

From: [Winter Dellenbach](#)
To: [Council, City](#)
Subject: May 6 Council Item 5 - Independent Police Auditor/PAPD study session
Date: Sunday, May 5, 2024 8:04:09 AM
Attachments: [2023 IPA UoF Recommend Reports.pdf](#)

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Dear Council Members - Your May 6th Council meeting includes your twice-annual study session with Independent Police Auditors Michael Gennaco and Stephen Connelly, and PAPD Chief of Police, Andrew Binder. Please read the following before this study session.

For your convenience, attached here is the IPA Report. At the end is Chief Binder's Use of Force Report, and Response to IPA Recommendations Report.

The IPA's Report Introduction states, "Much of this report is devoted to a lengthy discussion of an excessive force incident that eventually resulted in both administrative and criminal investigations and ultimate charges. It involved the circumstances of a particular arrest and use of force that had criminal, civil, and administrative facets."

That incident is the 2018 Gustavo Alvarez arrest and coverup by PAPD. When a video of the incident became public and a federal civil rights lawsuit was filed on his behalf, it rocked Palo Alto. Without his private video and lawsuit, we likely would have never known of this

Forty-two pages of the 62-page report are devoted to the Alvarez case, by far the most extensive reporting on an incident of police misconduct in the 17-years our City has benefited from the IPA's oversight. Finally, 6 years after his illegal detention, we know what happened during his arrest and the aftermath. Had he not had a private video of the incident and filed a lawsuit, we likely never would have known what was happening in the PAPD at that time. I hope you take the time to read this reporting.

Several excerpts from the IPA Report are below, focusing on binding arbitration and the IPA's recommendation to look for other options than it to deal with officer discipline - and why.

Binding arbitration is a systemic barrier to our City attaining the high quality policing our community resolved to achieve. As the IPA notes, doing this would

require Council initiation. I urge you to consider doing so, as some other large and small California police departments have done.

Winter Dellenbach

Independent Police Auditor's Report RE Binding Arbitration, excerpts and footnotes pgs. 37-42

H. The Major Reduction of the Discipline by the Arbitrator Reviewing Officer #1's Misconduct Shows the Structural and Practical Defects of Such a System⁴¹

The Racial and Identity Profiling Advisory Board (RIPA), which consists of current and former law enforcement officials, civil rights and oversight advocates, legal scholars, and experts in the field, recently released its annual report. In that report, the RIPA Board found that using binding arbitration for peace officers' disciplinary appeals raises accountability concerns. One of the concerns identified by the RIPA Board is that arbitrators often reduce disciplinary penalties for officers found liable for misconduct. The RIPA Board also noted that having an arbitrator as the final say on discipline allows for third parties who are not generally from the community to make final disciplinary decisions that overturn police supervisors' decisions. The report noted that, according to researchers, the tendency for arbitrators to side with officers is likely, because police officers often have some level of influence over the selection of arbitrators.⁴²

In Palo Alto, any employee who is subject to formal discipline can select either an appeal with the City Manager or binding arbitration:

If the aggrieved employee elects final and binding arbitration in accordance with this provision, the parties shall mutually select an arbitrator. In the event the parties cannot agree on an arbitrator, they shall mutually request a panel of five arbitrators from the California State Conciliation Service or from the American Arbitration Association if either party objects to the State Conciliation Service, and select an arbitrator by the alternate strike method.

Thus, in Palo Alto, the attorneys retained to represent the police employee have significant say in who is selected to hear the arbitration and total veto power over any arbitrator who has upheld police disciplinary determinations in the past.

As noted above [in the report], while in Agent DeStefano's arbitration, PAPD's decision to terminate the officer was upheld, Officer 1's discipline was reduced more than five-fold by the arbitrator.

41 Because the City's binding arbitration post-disciplinary system had a significant impact on the eventual resolution of the administrative charges, it is incumbent on

IPA to provide an independent assessment of those proceedings.

⁴² See also, “Police Arbitration” Professor Stephen Rushin, Vanderbilt Law Review, Vol. 74:4:1023. (2021) (Study finds that arbitrators on appeal reduced or overturned police officer discipline in 52% of these cases. In 46% of cases involving termination, arbitrators ordered police departments to rehire previously terminated officers. On average, arbitrators reduced the length of officer suspensions by approximately 49%); “Police Arbitration and the Public Interest”, Professor Stephen A. Plass, Harvard Blackletter Law Journal, Vol. 37 p 31 (2021) (The nuances of policing, require that publicly accountable individuals (as opposed to private arbitrators) have final authority for police discipline.)

