

**Evanston City Council
Closed Session
Aldermanic Library
June 24, 2002**

PRESENT: Aldermen Wynne, Bernstein, Kent, Moran, Rainey, Newman, Jean-Baptiste

NOT PRESENT AT ROLL CALL: Alderman Engelman

ABSENT: Alderman Feldman

STAFF: Judith Aiello, Maureen Barry, Kathleen Brenniman, Pat Casey, Roger Crum, Mark Franz, Herb Hill, Michael Perry, Ellen Szymanski, Bill Stafford

GUEST: Dick Ryan, Ryan, Smolens & Jones
Jack Siegel and Robert Markin, Altheimer & Gray

PRESIDING: Mayor Morton

START: 5:47 p.m.

Alderman Jean-Baptiste moved that City Council convene into Closed Session to discuss matters of litigation, real estate and minutes pursuant to 5 ILCS 120/2 (c) (11) (5) (6) and (21). Seconded by Alderman Wynne. Roll call: Voting aye – Wynne, Bernstein, Kent, Moran, Rainey, Newman, Jean-Baptiste. Voting nay – none. Motion carried. (7-0)

Minutes: Closed Session minutes of June 10, 2002 were corrected to read Gregg Grief instead of George Grief.

Litigation

NU versus City of Evanston

Corporation Counsel Jack Siegel reported that Robert Markin argued the case. The upshot was that Judge Aspen did not make the decision and suggested mediation, which is customary in Federal Court. Most cases are settled this way. The request for summary judgement was well taken. The judge asked both sides to get authority to go to mediation. He explained in jury cases, the judge settles but in non-jury cases they prefer not to settle. Mr. Siegel recommended going to a magistrate; noted when a judge suggests going to a magistrate it is hard to say no. Mr. Siegel would not recommend settlement. He was prepared to go to mediation and wanted authority to go to before a magistrate. They have to appear before Judge Aspen July 3. He does not want a mediator because they split down the middle. Here they have a legislative act, and if mediated, it would be like arguing against ourselves.

Mr. Markin said that both parties would hire attorneys and rehash the arguments and merits from a policy view. He was afraid a mediator would want to settle a broader issue; was not sure how they could change an ordinance and that no single alderman has the power to bind the Council. He believes the City has a strong case and ultimately will prevail.

Mayor Morton asked if they were ready to make a decision on the next step. Alderman Wynne moved that they make a decision that evening. Seconded by Alderman Rainey.

Mr. Siegel asked for authority to go to Judge Aspen to be assigned to a magistrate. The city has no offer to compromise. Alderman Rainey commented this was a waste of time and Mr. Siegel agreed. Alderman Rainey noted there is nothing for NU to give up -- what would happen? Mr. Markin said that NU has proposed to roll back to the Northeast Historic District. With nothing for the city to give, Alderman Rainey asked for a shorter date. Mr. Siegel stated that was up to the judge and magistrate, that they are totally at the mercy of the court. Alderman Rainey

thought that Judge Aspen was ready to issue a decision. Mr. Siegel guesses he would not have ruled and noted that Judge Aspen wants everything on the books.

Alderman Moran recommended giving deference to Judge Aspen because he controls the fate of the suit. Alderman Wynne commented that Judge Aspen has a reputation for pushing for settlement and this follows his suggestion. Mr. Siegel stated in a settlement discussion there is no transcript. Alderman Newman moved that Mr. Siegel be given authority to take this matter before a magistrate. Seconded by Alderman Jean-Baptiste. Mr. Siegel will report back to Council.

Mr. Markin left the meeting at this time.

Litigation

Prado/DeVaul Appeal

First Assistant Corporation Counsel Herb Hill stated they would discuss the power of the judge and what the judge did.

Alderman Engelman was present at this time.

Dick Ryan asked Council for their questions about the litigation. Alderman Newman wanted to understand what rights police have in pursuits. Mr. Ryan said the gang member (Tracy Parham) testified that there were no sirens/lights until their car went into the alley. The judge did not permit the tape to be used and there was no basis for the tape not being used as evidence. The tape clearly shows the officers contacting the dispatcher. The activation of siren/lights is heard on the tape at the beginning of the pursuit. Mr. Hill has replayed the tape many times; heard that Tracy Parham was wanted and the siren seven-eight times. The tape should have been allowed. Mr. Ryan said the reason sirens are sometimes not heard, is that the officer's turn off the tape so they can hear the dispatcher. Parham was wanted on three felony warrants, was driving without a license and in violation of his home monitor. Mr. Ryan stated individuals could be stopped or brought into the police station. On the tape the officers advised dispatch that they were effecting a stop. When Parham did not respond to flashing lights, they put on the siren. The judge did not allow the City's expert to discuss the tape, distance or time. Alderman Rainey asked when the police officers called into dispatch were the outstanding warrants mentioned? Mr. Ryan said police knew that Tracy Parham had removed his home monitor, was without it for two months and there was no doubt that he was a violent gang member. Mr. Ryan regretted that the officers did not get a fair trial and could not show their evidence. He stated that Tracy Parham claims he was mistreated. Parham sold drugs to an informant and was searched. It's all in the record but Ryan could not get into the Police Department's NET's mission.

