



## CITY OF PHILADELPHIA

### Police Department

HEADQUARTERS, FRANKLIN SQUARE  
PHILADELPHIA, PENNSYLVANIA

JOHN F. TIMONEY  
Commissioner

September 28, 2001

**Via Hand Delivery**

Richard Costello, President  
Fraternal Order of Police  
Philadelphia Lodge Number Five  
1336 Spring Garden Street  
Philadelphia, PA 19123

**RE: Matter of Alexander Kuilan:  
Police Advisory Commission Number 00 0758**

Dear Mr. Costello:

The Philadelphia Police Department ("Department") is in receipt of the Police Advisory Commission's ("PAC") opinion regarding the above referenced matter. On June 7, 2000, Mr. Alexander Kuilan filed a complaint with PAC regarding an incident he had with police officers on June 3, 2000 during which he was allegedly physically and verbally abused. On May 17, 2001, during a PAC fact-finding hearing before a panel, four police officer witnesses refused, upon advice of Fraternal Order of Police ("FOP") counsel, to properly testify and cooperate with the PAC hearing panel. The four police officer witnesses – Police Officer Michael DeRose (badge number 2584), Police Officer Thomas Galloway (badge number 1587), Police Officer Timothy Linneman (badge number 1779), and Sergeant Mark Nagy (badge number 8783) – were subpoenaed to appear before the PAC hearing panel. PAC recommended that each of the four officers receive a ten-day suspension without pay and that each officer not be permitted to forfeit paid leave time in lieu of the unpaid suspension.

When the PAC panel convened on May 17, 2001, the four aforementioned officers and Police Officer Acevedo (badge number 1547) appeared together with a counsel. Each of the five officers were sworn in, given their Garrity warnings, and acknowledged receiving an order from their superior officer to appear and testify. Officer Acevedo was the first officer to testify. He testified that he saw Officer DeRose hit Mr. Kuilan.

After a break in the hearing, FOP counsel made a formal request to the PAC panel to continue the case. He stated to the PAC panel that he just learned that the Department had preferred disciplinary charges against Officer De Rose in connection with the Kuilan incident, and that DeRose was scheduled for a Police Board of Inquiry ("PBI") hearing. FOP counsel stated:

In between hearing from the last officer I found out that the department has not, itself, completed its investigation of the matter currently pending before this Board. And as such, it's improper to go forward and ask the officers any questions other than those which concern the veracity of the statements that they gave to Internal Affairs or to the PAC Commission. So I'm asking that the matter be continued until after the department has concluded its investigation. . . . I am aware of Michael DeRose, one of the officers that you subpoenaed here is waiting outside this room and has already been sworn before the Commission, faces a disciplinary hearing, a Police Board of Inquiry Hearing that as the name inquiry implies suggests that an investigation is continuing with regards to this matter. And that the disciplinary charges that have already been preferred against him relate to this particular incident. And so to go forward before the PAC Commission at this time is not proper in light of the possibility that the officer may be disciplined beyond that. That's my understanding of how it works, and for those reasons I would advise all my clients to only answer those questions as to the truthfulness of the prior statements.

FOP counsel went on to state that the pending PBI hearing meant that the Department was still investigating the incident, and that the officers could not be required to testify before PAC until the Department had concluded its investigation.

The PAC panel denied the continuance request and noted that the decision to bring internal administrative charges against an officer, if anything, suggested that the investigation had concluded.

Thereafter, upon being called to testify, each of the remaining four police officers, when individually addressed in the witness chair, refused to answer directly the questions of the PAC panel members. Instead of answering the questions responsively, each officer responded to PAC panel members' questions by reading verbatim from a handwritten statement allegedly provided by FOP counsel. The text of the statement was:

On the advice of my attorney, I am limiting my answers to the single issue of whether my prior written statement was truthful. I base this on the fact that the Police Department has not yet completed its investigation.

The PBI is not and has never been an investigative part of the Department. The PBI is the internal administrative fact finding process of the discipline system which determines guilt or innocence and make recommendations for penalties. Cases only go to PBI once the investigation is completed. The FOP counsel was clearly and completely wrong in his statement and alleged advice.

The Department is committed to the mandates prescribed in Mayor's Executive Order 8-93 which deals with the power and authority of PAC. The Department views Executive Order 8-93 as a serious matter that deserves full Departmental attention and cooperation.

PAC's authority is vested in the Executive and Administrative branch of City government under the Philadelphia Home Rule Charter. It compels the attendance, interview, and/or testimony of any witness(es) and the production of documents and any other evidence relating to any and all matters properly before it. PAC may also issue subpoenas requiring the attendance, interview, and/or testimony of persons and the production of documents to all City departments. This authority and control clearly and unequivocally extends to police officers.

The improper advice of an attorney should not immunize the actions of police officers in PAC hearings. PAC's opinion in this matter stated and the PAC panel told the three non-target officers in this incident that "there was no indication in the record of the case that any of them had engaged in any misconduct in connection with the incident underlying the Kuilan complaint" (emphasis added). It can be reasonably inferred that the officers reasonably relied upon the improper advise of the FOP counsel in giving their replies which were prepared by the FOP counsel. Officer Acevedo, the first officer to appear before the PAC panel testified fully and completely. PAC did not mention any criticism of his testimony in their opinion. Only after the FOP attorney requested a formal continuance and gave an explanation for the request on the record did each officer read verbatim from a handwritten statement that had been provided by the FOP counsel. The officers' conduct do not appear to be deliberate, willful, and contemptuous. Based on this mistaken reliance, the Department will decline, at this point, to accept PAC's recommendations. Future reliance by police officers on this type of advice may result in discipline.

By copy of this letter, the Department requests PAC to accept this document as a formal response to PAC's findings and recommendations, requests that this hearing be rescheduled at the earliest possible convenience to avoid undue delay in deciding the merits of the underlying complaint, and requests that the Department be contacted immediately if there are any further problems in this case or any similar problems in any other PAC case.

Respectfully yours,

John F. Timoney  
Police Commissioner

By:



Daren B. Waite  
Special Advisor for the  
Police Commissioner

DBW:mm

cc: Honorable John F. Street, Mayor  
Joseph Martz, Managing Director  
Kenneth I. Trujillo, City Solicitor  
Michael Butler, Esq., Commission Legal Counsel  
✓ Hector W. Soto, Esq., Commission Executive Director