Given the significance of this episode in the Department's recent history, the outcome was especially notable and disappointing. But the questionable reasoning that apparently formed the foundation for the decision underscores the limitations of binding arbitration as a valid form of appeal and raises many of the issues identified by the RIPA Advisory Board, legal scholars, and progressive policing professionals. While the great majority of jurisdictions in California have similar binding arbitration agreements with their police associations, others have instead a Civil Service Commission or other City maintained body that hears the appeal. And others instead have non-binding arbitration whereby the arbitrator makes a recommendation which City leadership can then accept, modify, or reject.

The unfortunate result of this arbitration proceeding provides an opportunity for the City⁴³ to consider other options for post-disciplinary appeals.⁴⁴

IPA RECOMMENDATION 10

In future discussions with the PPOA, the City should consider the viability of other options than binding arbitration for appealing officer discipline.

⁴³ To be clear, while PAPD leadership may have input into how post-disciplinary appeals are handled, the recommendation is directed at City leadership since the labor agreement is between the City and the labor association.

⁴⁴ To be sure, there are counterarguments to maintaining the status quo, one being the relative rarity of police matters that end up going to arbitration in Palo Alto and perhaps more significantly the impact that any change in the disciplinary process might have on hiring and retention, especially considering the ongoing crisis in

keeping police agencies fully staffed.

[IPA] Conclusion

This incident, in which a veteran sergeant dishonored his oath to uphold the Constitution by engaging in excessive force on a handcuffed detainee, stands as a low point for the PAPD. Nor did the deplorable conduct end with the sergeant: the Department also was and remains properly disappointed in the failures of the other on-scene officers to report the the incident fully and accurately. That “coverup” caused the excessive force and other misconduct to go unknown to the Department for over a year, and eventually compounded the harm to the agency's standing in the community. But for Mr. Alvarez’ civil action and the existence of a private surveillance recording, it likely would have never been discovered.

Considering that six years have passed before the last of the proceedings related to this incident reached its conclusion and given the change in leadership at the top of the organization, it is understandable that there is a sentiment among some in the City to move on and leave this matter behind. However, law enforcement organizations have an obligation to learn from past mistakes, and to recall them as part of an ongoing process of course correction and refinement. These recommendations are meant to contribute to that process, and to leave PAPD better positioned to detect and address problematic uses of force in the future.

Chief Binder response to this IPA Recommendation: *"The Department does not have a response to this recommendation, as it pertains to labor negotiations that are in the ultimate purview of the City Council."*

From: halter.grain-0m@icloud.com
To: [Council, City](#)
Subject: Agenda #5 Excerpt from the Police Auditors Latest Dumpster Fire
Date: Friday, May 3, 2024 4:19:37 AM

Some people who received this message don't often get email from halter.grain-0m@icloud.com. [Learn why this is important](#)

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The Auditor with No Oversight, six years behind in his work, writes,

"excerpts of a private surveillance video which depicted aspects of the arrest, including an unreported use of force by Sergeant Benitez that aligned with Mr. Alvarez's allegations."

The Police Auditor should know that it is very easy to manipulate video, and this evidence was never properly vetted by a court as evidence because the charges were dismissed before it got to court, everybody in a panic without thinking it all the way through.

I was not aware until this moment that there was potential ginned up video shown to the public, I understood it all came of body cams with strict protocols for preserving the chain of custody of the evidences.

"Several weeks later, the attorney provided to the media the excerpts from the **home surveillance video** that he had provided to PAPD. This generated significant local coverage and ensuing civic concern." And panic and a settlement, that's how these things go.

How is this Auditor allowed to operate when he knows better than this and should be pointing out the difficulties with the evidence rather than pulling another dumpster up in front of PAPD.

I was concerned when I heard the audio "I'm bleeding" when I could not see his face before I realized that this was home video.

The council should reject this as legitimate evidence absent vetting by a court and so should the auditor have done and that's another reason he needs to be audited himself because he's grossly ignorant of evidentiary procedures and clearly biased against the PAPD.