Mr. Ryan stated the young woman is a fraud and described her injuries She claimed the problem was loss of short-term memory and cognitive disability. Dr. Wilson testified she had a contusion to the head and may have been unconscious for a period of time. Two neurosurgeons found that everything was fine. In 1995 this woman was in an auto accident and had a concussion. In 1996 she was hospitalized for major depression after her boy friend was killed. She had cognitive deficits in 1996 and 1997 and complaints that related to major depression. None of these records were allowed in the trial. Alderman Engelman asked when Dr. Wilson was deposed. Mr. Ryan said it took two years to get the medical records and Dr. Wilson's deposition was before receiving them. Dr. Medina examined her in July 1999 and was given some records but discounted them; claimed she is totally disabled. Alderman Bernstein asked if there were offers of proof. Yes. Mr. Ryan stated that all objections were sustained for the other side and not to him. Whatever plaintiff asked for they got. The jury did not like Evanston and the inference was that Evanston police mistreat people.

Mr. Ryan stated he tried a case before Judge Levine 15 years ago and in that case the police officer did not get a fair trial. This case was assigned to Judge Frank Orlando who is even worse. The second change was to Judge Levine. Mr. Ryan asked to send the case back due to prejudice against police officers. Judge Levine claimed that he could be fair to police officers. Mr. Ryan said the only way to find for the plaintiff was to believe Tracy Parham and DePrado. This was a horrendous case and nothing was done that was not prejudicial to police officers.

Mayor Morton asked who would handle the appeal. Mr. Ryan said he respected the names of all that were submitted and that he has handled many appeals. He said the attorney who handled the trial should handle the appeal. There was much error in the case and this judge should not be sitting on the bench. Mr. Ryan left the meeting at this time.

Mr. Crum asked Council if they wished to pursue an appeal. Yes. He said they can engage an outside attorney to be the lead attorney and that Mr. Ryan wants to be lead attorney with a consulting attorney. Staff recommended William Quinlan for the outside attorney.

Mr. Hill explained that as soon as the trial concluded, Mr. Ryan was thinking about an appeal. A decision was made to bring in an outside expert, an appellate attorney. Three firms were reviewed: Gino DiVito and Michael Rothstein of Tabert, DiVito and Rothstein; James Ferrini and Edward Kay of Clausen Miller and William Quinlan of Quinlan & Carroll. These attorneys have served as appellate judges. Their background in appeals, time, expertise, and who would do the work was considered. The firm of Quinlan & Carroll was chosen as most appropriate. He stated that Ryan, Jones firm has much to offer but there can only be one lead.

Mayor Morton asked whether Council wanted Ryan to lead the appeal or someone else. Alderman Newman expressed respect for Mr. Ryan; noted if they bring in Quinlan they have a person representing the city that is in the best position in court; did not see how they could cut out the tape; thought the city would hurt itself if Ryan was taken out. Mr. Siegel cited Mr. Quinlan's extensive experience as corporation counsel for the City of Chicago, trial judge, Chancery Court, Appellate Court and accomplishments as an attorney. Alderman Moran recommended hiring Mr. Quinlan; said he is very respected; has done major work for the Cook County Board, is well known, smart and a good friend of Mayor Daley. He said that Dick Ryan is a great lawyer who does a great job; felt he was hurt because he got manhandled in this trial. He stated that Mr. Ryan should be on the briefs, stay on and work with Quinlan with oral arguments by Mr. Quinlan. Mr. Siegel pointed out if they hire Mr. Quinlan he would call the shots. This was an outrageous verdict and if Judge Levine had sense, he would cut back the award. The post trial motions are important because the record has to be proved. Alderman Engelman noted in appealing -- all matters must be in the post trial motions and would they use a shotgun approach and appeal everything? Mr. Hill said there is more in post trial motions and not all are argued on an appellate brief. They put in much less down the road.

