

LOS ANGELES POLICE COMMISSION

***NON-CATEGORICAL USE OF FORCE
INVESTIGATIONS AUDIT
(Fiscal Year 2008/2009)***



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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April 30, 2009

**OFFICE OF THE INSPECTOR GENERAL
NON-CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
FISCAL YEAR 2008/2009**

PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 136(i), completed its annual Non-Categorical Use of Force (NCUOF) Investigations Audit (Audit). Paragraph 136(i) requires the OIG to assess areas of concern identified by the Inspector General and at least one area related to the quality and/or outcome of NCUOF investigations. For this Audit, the OIG assessed the overall quality of the NCUOF investigations.

This Audit is not intended to provide an assessment of Department-wide adherence to mandates specified in the Consent Decree. The Los Angeles Police Department's (LAPD or Department) Internal Audits and Inspections Division performs that type of assessment annually. Instead, this Audit focused on NCUOF Level I investigations, which require that a more extensive investigation be completed by the Department.

BACKGROUND

Per Department policy (Special Order No. 13, 2004), a NCUOF is defined as an incident in which a Department employee uses a less-lethal control device or physical force to:

- Compel a person to comply with the employee's direction; or,
- Overcome resistance of a person during an arrest or a detention; or,
- Defend any individual from an aggressive action by another person.

The following incidents are not reportable as a NCUOF:

- Use of general grips and joint locks to compel a person to comply with an employee's direction (if the force does not result in an injury or complained-of injury);
- Force used to reasonably overcome passive resistance due to physical disability, mental illness, intoxication, or muscle rigidity of a person (if the force does not result in an injury or complained-of injury);
- Discharges of less-lethal projectile weapons that do not contact a person;
- Force used by an organized squad in a crowd control situation or a riotous situation when the crowd exhibits hostile behavior and does not respond to verbal directions from Department employees; and,
- Any incident investigated by Force Investigation Division (e.g., a Categorical Use of Force).

All NCUOF investigations are classified into two levels, I and II. Level I investigations are generally related to higher-risk NCUOF incidents and involve one or more of the following:

- An allegation of unauthorized force used by a Department employee(s); or,
- A serious injury resulting from the force used, such as a broken bone, dislocation, or an injury requiring sutures;¹ or,
- Injuries to the person upon whom the force was used that are inconsistent with the amount or type of force reported by the involved Department employee(s); or,

¹ If the NCUOF investigator is unable to verify the seriousness of an injury, the investigation should be classified as Level I. However, if the subject received injuries requiring hospitalization related to the use of force, Force Investigation Division (not the involved officer's Chain of Command) should investigate the incident as a Categorical Use of Force.

- Accounts of the incident provided by witnesses and/or the subject² of the use of force that substantially conflict with the involved employee(s) account.

All other NCUOF investigations are classified as Level II. Level I investigations, unlike Level II, require all subject and public witness interviews to be recorded, unless impractical or the interviewee refuses to be recorded. However, an explanation for the inability to record the interview must be documented. Also, the interview of each subject and witness must be summarized if a statement is not recorded or the person's account of the use of force is in substantial conflict with the involved Department employee's account. The NCUOF investigating supervisor is not required to record the interviews of Department employees who are involved or considered witnesses to the NCUOF, and the Department does not require these interviews to be summarized. Uninvolved Area supervisors investigate these uses of force.

SCOPE AND METHODOLOGY

This Audit focused on NCUOF Level I investigations, which may involve an allegation of unauthorized force, a serious injury or inconsistencies. To identify our population, the OIG requested Use of Force Review Division (UOFRD) to provide a listing of all NCUOF Level I investigations closed from August 1 to December 15 of 2008. Twenty NCUOF investigations were identified and reviewed. To evaluate the 20 NCUOF investigations, the OIG reviewed documentation within the NCUOF investigations and listened to all recorded interviews associated with the investigations. These 20 investigations were completed from 116 to 600 days after the date of the use of force, averaging 287 days.³

For each of the 20 investigations, the Audit utilized two detailed matrices (audit programs) guides to evaluate the NCUOF investigations. The first matrix contained 37 questions to test the quality and completeness of the investigation and related investigative file. The second matrix contained 11 questions to test the quality of the recorded interviews [of the NCUOF subject and public witnesses], and the accuracy and completeness of the related summarized statements. The Audit Report (Report) includes concerns that the OIG believed to be significant because they could have impacted the adjudication of a NCUOF investigation, the subject's criminal case, and/or any related complaint investigation (or lack thereof) of "excessive force" allegations. Less significant concerns were separately communicated to the Commanding Officer of UOFRD for consideration and appropriate action.