Mary

From: tracymcgreedy@mac.com
To: [Council, City](#)
Subject: Re: Agenda Item #5 Concerns About Your Contract Dependent Police Auditor Ginning Things Up for More \$\$\$
Date: Thursday, May 2, 2024 2:36:22 PM
Attachments: [The City of Palo Alto ContractorSets The Tone copy.pdf](#)
[Friends Say Probe is Flawed DEADLINK.pdf](#)

Some people who received this message don't often get email from tracymcgreedy@mac.com. [Learn why this is important](#)

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I missed a document in my prior email.

On May 2, 2024, at 2:29 PM, tracymcgreedy@mac.com wrote:

Greetings Palo Alto City Council,

I am writing to alert you that you have a problem with your Police Auditor and the way he conducts his business, [which may well have lead the the most recent smear of the PAPD](#)

First, he blames them for him taking his time. He rubs his "power" right in their faces, again. They took a year to get me something (but I took SIX YEARS to get you this report) so they are bad and I am good,

is somehow implied. He uses sleights of hand like that all over the place. I wish I could read his report before sending this, but I could not yet find it.

I reasonably believe he's so used to using his 'immunity' to police to gain control over the PAPD, *it took six years for this to happen*, just as somebody may have been catching on to what he pulled off to get himself into the permanent position he is in during the Children's Theatre Debacle with the Friends of the Children's Theater.

The Friends who have not filed Federal Taxes (Form 990) *in years and years*, as the City of Palo Alto website links right to their "donate" button, selectively, one non-profit over another, from the City Website.

I am sorry to be the bearer of such bad new, except I am reasonably sure it did not happen on your watch.

I am making a claim that this auditor should be investigated quickly due to the manner in which he conducts his business, **constantly ginning up more work for himself.**

Oh that's it, my guess would be [he is so busy with all the other contracts he now has](#), perhaps he didn't do much really and he had to come up with something to

justify his contract, so he reached back *for something really splashy*.

Enough is enough.

These people literally risk their lives for you more so every day as guys like this help create an environment where they have to let crime fester or face political repercussions that have no place in their work.

You pass the law, they uphold it. Without them, you have no teeth, at all, ever.

Don't bite the hand that keeps you safe, and in, so far, one of the nicest cities in the country, in large part due to them.

Don't let him do it again.

Mary

On Apr 23, 2024, at 8:25 PM, Tracy Hern <tracyhern8@gmail.com> wrote:

Begin forwarded message:

From: halter.grain-0m@icloud.com

Subject:

Date: April 23, 2024 at 8:19:27 PM PDT

To: Stephen Manley <SManley@scscourt.org>

[Are you still on the Board?](#) You have time for all that?

I can't find any federal taxes filed in quite a while, nor can I personally think of a reason they would be exempt, but I'm not an accountant.

Also repeating, there is a Saint Samuel. He was a

Coptic.

<we the non profit are putting on a fundraiser.png><registered as non profit in california accepting donations on their website.png>
<wait the theatre is operated BY THIS CITY OF PALO ALTO FFS how many ways to a conflict cant there be.png>
<no federal taxes for a long time maybe some exemption

but I don't know what.png>

They are taking in big money, too, lots of room for slush after I bet Palo Alto more than generously funds enough to get the job done.

Did PAPD review the City's contract with itself to provide these services, lol, this is a riot.

Under no condition should the City have hired an auditor for this dumpster fire of a situation, from this angle.

If they City operates the theatre, then they were investigating City employees and the Friends is a whole different situation.

Unless the City took it over afterwards.

Nope, the City of Palo Alto took over operations of the Children's Theatre in 1933 and then paid a police auditor to increase his "scope" when they should have openly declared the conflict of interest.

These articles make it appear as though the city has a contract with the theatre, not that the city is operating the theatre.

Oh this was dirty.

Ken Hardesty was on the Board of Harmon's Sobrato thing and it was very fun to watch that implosion once he knew.

[TWENTY-FIVE BUCKS](#) a ticket to a school play, lol. The Friends Fundraiser, one of several they do a year, plus the website and the city ought to keep track of all the dollars that flows through their website. I understand they started charging the kids entry fees, too, or was that just discussed. 200*25 is 5k in the box office for 15 nights they are running.

A potential of 75k in slush just from this one event.

People in Palo Alto need tax write offs.