Mr. Crum reported that nobody has seen the trial transcript. Mr. Hill explained the attorneys would seek a time extension and go from there. He estimated this could take up to two years. Mr. Quinlan's rate is \$400 an hour but the city would be charged a blended rate of \$180. The City's role is to get Quinlan to work with Mr. Ryan. Alderman Engelman noted these were fees and not costs. Alderman Newman confirmed that if Judge Levine reversed himself he would have to grant a new trial. Alderman Kent did not understand trading our captain for another captain because Mr. Ryan had done nothing wrong; asked what a big name attorney could offer? Mr. Hill stated there was no criticism of the trial attorneys but the city is looking to put their best foot forward by going for more expertise. The attorneys who do the trial need a second eye. Ideally they want the expertise of both trial attorneys and appellate attorneys the judge will listen to. His hope was that the two would work together. Mr. Hill stated that Mr. Quinlan has a good record, but there is no guarantee of success. Alderman Kent said it seemed the city needed a brand name to go before the Appellate Court who would listen to a big name; noted all that was not allowed in the trial, which was wrong. Mr. Crum responded that the city needs someone to look at the legal aspects with a significant technical background -- legal history of police tapes, etc., and needs to condense the presentation to an hour. Mr. Hill pointed out with the magnitude of this verdict they need to do all they can, such as bringing in experienced appellate attorneys. At the post trial, they will have appellate and trial attorneys. This was not a declaration of lack of confidence. Alderman Bernstein agreed that Mr. Ryan has been hurt; has a good name with 39 years of practice and there was no doubt he could do the appeal. He noted that Mr. Ryan might feel they have lost confidence in him and asked if Mr. Ryan could work with Mr. Quinlan? Mr. Hill said he speaks with Mr. Ryan daily and asked him if he could work with an outside attorney and believes Ryan and Smolens could. Alderman Bernstein stated that Mr. Quinlan needs Ryan/Smolens.

Alderman Rainey asked the experience of other attorneys with this judge on post-trial motions? Mr. Siegel related an anecdote in which his co-counsel, an expert on medical malpractice in Kankakee, told him that Judge Levine was a plaintiff's judge, so he is known as far away as Kankakee. He said an appeal involves technical issues and any errors of law that took place. The arguments would be based on legal mistakes that were made. Alderman Rainey said if there are three or four legal mistakes found, what happens? Mr. Hill said they can totally reverse the verdict; remand for a new trial with what was wrong, i.e., mental health records, the audiotape, cross examination of doctors on previous records. It would be remanded back to the same judge, however, Judge Levine will be gone in December.

Mr. Siegel recalled filing a brief in the Frett case, which was important, because it was an attack on residential only parking. The man was given a ticket for parking at 2300 Brown claiming discrimination against residents. Karen Gilkerson won on summary judgement and the judge was former Evanston City attorney Jim Smith.

Alderman Moran said that Mr. Hill made sense that typically one gets a specialist; said both Quinlan and Ryan were good. Quinlan is a star. He recalled on the SWANCC case before the Supreme Court they found a law clerk that all on the court knew. They need to send the best guy and in Cook County it is who you know. Alderman Jean-Baptiste urged before assigning new cases to take a closer look at what happened; supported new counsel to lead the charge. Alderman Newman agreed; has confidence in Ryan and nobody said this case was mishandled but no one was prepared for an \$11 million verdict.

Mayor Morton asked if anyone objected to hiring Quinlan & Carroll. No.

Purchase/Sale of Land/Litigation – Zipperstein

Community Development Director Jim Wolinski and Assistant Director Stan Janusz were present at this time.

Assistant Corporation Counsel Ellen Szymanski related negotiating with Mr. Rosenthal who agreed to pay \$25,000 to settle the lien. Alderman Rainey indicated that was acceptable, but urged caution and that this cannot be connected to the closing. She suggested they give a time limit to receive the \$25,000 by Friday and request payment by cashiers check. She urged separating the closing and the fine. Alderman Bernstein argued that they would say they need to close to get the \$25,000. Alderman Rainey noted the contract excludes the fire proceeds. Alderman Moran pointed out there was always agreement on a key aspect and that was that this property change hands which was more important than the \$25,000. They won't have the money to close the deal if the city says pay by Friday, They need to make both happen. He saw this as a package they don't want to unbundle. Alderman Jean-Baptiste asked whether Alderman Rainey was suggesting an enhanced penalty if the sale does not close. Alderman Rainey thought they would not see the \$25,000; that Rosenthal does work for all sorts of questionable situations.

Mayor Morton asked if there were objections to the \$25,000 to settle the lien. No objections were raised.

Purchase and Sale of Land – 1813 Lyons

Mr. Wolinski reported this property is boarded up with a rehab loan lien of \$22,154. Neil Davidson of ECON Housing Groups wants to buy the property, demolish it and build new housing similar to what he is constructing at 1816 Darrow. Mr. Davidson is proposing that the rehab loan be deferred until a home is built and sold. Deferral of the loan would allow would allow him to acquire the property. The request was accepted.

At 7:29 p.m. Alderman Jean-Baptiste moved to convene into open session and recess. Seconded by Alderman Rainey. Motion carried unanimously.

Mary P. Morris,
City Clerk