On April 9, 2009, the OIG discussed the results of the Audit with UOFRD management. At that time, they expressed general agreement with the results. The OIG wishes to thank UOFRD for their cooperation and for sharing their expertise while we were conducting this Audit.

² Within this Report, the word "subject" refers to the person upon whom the involved officers used force.

³ The Office of the Chief of Staff issued a Notice on September 30, 2008, indicating that effective immediately there is a six-month deadline for the investigation, review and submission to UOFRD of all NCUOF investigations.

FOCUS POINTS

The Audit identified the following most noteworthy issues in four investigations:

No. 2006809: A sergeant involved in a use of force with a female juvenile also investigated a patrol officer's concurrent use of force at the same residence against a male juvenile. The watch commander's insight for the patrol officer's use of force against the male juvenile indicated that the sergeant at the scene was not in a position to observe the use of force incident, but did observe the end of the struggle. The OIG is concerned that since this sergeant was also involved in a related concurrent use of force at the same residence, the sergeant may have lacked objectivity in investigating the patrol officer's use of force against the male juvenile. The OIG would have preferred that an uninvolved sergeant not on scene at the time of the incident would have completed this NCUOF investigation.

No. 2007050: The subject indicated on the audio recording that he was hit with a club by one of the officers as they were trying to get him down on the ground, but this was not included in the subject's summarized statement. Also, during the audio-recorded interview of the subject, the investigating supervisor did not ask any follow-up questions as to what body part was allegedly hit with the club, nor did the investigating supervisor request to visually inspect the body part allegedly hit by the club for any visible mark(s).

The NCUOF investigation did not indicate that any of the officers used their collapsible baton on the subject. However, the arrest report stated that one of the officers "utilized his collapsible baton and deployed it" and ordered the subject again to turn around and place his hands behind his back. The arrest report indicates that the officer then grabbed the subject's right arm with both of his hands. There is no indication in the arrest report nor in the NCUOF investigation as to what happened to the baton from the time the officer deployed it to when the same officer grabbed the subject's right arm with both of his hands. The OIG's believes the NCUOF investigation should have addressed this issue involving the use or non-use of the collapsible baton.

No. 2006719: The watch commander's insight written for the first officer to identify and evaluate his force options applied was also used as the watch commander's insight for the second officer, despite the fact that second officer applied different force options. As a result, the second officer's force options applied were not identified in his watch commander's insight and formally evaluated. This error went undetected and uncorrected through multiple levels of review at the Area, Bureau and UOFRD. Specifically, the first officer applied bodyweight, a punch and a wristlock to Subject A. In contrast, the second officer applied a knee strike, a takedown and a wristlock to Subject A; and he also applied a palm strike and other force (pulled shirt and pushed to ground) to Subject B.

No. 2006923: The OIG noted that although four individuals were cited for violating Vehicle Code § 21956(A) (Pedestrian in the Roadway), the police did not release them from custody until after the NCUOF investigating supervisor finished interviewing all of them approximately one hour after the citations had been issued. The OIG believes that the detention of these individuals was unreasonably extended for the purpose of conducting a NCUOF investigation.

SUMMARY OF AUDIT RESULTS

The Audit revealed that, overall, the NCUOF investigations were completed in a quality manner. The OIG believes, in large part, this was due to UOFRD conducting thoughtful and standardized reviews of the Area NCUOF investigations prior to their final adjudication and closure. This was often reflected in the NCUOF investigative files by corrective action “kickback” notices from UOFRD to the Areas. Nevertheless, the OIG identified some investigative quality and other concerns in five of the 20 investigations reviewed that warranted a detailed discussion within the Detailed Findings section of this Report. These concerns involved:

- An investigating supervisor involved in a related concurrent NCUOF at the same residence (No. 2006809)
- Inaccurate and/or incomplete summarized statements (Nos. 2006809, 2007050 and 2006923)
- The lack of follow-up questioning and related outstanding issue not addressed (No. 2007050)
- An incorrect watch commander’s insight (No. 20076719)
- A missing signed medical release form (No. 20076719)
- Possible *Miranda* rights violations (Nos. 2007061 and 2006923)
- Unreasonably extending the detention of a group of individuals for a minor traffic violation for the purpose of interviewing them in a NCUOF investigation (No. 2006923)