Say your income is just over \$1,000,000 and the MSHS requires you to pay 1% in tax on that.
\$10,000.

So you donate \$1000 to the theatre, bring your income in under \$1,000,000, and save \$9000 in taxes, things like that, plus other people really care about kids like they do about homeless people and out of the generosity of their hearts, they give.

A theatre running this long has all the sets and all the costumes by no, or most of it, they have to supplement a little, but not in a huge full blown way year after year.

Oh the smoking gun. After the {DA} declined to Prosecute, the City of Palo Alto moved in and fired the Children's Theatre Director.

She then responded to their allegations, the City's allegations on letter dated June 4, 2008 and presented at a hearing on June 5, 2008, a hearing about the City of Palo Alto's handling of an employee matter, which probably put them on several hot-seats because of the way they were so publicly handling the matter, the City, who probably cannot discuss an employee in the newspaper the way the police can openly discuss a suspect.

So the City of Palo Alto had a problem on their hands when, on

[On June 10, 2008 they called for an expanded audit after the DA declined to prosecute when PAPD seems to have a differing opinion and the City elected to audit the PAPD rather than the DA when they knew there was theft.](#)

To get out of it's own problem, the City turned on the Police who protect them.

By July 10, 2008, the same day as the call for the expanded audit they slushily gave the auditor more money annd expanded imporpoer powers when they were not authorized to deputize the auditor, to get them out of it,

it turned into a **confidential settlement with their employee**

where presumably the City admitted wrong doing by July 10, 2008, they day the City Council flipped blame onto the PAPD, who never investigated the Friends or the Box office.

But the Police Auditor presumably did once he took it on as his SCOPE. What did his investigation of the cash handling with the Friends of the Theatre and the Box Office turn up, Ferris.

[The City of Palo Alto Settled on their own bad behavior on July 21, 2008, their destruction of her reputation was at issue.](#)

[This indicates they promised her the apology, so they needed the](#)

[Police to be wrong, not them.](#)

A year passes, and festivities were held in the City Council Chambers when their Deputized Expanded Scope and Cash Laden Police Auditor declared the police were, gasp, wrong.

Then the [City Publicly Apologized to Itself at a City Council Meeting and Openly Declared Itself Innocent of All Charges](#), because the Independent Police Auditor with Police Powers and No Oversight, issued a report

"cataloguing errors committed by the Palo Alto Police Department over the 11-month course of the investigation. Gennaco said errors by investigators included ignoring exculpatory evidence and loading the police report with conjectures and biases."

Did anybody catalogue the errors in their termination process of the rogue employee that led to a confidential settlement and a coverup?

The City of Palo Alto also wrote a letter to itself and its employees apologizing for victimizing themselves

["Council members also apologized to former theater Director Pat Briggs and other targets of the investigation at its June 1 meeting."](#) Which I bet was written into the confidential settlement agreement before the auditor finished his work, but they held her off till he was done for the Splash and Trash PAPD.

Is this legal,

"With the Auditor's report as evidence, the Palo Alto City Council hereby repudiates the police investigation report. We direct staff to correct all public records related to the investigation to reflect the independent police auditor's finding that the conclusions of the police investigation report were without merit."

[It was an emotional public apology, perhaps from people involved in theatre themselves?](#)

I call a hit on PAPD that is ongoing with this loose canon in their house after he committed crimes against them, because it is documented there was theft. Period. That it wasn't prosecuted makes it that much trickier.

Now the City Council is going to decide what the PAPD can and cannot investigate.

Articles indicate they had cash handling problems with this employee preceding the burglary, so they knew they screwed up the firing

process and pushed the Dumpster over to Public Safety and squirt some lighter fluid on it for good measure

Oh

[There was “no reportable action” from a closed session of the Palo Alto City Council that reportedly related to three issues left over from the police investigation into the Children’s Theatre.](#)

The third issue is a request from a group of donors to the **Children’s Theatre Legal Defense Fund** to be reimbursed for their \$45,000 donations, according to Mac Clayton, a retired attorney. Clayton was one of the founders of the donor group along with Suzie Stewart and Beth Broderson. Clayton said he was acting only as a member of the group in making the request in a July 2 letter to the council.

How did they have that kind of cash sitting around when it was all supposed to go to the children and who did they throw it at?

