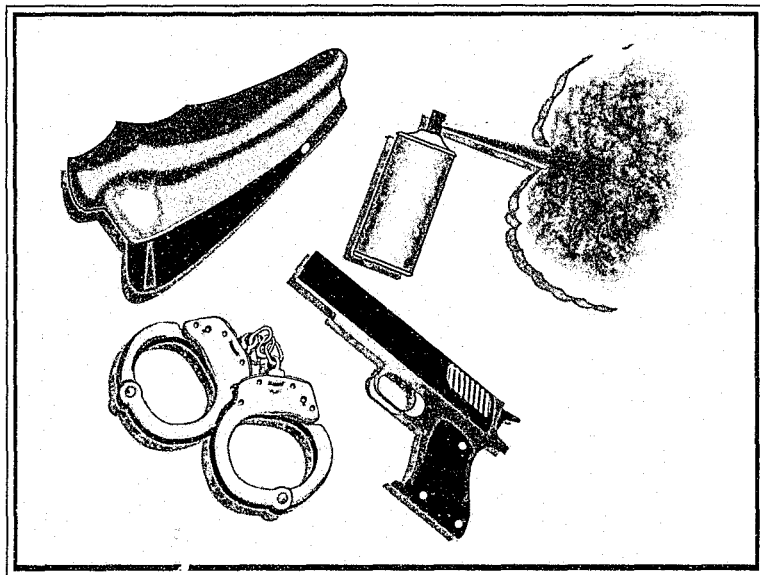
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Focus on Use of Force

Pepper Spray

By John C. Hunter



A deputy sheriff responds to a reported domestic dispute in a rural area of the county. Backup officers are 20 minutes behind when the deputy passes one of the subjects speeding in the opposite direction. After a short pursuit, the subject stops his vehicle and flees on foot. The deputy confronts the man, and a physical struggle ensues. Although not assaultive, the subject escapes when the deputy cannot effectively control him.

In another part of the country, officers take part in a multivehicle pursuit as a suspect attempts to avoid apprehension. The suspect eventually stops his vehicle, but refuses to comply with the officers' verbal commands to lie face down. After attempts of physical restraint fail, officers resort to tasers and repeated baton blows. A bystander captures on video what appears to be the officers' flagrant disregard for the citizen's safety.

Meanwhile, officers from another department transport a mental patient from a detention facility to

the hospital. Because the subject will not sit calmly in the backseat of the patrol vehicle, the officers hogtie him. When they arrive at the hospital after a 5-minute drive, the officers find the subject dead in the back seat. A subsequent coroner's report lists the cause of death as *positional asphyxia*.¹

These incidents reveal a paradox in modern policing. For the most part, the officers acted in accordance with their departments' training procedures. However, each of these encounters ultimately produced results unacceptable both to their departments and to the communities they serve. In fact, each of these scenarios reflects a missing link that exists in the use-of-force continuum currently recognized and accepted by law enforcement.

What makes scenarios such as these especially frustrating is that they could be resolved without placing either the subjects or the officers in jeopardy. Advances in nonlethal neutralizing agents—most notably oleoresin capsicum, or "pepper spray"—give today's law enforcement officers a means to control subjects without resorting to a physical confrontation or to the deadly force level of the force continuum.

Although an increasing number of departments equip their officers with pepper spray, other agencies have been slow to embrace this alternative to more conventional methods of subject control. Considering the many challenges facing modern law enforcement officers, agency administrators should consider the potential advantages of expanding the use-of-force continuum to include pepper spray.

EXPANDING THE USE-OF-FORCE CONTINUUM

As taught by most law enforcement academies, the use-of-force continuum consists of five levels,

with each tier representing an escalation in force from the preceding level. The principles of the continuum and safety considerations, as well as officer and department liability factors, reinforce the importance of approaching each situation on the *lowest* level possible to achieve the desired results. The escalation-in-force continuum model generally recognized in departments across the Nation is as follows:

- 1) Physical presence
- 2) Verbalization
- 3) Physical contact
- 4) Hand-held impact weapons
- 5) Lethal force.

While this model adequately reflects the methods available to police departments in past years, it does not accommodate the expanded arsenal of neutralizing agents available to today's law enforcement officers. Therefore, administrators and trainers should consider modifying the continuum to encompass these measures.

The new use-of-force continuum should include two additional levels and appear as such:

- 1) Physical presence
- 2) Verbalization
- 3) Less than physical force (neutralizing agents)
- 4) Physical contact
- 5) Less than physical force (neutralizing agents)
- 6) Hand-held impact weapons
- 7) Lethal force.

As reflected in this new model, neutralizing agents, such as pepper spray, can give officers an added degree of flexibility at two critical points in the force continuum—before they make any physical contact with subjects or after initial physical contact but before the introduction of hand-held weapons.