DETAILED FINDINGS

No. 2006809

Incident Overview

A patrol officer was flagged down by a female who informed the officer that her son, a male juvenile, was under house arrest but was getting ready to leave. Her son was heavily intoxicated and was in violation of his probation terms. A female juvenile was found inside the house, also very intoxicated. Both juveniles became belligerent and verbally abusive towards the officer and the male juvenile’s mother. A sergeant arrived at the location and assisted the officer in escorting the female juvenile out of the house. As the sergeant walked the female juvenile out holding her by one arm, the female juvenile turned toward the sergeant and attempted to bite his arm. In response, the sergeant grabbed the female juvenile’s mouth area with his hand to prevent her from biting him.

Note: A concurrent use of force at the same residence occurred between the initial responding patrol officer and the male juvenile (No. 2006796).

Investigating Supervisor Involved in Related Concurrent NCUOF at Same Residence

The sergeant involved in the use of force with the female juvenile also investigated the patrol officer’s concurrent use of force at the same residence against the male juvenile. The watch commander’s insight for the patrol officer’s use of force against the male juvenile indicated that the sergeant at the scene was not in a position to observe the use of force incident, but did observe the end of the struggle and therefore, conducted the investigation. The OIG is concerned that since this sergeant was also involved in a concurrent use of force at the same residence, the sergeant may have lacked objectivity in investigating the patrol officer’s use of force against the male juvenile. The

OIG would have preferred that a different sergeant not on scene at the time of the incident was assigned this NCUOF investigation.

Inaccurate Summarized Statement

The female juvenile sustained a lip injury and alleged that she was slapped in the face by the sergeant. The sergeant indicated in the investigative summary (for NCUOF No. 2006796) that the mother of the male juvenile stated that the female juvenile was in a fight with another female and that is how she sustained her lip injury. However, the OIG listened to two different/separate audio-recorded interviews of the mother (one for NCUOF investigation No. 2006809 and one for No. 2006796) and noted that the mother did not make this statement. As a result of the female juvenile's allegation, a complaint was initiated.

No. 2007050

Incident Overview

Two officers were motioned over to assist three females who appeared to be bothered by a male subject at a gasoline station. One officer asked one of the females if everything was ok. The subject, who appeared to be intoxicated, became agitated and began to verbally abuse the officers. The officer advised the subject to leave the area. The subject refused and took a fighting stance. The officers attempted to apply a firm grip on the subject's arms. The subject tensed up and actively resisted the officers. The officers continued to verbalize and quickly took the subject to the ground and handcuffed him without further incident.⁴

Inaccurate and/or Incomplete Summarized Statements

The subject indicated on the audio recording completed by the investigating supervisor that he was hit with a club by one of the officers as they were trying to get him down on the ground, but this was not included in the subject's summarized statement.

In addition, the subject had a friend who was in the convenience store at the gasoline station during the time of the use of force. The NCUOF investigation indicated that the friend's statement was consistent with those of the subject, officers, and investigation. However, the audio recording of the interview of this friend indicated that he was in the convenience store during the use of force and when he came out, the subject was already in handcuffs, so he did not observe any use of force that occurred. Hence, it was inaccurate to represent that the friend's statement was consistent with the officers' and subject's version of the NCUOF, as he was not a witness to the use of force, so he had no version of the NCUOF.

Additionally, there were two security officers who witnessed the use of force. These security officers indicated that they did not want their statements audio recorded. The NCUOF investigation indicated that their statements were consistent with those of the subject, officers, and investigation. However, the investigator did not summarize the security officers' statements, as required by

⁴ The OIG noted that 18 days later the subject initiated a complaint alleging unauthorized force. There were no additional interviews conducted during the complaint investigation.

Special Order No. 13, 2004.⁵ Hence, the OIG was unable to determine if their statements were consistent with those of the subject, officers, and investigation.

Lack of Follow-up Questioning and Related Outstanding Issue Not Addressed

As mentioned above, the subject indicated he was hit with a club. During the audio-recorded interview of the subject, the investigating supervisor did not ask any follow-up questions regarding the subject's statement (e.g., How many strikes? Which part of the subject's body was hit?) There were three photographs taken of the subject's front torso, back and left knee. However, it is unclear if any of these parts of the subject's body were allegedly hit. The NCUOF investigation documents in the subject injury section of the NCUOF Report that the subject complained of a sore back and received two small abrasions to his left knee.