PAPD was not investigating that organization, why would they need an anticiptory legal defense fund or have any defenses to expend relating to a civil service matter?

MAY 16 SFGATE[PALO ALTO THEATRE PROBE ENDS NO CHARGES](#)*****MAY 19 EAST BAY TIMES [PALO ALTO RECOMMENDS FIRING CHILDREN’S THEATRE DIRECTOR](#)*****JUNE 10, 2008 PALO ALTO ONLINE AFTER THE CITY PUBLICLY DEFAMED BIGGS[POLICE AUDITOR TO PROBE THEATRE INVESTIGATION](#)JUNE 30, 2008 SAN JOSE MERCURY NEWS[CITY FIRES CHILDREN’S THEATRE DIRECTOR](#) {25 days after she testified in a closed hearing and as settlement negotiations where underway by 10 days later, finished in 21 days}JULY 1 2008 PALO ALTO ONLINE WAITS THREE WEEKS TO REPORT AFTER SHE IS FIRED[PAT BIGGS DETAILED RESPONSE TO CITY ALLEGATIONS](#) (not police allegations)

[*The June 5th Hearing With an Attorney*](#)

JULY 6 EAST BAY TIMES[PALO ALTO TO DISCUSS SCOPE OF CHILDREN’S THEATRE AUDITS](#) later they declined to audit themselves

JULY 10, 2008 PALO ALTO ONLINE A MERE 10 DAYS AFTER THE FIRED HER AFTER THEY HAD TO[SETTLEMENT NEAR FOR THEATER'S PAT BRIGGS](#)

On and on it goes, till this little tidbit.

PALO ALTO ONLINE DATE UNKNOWN THEY REMOVED

THE LINK [POLICE PROBE FACTUALLY FLAWED, “FRIENDS SAY”](#) I’ve attached a pdf of the July 10 announcement they achieved an audit that has a link to this now dead article.

It goes on from here, I will have to come back to it cause I gotta do the Opening Brief and this is way more fun....

This was a HIT very clearly from the rear view mirror with the city hiding that they were negotiating with her lawyer before they fired her. The Settlement talks were way too fast.

Who is who on that Friends group that pulled these strings in the background? Later they came back asking for “legal fees” though they weren’t formally investigated beyond a search of property on City of Palo Alto premises related to the City of Palo Alto Children’s Theatre.

INTRODUCTION

On June 18, 2007 the Children's Theatre ("CT") in Palo Alto was burglarized. Officers from the Palo Alto Police Department responded and began a criminal investigation into the burglary. As with any other burglary investigation, the employees of the Theater were asked to identify missing items. Several days later, PAPD was informed that pursuant to an investigation being conducted by another law enforcement agency, JUICY, WHO DAT? traveler's checks made out to employees of the Children's Theatre had been recovered. Eventually, additional traveler's checks were located and presented to PAPD from another source.

The traveler's checks that were located had not been reported by the CT employees as missing from the burglary. As a result, suspicions were raised about actions of certain of the CT employees. As a result, the tenor of the Police Department's investigation transformed from a routine burglary investigation to suspicions of fraud and embezzlement on behalf of certain CT employees. A detective was assigned full time to the investigation to attempt to determine whether financial crimes had been committed by any of the suspected CT employees.

As a result of the PAPD investigator's initial investigation, search warrants were eventually applied for and obtained for CT offices, residences of certain CT employees, and storage lockers maintained by the CT. In addition, judicial authority was also obtained to search lockers maintained by the Friends of the Theatre, a non-profit group formed to support the CT. After the search warrants were obtained and as the search warrants for the CT were being executed, the targeted CT employees were visited at work and asked to travel to the police station for interviews. In the meantime, PAPD personnel were assigned to search the remaining targeted locations. In order to effectuate the search of the CT, the theatre was closed.

At that time, the investigation drew significant attention from the citizens of Palo Alto and local media. As the investigation proceeded, questions and concerns were raised by the community about the nature of the investigation. The investigation eventually concluded with a public announcement that no criminal charges would be filed against the targeted CT employees. At the same time, a redacted version of the lengthy investigative report was voluntarily released by PAPD. Rather than resolve issues, the closing of the criminal case and the release of the report only served to heighten concern about the criminal investigation itself. As a result, your Council requested that the Independent Police Auditor conduct a review of the investigation to assess the decisions made by PAPD officials as the investigation progressed and offer any recommendations for reforms to address issues arising out of that assessment. Please consider this report as the IPA response to that request.