PEPPER SPRAY

A Tool to Augment the Force Continuum

Once administrators decide to expand the use-of-force continuum, they must then determine the most appropriate technology or device to fill the gaps. Pepper spray is gaining endorsement throughout law enforcement for its versatility and effectiveness.

The spray is an organically based inflammatory agent derived from the essence of cayenne peppers. Its ingredients are generally 90 to 95 percent inert, making it safe for use at very close range.

Effects

Pepper spray results in considerable tearing of the eyes, as well as temporary paralysis of the larynx, which causes subjects to lose their breath. Contact with the face causes a strong burning sensation.

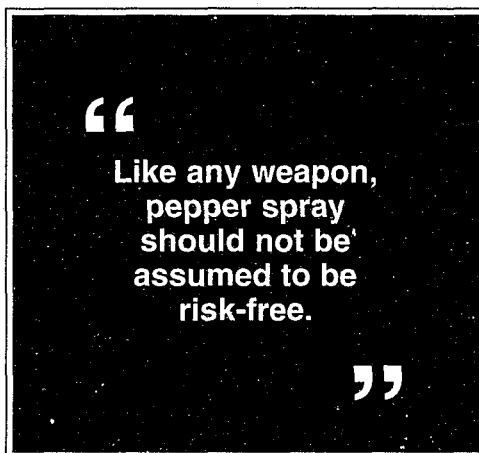
After being exposed to the spray, subjects' reactions become reflexive in nature. They immediately cover their eyes and bend over into a defensive posture to avoid further contact. This reactive

behavior allows officers to gain control and restrain disorderly subjects more effectively. The effects of the spray generally last about 20 to 45 minutes and leave no residual effects.

One advantage of pepper spray is that it can be applied to handcuffed, resistant, and violent persons during transport, in lieu of the hogtying method. Contamination of vehicles is minimal. Generally, vehicles can be operated within a few minutes after the spray has been used. After use, no decontamination procedures are required other than normal cleaning of the vehicle's interior.

Other Considerations

Because individual protective devices are widely used by citizens, neutralizing agents such as pepper spray appear to be viewed by the public as



an acceptable means of force. Pepper spray is available in most areas of the country in strengths ranging from .5 percent (dog repellant) to 10 percent (bear repellant). Most personal protective versions of the spray are in the 1-percent strength range.² Sales of the spray in the 5-percent range are restricted to law enforcement.

Like any weapon, pepper spray should not be assumed to be risk-free. At least one death has been attributed to the application of pepper spray. Although pre-existing medical conditions may have contributed to the subject's death, the coroner's report cites pepper spray as a significant factor.³

Still, compared to using batons and tasers in marginal use-of-force scenarios, pepper spray generally represents a more acceptable level of force. In fact, because the spray forces subjects to assume a prone position without officers resorting to physical contact, departments that train their personnel in the proper use of pepper spray can significantly limit their vulnerability to lawsuits.

Affordable Training and Deployment

Another aspect of pepper spray that makes it attractive is its affordability. At an initial cost of \$10 to \$25 per canister and 4 to 8 hours of inservice training per officer, implementation is practical for most departments.

The low probability of civil liability rests with the effectiveness of officer training procedures. An important element of this training includes exposing officers to the effects of pepper spray.

This accomplishes two important goals. The first addresses officers' ability to react if exposed during an actual field situation. Officers should be aware of the physical reactions to the agent. The second goal involves developing a history of the product's reliability and safety. Courts may be more willing to side

with law enforcement officers who have themselves been exposed to the spray and survived with minimal short-term discomfort.

Among other considerations, training should also stress that officers move away quickly after spraying a subject. This is to ensure that the subject does not grab the officer when reacting to the spray.

After the initial instruction, agencies should conduct yearly inservice training. However, this training can be reduced to an informal update at little or no cost to the agency.

CONCLUSION

Today's law enforcement officers act according to a use-of-force continuum designed many years ago. Pepper spray allows for the expansion of this continuum and gives officers a needed degree of flexibility to confront noncooperative subjects. Administrators owe it to

their personnel and to their communities to explore this new and effective option. ♦

Endnotes

¹ Although the hogtying technique is allowed by many law enforcement agencies as a way to restrain noncooperative subjects after arrest, this practice recently came under scrutiny due to the death of several suspects who had been restrained in this manner. A study of three such deaths determined that each resulted from positional asphyxia. This phenomenon occurs when the position of the body interferes with respiration, resulting in asphyxiation. See Donald T. Reay, et al., "Positional Asphyxia During Law Enforcement Transport," *The American Journal of Forensic Medicine and Pathology*, 13 (2), 1992, 94.

² While pepper spray is widely accepted in the law enforcement community, it still remains illegal in certain areas of the country. Police administrators should consult with their legal advisors before employing this neutralizing agent.

³ Report of Autopsy Examination # ME-93-658, Office of the Chief Medical Examiner, Chapel Hill, North Carolina.

Chief Deputy Hunter serves with the Skagit County, Washington, Sheriff's Office.