The NCUOF investigation did not indicate that any of the officers used their collapsible baton on the subject. However, the corresponding arrest report stated that one of the officers "utilized his collapsible baton and deployed it" and ordered the subject again to turn around and place his hands behind his back. The subject then turned, squared his body facing the officer and clenched his fists in what appeared to be a fighting stance. The partner officer grabbed the subject's left arm with both hands and the other officer grabbed the subject's right arm with both of his hands. There is no indication in the arrest report nor in the NCUOF investigation as to what happened to the baton from the time the officer deployed it to when the same officer grabbed the subject's right arm with both of his hands. The OIG believes that the NCUOF investigating supervisor should have investigated whether any baton strikes were delivered by the officer and where specifically the subject was struck with the baton.

No. 2006719

Incident Overview

Officers responded to a radio call of "Vandalism suspects there now." As officers approached to make contact with three possible suspects, they fled on foot from the area. The officers remained in the area and observed the suspects. As the officers attempted to detain the suspects, a use of force occurred. The officers used force on two of the three suspects.

Incorrect Watch Commander's Insight

The watch commander's insight written for the first officer to identify and evaluate his force options applied was also used as the watch commander's insight for the second officer, despite the fact that the second officer applied different force options. As a result, the second officer's force options applied were not identified in his watch commander's insight and formally evaluated. This error went undetected and uncorrected through multiple levels of review at the Area, Bureau and UOFRD. Specifically, the first officer applied bodyweight, a punch and a wristlock to Subject A.

⁵ Special Order No. 13, 2004 requires that there be a brief written summary of the statement provided by any public witness if the interview was not audio recorded or if the witness's account of the use of force is in substantial conflict with the involved employee's account.

In contrast, the second officer applied a knee strike, a takedown and a wristlock to Subject A; and he also applied a palm strike and other force (pulled shirt and pushed to the ground) to Subject B.

A Missing Signed Medical Release Form

The NCUOF investigation indicated that a signed medical release form was obtained for one subject who received medical treatment for pain to both wrists, marks to his left ribs and chest, and minor scratches to his left shoulder and back. However, this referenced signed medical release form was missing from the investigative file. Furthermore, there were no medical treatment records, nor explanation of any possible attempts to obtain them. Although there were multiple photographs taken to show the subject's visible injuries, and/or the lack thereof, medical treatment records would have still been useful to further confirm the presence and/or absence of injuries.

No. 2006923

Incident Overview

Two officers were conducting a pedestrian stop when two males approached them and stood in the middle of the street. The officers ordered the two males out of the street, and the officers detained them when they refused. The officers also detained a third male, dressed in gang attire, who stated that he was a relative of the first two males. The officers ordered this third male to wait at a distance and he became very disruptive, but he reluctantly walked about advising the officers that they were going to regret this. A fourth male, a 12-year-old juvenile listening to his music player (the subject), responded and stood next to the third male. One officer ordered the subject out of the street and then detained him when he refused to do so. During a pat down search of the subject, he refused to answer any questions and told the officer to "shut up." One officer told the subject to turn off his music player and wait, to which he responded, "f__ off." As the officer stepped back from the subject, the subject immediately lowered his center of gravity, bent his knees, and spun around and reached his arms towards the officer. The officer grabbed the subject by his shoulders, spun him back around so he was facing away from him, pushed him against a parked vehicle (making contact with his chest only), and used firm grips to control his hands for cuffing.

Unreasonably Extending the Detention of Individuals to Conduct a NCUOF Investigation

The OIG noted that although four individuals were cited for violating Vehicle Code § 21956(A) (Pedestrian in the Roadway), it would appear, based on our review of the underlying investigation, that the police did not release them from custody until after the NCUOF investigating supervisor finished interviewing all of them approximately one hour after the citations had been issued. At the outset, it is helpful to narrow the scope of this analysis by noting what is *not* in dispute in this case. The issue is not whether the officers lawfully stopped the individuals for purposes of investigating a Vehicle Code violation. Based on the underlying investigation and the statements provided by the detainees, it is undisputed that the officers had cause to detain and cite them for the above noted violation. The issue is that it appears that the detention of the individuals was unreasonably extended for the purpose of conducting a NCUOF investigation.