Police auditor to probe theater investigation

Council may also hire its own consultant to examine city's role in theater episode

by [Becky Trout](#) June 10, 2008 6:49 am

Calling for a thorough inquiry into the criminal investigation of the Palo Alto Children's Theatre, the City Council voted 8-1 Monday night to expand the workload of the city's independent police auditor.

The probe must be broad enough to examine fully the 11-month police investigation into suspected embezzlement by theater staff, Mayor Larry Klein said.

City Manager Frank Benest, after a discussion with police auditor Michael Gennaco of the Los Angeles County's Office of Independent Review, proposed an inquiry that would examine whether the Police Department's investigation was warranted and if the police responded appropriately throughout the investigation.

The auditor would review documents and interview police and Santa Clara County District Attorney's Office personnel, Benest suggested in a brief staff report.

That isn't nearly enough, the council voted, with some members citing specific questions.

"I don't like the idea of an investigation that's constrained from the start. Then people on either side can say you didn't do enough," Klein said.

Councilman Yiaway Yeh was the sole vote against the review.

An after-the-fact analysis that might produce distasteful results won't help resolve the community's current angst, he said.

"Our hearts are focused on a separate process that is beyond the purview of the council," Yeh said. "An investigation of an investigation will not have an effect on that."

Instead, the city should look forward, ensuring that its procedures and policies won't allow the financial slips behind the entire episode to recur, Yeh said.

Councilman Greg Schmid also proposed commissioning a non-police auditor to examine general city procedures.

The mystery is why should the police find the financial problems, he said. "Why didn't our policies and procedures find that?"

The council rejected his proposal on a 7-2 vote, with Schmid and Yeh voting yes.

City Attorney Gary Baum and the council's Policy and Services Committee will negotiate a contract with Gennaco that broadens the scope of the audit so Gennaco can interview other city staff members, board members of Friends of the Palo Alto Children's Theatre and others, Klein said.

The police auditor team does not usually conduct independent investigations — it usually only reviews existing work, Baum said. The city will need to prepare a separate contract with the auditor for this assignment, he said. No cost estimates for the work have been prepared.

Klein said he would like to work directly with the auditor to understand his

limitations and concerns.

The police auditor will report directly to the council, Klein said.

The council on May 19 decided to consider reviewing the criminal investigation of the theater and its staff members, primarily Director Pat Briggs and Assistant Director Michael Litfin, who died Feb. 1.

Police Chief Lynne Johnson announced the criminal embezzlement investigation was over May 15 and that no one would face charges, following a decision by the Santa Clara County District Attorney's Office.

Morton — an outspoken critic of the investigation, whose name appears several times in the police reports as accountant for the non-profit Friends group — began Monday night's debate by expressing his support for an audit of "this whole sordid affair."

His language troubled Councilman John Barton.

"Your motion presupposed there was a problem that needed to be investigation," Barton said.

He said he could only support the audit if the goal was, "Let's go find out and see if there is a problem."

Morton said he was open to whatever conclusions the auditor reaches.

"The answer might be there was no problem, everything is as it should be. That's what the community will have to hear," Morton said.

Baum said he will work with Gennaco to communicate the council's goals for the probe. Gennaco would then meet in person with the council.

Benest also said in his written report that he plans to hire an independent

accountant to review the city's handling of cash, expense reimbursement and travel policies and procedures.

Councilman Pat Burt said he would like the council to consider hiring an outside consultant, reporting directly to the council, to review the city's errors and existing policies and procedures. The city did not ask theater staff for receipts, approved two "fraudulent" contracts giving money from the city to the Friends and reimbursed Briggs for the same purchases more than once, according to police findings, some of which have been challenged by the Friends group.

That issue will be discussed at a future meeting, Klein said.

Theater supporters continued their weekly testimony on the important contributions and high moral character of theater staff. Briggs and Program Assistant Richard Curtis are facing a recommended termination under an administrative investigation separate from the criminal probe.

The council adjourned at 12:50 a.m. Tuesday.

Related material:

- [Police probe factually flawed, 'Friends' say](#)
- [ARCHIVE: Children's Theatre investigation](#)