According to the United States Supreme Court, “an investigatory detention cannot last longer than necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 4760 US 491 (1883). In this case, the purpose of the stop was presumably to cite individuals for blocking the roadway, not to detain them in order to interview them for an administrative investigation of an officer’s use of force.

The four traffic citations issued in this case indicate that the violations occurred at approximately 9:05 p.m. As the period of time necessary for the officers to complete their investigation of the Vehicle Code violation ended when the detainees signed the traffic citations, it was incumbent on the officers to release the detainees forthwith. However, the audio recording of the investigating supervisor’s NCUOF investigation revealed that it was commenced at 9:27 p.m. when he arrived on scene and that the interviews of the witnesses to and the subject involved in the use of force were also commenced at that time. During an interview with one of the witnesses, the investigating supervisor indicated that he was conducting a use of force investigation and that he was going to talk to “anyone who saw anything,” including “the [subject] and the three other gentlemen who were out there with him, the three other guys that are out there in *handcuffs*.” This audio recording is approximately 37 minutes in length and concluded with the investigating supervisor stating to one of the detainees, “Stand right there, *spread your legs for me*⁶...I’m done, what I want to do is take a picture of the [subject’s] face so we need to get a camera before he leaves and a picture of the car. I’m going to go off tape; time now is [10:05] on the 11th.” *Id.*

Custody is objectively determined without regard to the suspect or the officer’s subjective state of mind; “it is the functional equivalent of formal arrest.” *Berkemer v. McCarty*, 468 US 420, 442 (1984), *Interrogation Law and Tactics*, Los Angeles County District Attorney’s Office (2008). Even though not formally arrested, a person may be in custody when restraints like handcuffs and/or a show of force is displayed by the police. Based upon the statements of the investigating supervisor described above, the indication that at least some of the witnesses to and/or the subject of the NCUOF were still in handcuffs during the NCUOF investigation, the prolonged period of the detention to conduct the administrative NCUOF investigation, and the detainees’ apparent inability to terminate their contact with the police, there is some suggestion that all four individuals were in police custody for an arguably unreasonable length of time.

Possible Miranda Rights Violation

There is no evidence that the supervisor investigating the NCUOF advised the subject of his *Miranda* rights before commencing his interview. Department policy provides that once an individual has been placed into police custody and interrogated, “the officer is required to read the *Miranda* Admonition verbatim, and record the subject’s responses to each question.” (Admonition of *Miranda* Rights, Standardized Roll Call Training, LAPD, 2005). As discussed above, if it is determined that the subject and his three cohorts were in police custody, then the NCUOF investigating supervisor’s inquiry of the incident constituted interrogation and he should have provided *Miranda* warnings.

⁶ The phrase “*spread your legs for me*” is a preparatory command frequently used by police officers to either apply handcuffs to or remove them from individuals in police custody.

While it appears that the investigating supervisor intended to question the subject about the underlying use of force, a strong argument could be made that those questions could not have been adequately addressed without some inquiry of whether the subject in fact turned toward the officer in a manner that could be interpreted as an attempt to assault the officer or resist arrest. “Any words or conduct, by law enforcement officers that could foreseeably elicit an incriminating response, is interrogation.” *Rhode Island v. Innis*, 446 US 291, 300 (1980). As the NCUOF investigating supervisor’s inquiry of the use of force created an opportunity in which the subject could have made incriminating statements that could be used against him during a possible criminal prosecution, the OIG believes that the NCUOF investigating supervisor should have advised the subject of his *Miranda* rights before the interview was commenced. The Department now requires NCUOF investigating supervisors to advise NCUOF suspects of their *Miranda* rights before they are interviewed in connection with the NCUOF. (Chief of Staff Notice dated July 2, 2008 - *Miranda* Admonitions for Non-Categorical Use of Force Interviews of Suspects in Custody)

Inaccurate Summarized Statement

Following the use of force incident, the NCUOF investigating supervisor interviewed several witnesses to determine what transpired between the involved officer and the NCUOF subject. Based on an interview of one witness, the subject’s relative, the investigating supervisor reported that the subject turned over his shoulder to confront the officer, which caused the officer to push the subject away from him and into the side of a vehicle. This version of events provided by the investigating supervisor is significant because it appears to form the basis by which the watch commander adjudicated the NCUOF and recommended that it be classified as In Policy, No Action. As noted in the watch commander’s insight:

The [investigating supervisor] interviewed several witnesses including a family member of the subject who ultimately admitted that the subject swung at the officers (consistent with the [involved officer’s] statement). The [involved officer’s] use of a push and c-grips were reasonable to overcome the aggressive actions of a gang member who was lawfully detained. The [involved officer’s] quick response to the subject’s behavior probably prevented further belligerent actions.

In the OIG’s review of the audio-recorded interview of the witness, the witness did *not* state that the subject swung at the officer. Instead, the witness acknowledged that the subject turned a little bit over his left shoulder and asked the officer, “What are you stopping me for?” However, the investigating supervisor summarized this statement to be that the subject “yelled at the officers and turned on them suddenly.” The investigating supervisor further stated in the NCUOF Report that the witness’s statement appears to corroborate the involved officer’s reported account that the subject “rapidly spun around and reached out his arms” to attack the officers.

Had the investigating supervisor accurately summarized the witness’s statement, it is possible that the watch commander who reviewed this matter could have reached a different result.

No. 2007061

Incident Overview

Two officers responded to a “robbery in progress” radio call involving two male subjects. The two officers located the two male subjects, identified themselves as police officers, and ordered them to stop. Both male subjects fled on foot, the officers requested a back-up unit, which soon arrived. Eventually, four officers foot-pursued and caught the two male subjects, and applied various force options on them to take them into custody.

Possible Miranda Rights Violation

Following the use of force incident, one of the male subjects who had been arrested for both Robbery (Penal Code 211) and Delaying or Obstructing a Peace Officer’s Investigation (Penal Code 148) was interviewed by the NCUOF investigating supervisor. During the course of the interview, the investigating supervisor inquired of the facts that gave rise to the use of force incident without first advising the subject of his *Miranda* rights. Unwilling to discuss the use of force incident, the subject invoked his Fifth Amendment right and requested an attorney. Undeterred by the subject’s invocation, the investigating supervisor continued to question the subject and stated numerous times, “tell me what happened, tell me what happened.” The investigating supervisor’s insistence that the subject answer his interview questions is significant because the subject was not advised of his *Miranda* rights before questioning commenced and was pressed to answer questions outside the presence of counsel.

Department policy provides that once an individual has been placed into custody and subject to interrogation, “the officer is required to read the *Miranda* Admonition verbatim, and record the subject’s responses to each question.” (Admonition of *Miranda* Rights, Standardized Roll Call Training, LAPD, 2005) While it appears that the investigating supervisor intended to question the subject about the underlying use of force, those questions could not have been adequately addressed without some inquiry of the subject’s involvement in the crimes of Robbery and Delaying or Obstructing a Peace Officer’s Investigation; thereby, inviting an opportunity in which the subject could have made incriminating statements. Given that the subject was in custody for robbery and interrogated, the investigating supervisor should have advised him of his *Miranda* rights before the interview had commenced. In light of instances such as this, the Department now requires NCUOF investigating supervisors to admonish NCUOF suspects with their *Miranda* rights before they are interviewed. (Chief of Staff Notice dated July 2, 2008 - *Miranda* Admonitions for Non-Categorical Use of Force Interviews of Suspects in Custody)

While the aforementioned Department Notice requires that subjects of NCUOF investigations be advised of *Miranda* rights, it does not address instances in which a subject is interrogated after invoking his right to counsel. California Courts have held that after a knowing and voluntary waiver of rights under *Miranda v. Arizona*, 384 US 436 (1966), “law enforcement officers may continue questioning until and unless a suspect clearly requests an attorney. A suspect is entitled to the assistance of counsel during custodial interrogation even though the Constitution does not provide for such assistance.” *Id.*, at 469. “If the suspect invokes that right at any time, the police must immediately cease questioning him until an attorney is present.” *Edwards v. Arizona*, 451

U.S. 477, 484-485 (1981). Here, although the subject unequivocally requested an attorney and chose to end the interview, the investigating supervisor challenged the subject, accused him of lying and stated numerous times, “tell me what happened, tell me what happened.” The invoking of *Miranda* rights protects a suspect from making incriminating statements after unequivocally requesting legal counsel and prevents the police from badgering a suspect into waiving previously invoked *Miranda* rights.

PRIOR RECOMMENDATIONS

The OIG reviewed and followed up on previous recommendations made in prior NCUOF Investigations Audits. This section consolidates the Department’s responses and the OIG’s assessment of implementation status:

1. Formalize into Department policy a reasonable timeframe for the final approval and closure of NCUOF investigations. The timeframe established should consider that the initial review of the investigation is normally completed within 14 days of the incident, and generally by that time the investigating supervisor has already completed most of the investigation.

*The Office of the Chief of Staff issued a Notice on September 30, 2008, indicating that effective immediately there is a six-month deadline for the investigation, review and submission to UOFRD of all NCUOF investigations. The OIG considers this recommendation **implemented**.*

2. Require that Area NCUOF investigating supervisors provide an explanation as to why an employee was not included as a witness in a NCUOF investigation, in instances where it is not clear whether that employee witnessed the use of force.

*The Commanding Officer of UOFRD indicated in an intradepartmental correspondence dated March 6, 2009, to the Commanding Officer of Internal Audits and Inspections Division, that the officer in charge of the Tactics Review Section within UOFRD has been providing Department-wide training in regards to the proper completion of NCUOF investigations, including this requirement. Additionally, the requirement to list all employee witnesses has been emphasized during training provided in the basic supervisor course and in supervisor meetings at the Areas. Non-Categorical Review Section staff has also continued to monitor compliance with this requirement during its regular review of NCUOF investigations. The OIG has reviewed two different training materials from UOFRD, which both include the information as directed in the recommendation. Therefore, the OIG considers this recommendation **implemented**.*

3. Provide policy clarification regarding when a complaint face sheet should be generated when allegations of excessive force are made during a NCUOF investigation.

The Commanding Officer of UOFRD indicated in an intradepartmental correspondence dated March 6, 2009, to the Commanding Officer of Internal Audits and Inspections Division, that the Non-Categorical Review section staff is currently in the process of drafting a Use of Force Directive that will incorporate NCUOF definition, reporting, investigation, and adjudication. An entire section will be added to clarify when a personnel complaint should be initiated during

*the investigation of a NCUOF incident. The OIG considers this recommendation **in progress**.*

4. Continue, in an expeditious manner, to work toward providing clarification to NCUOF investigating supervisors on the use of *Miranda* admonitions in administrative investigations and the extent of references to suspect statements (taken outside of a *Miranda* Waiver) made within arrest reports.

*The Office of the Chief of Staff issued a Notice to all Commanding Officers on July 2, 2008, which stated the protocols relating to the *Miranda* admonition during the NCUOF investigations. The OIG considers this recommendation **implemented**.*

5. Reemphasize to NCUOF investigating supervisors the requirement to take photographs of officer and subject injuries, or the lack thereof, and/or complained-of injuries.

*The Commanding Officer of UOFRD indicated in an intradepartmental correspondence dated March 6, 2009, to the Commanding Officer of Internal Audits and Inspections Division, that the officer in charge of the Tactics Review Section within UOFRD has been providing Department-wide training in regards to the proper completion of NCUOF investigations, including this requirement. Non-Categorical Review Section staff has also continued to monitor compliance with this requirement during its regular review of NCUOF investigations. The OIG has reviewed two different training materials from UOFRD, which both include the information as directed in the recommendation. The OIG considers this recommendation **implemented**.*

6. Enhance existing policy to require NCUOF investigating supervisors to document the witness' vantage points and whether a witness (public or officer) observed the entire use of force or just portions of the use of force.

*The Office of the Chief of Staff issued a Notice to all Commanding Officers on February 27, 2009, which indicated that an investigating supervisor conducting a Level I NCUOF investigation shall ensure that each witness (public and department employee) statement clearly indicate the vantage point and what portion of the use of force was observed. Therefore, the OIG considers this recommendation **implemented**.*

7. Require NCUOF investigating supervisors to make a declarative statement as to whether or not on-scene officers recorded the NCUOF incident or whether public or private audio/video recording devices recorded the incident. This type of control will help ensure that each involved or witnessing officer is asked whether this type of evidence may exist.

*The Commanding Officer of UOFRD indicated in an intradepartmental correspondence dated March 6, 2009, to the Commanding Officer of Internal Audits and Inspections Division, that directions have been added to the Use of Force System that will require the NCUOF investigating supervisors to obtain the information as set forth in this recommendation. UOFRD management indicated that these changes to the system should be implemented in April 2009. The OIG has viewed the proposed changes for the Use of Force System and believes that the changes meet the requirements of the recommendation. Therefore, the OIG considers this recommendation **implemented**.*