

**Evanston City Council
Closed Session
Aldermanic Library
October 14, 2002**

PRESENT: Aldermen Feldman, Jean-Baptiste, Wynne, Bernstein, Moran,

NOT PRESENT AT
ROLL CALL: Aldermen Kent, Engelman, Newman

ABSENT: None

STAFF: Judith Aiello, Maureen Berry, Kathleen Brenniman, Pat Casey, Roger Crum, Herb Hill,
Frank Kaminsky, Bill Stafford, Elke Tober,

GUEST: Dick Ryan, Ryan, Smolens & Jones

PRESIDING: Mayor Morton

START: 5:41 p.m.

Alderman Jean-Baptiste moved that City Council convene into Closed Session to discuss matters of litigation, pursuant to 5 ILCS 120/2 (c) (11) (12) and (2). Seconded by Alderman Feldman. First Assistant Corporation Counsel Herb Hill added (12) from the Open Meetings Act.

(12) the establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim, or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member.

Roll Call - Voting aye – Feldman, Jean-Baptiste, Wynne, Bernstein, Moran, Voting nay – none. Motion carried. (5-0)

Litigation Update

Mr. Hill announced that Mr. Ryan was present to answer questions about significant cases. He stated the litigation report, which was passed out, was a snapshot as of that day of all litigation. Dick Ryan represents general tort liability and Jack Siegel represents non-tort litigation. The report combines the status of all litigation. There were no projections on new cases and how those would affect the budget.

At this time Alderman Kent was present.

Mr. Hill stated there are two components to the insurance fund. General liability matters and Workers Compensation insurance. Workers compensation was not included in the analysis.

At this time Alderman Engelman was present.

Mr. Hill reported \$400,000 was spent last year for insurance and next year they project a 33% increase to \$600,000. Exhibit A was all litigation with total exposure of \$20,815,000. That includes the Prado-DeVaul case. Exhibit B was all cases with exposure in excess of \$100,000.

At this time Alderman Newman was present.

Mr. Ryan would discuss the five cases, which are expected to go to trial or be settled in 2003-04. Each of these five cases could result in a cost of \$1 million or more. The City Manager currently has authority to \$25,000 to settle. Mr. Hill asked for initial authority to open the discussion to be raised to \$500,000. He stated they cannot have meaningful discussions without more authority. He emphasized the \$500,000 was not authority to settle. Any settlement requests would be brought to Council for approval. Exhibit C represented cases handled by Jack Siegel. An additional update will come from Mr.

Siegel. He explained casualty loss recap through 9/1/02 were claims that were paid out for damages to property by city departments. Reimbursement to City property followed by reimbursements for damages to city property. The last page of the report was Safety Risk Transfers for calendar year 1/1/01-1/22/02.

Mr. Hill reported that they had received post trial motion on the Magaly Prado-DeVaul vs. Tracy Parham case, which will be heard October 16 before Judge Levine. Mr. Ryan and Mr. Quinlan put it together. Because it was so comprehensive Alderman Newman asked if it was different than the Appellate brief? Mr. Hill said in the post trial motion 12-14 areas of error were described and there will be a weeding process on what will be argued before the Appellate Court. This is an \$11 million case and the attorneys did not hold back. He described it as a great collaborative effort by Mr. Ryan and Mr. Quinlan.

Mr. Hill reported that \$90,000 settled the case of the jail suicide of Mr. Walsh.

Mr. Hill noted the Bledsoe, Kahn/Shah, Parham, and Paul cases would come up the next fiscal year. Khan was dead and Shah had medical bills of \$700,000 and Mr. Bledsoe was a quadriplegic for two years before he died.

Mayor Morton asked what decisions were being asked for? Mr. Hill said no decisions, except for increased authority to begin settlement negotiations.

Alderman Newman noted when they talk about policy, the Bledsoe case involved police handling in a paddy wagon and the Prado-DeVaul case involved chases. Mr. Hill stated police behavior was appropriate. He has discussed chases several times with Chief Kaminski and the policy has been rewritten twice. The Internal Review board and state's attorney office reviewed police matters. Those policies would not be discussed that evening. Alderman Rainey asked if these large cases were covered by insurance. Mr. Hill said the city got insurance March 1, 2001 and all the big cases occurred before that date.

Bledsoe vs. City

Mr. Ryan explained that Richard Bledsoe was spitting at police officers in the squad car when he was arrested so they called the paddy wagon. He was handcuffed and walked into the van. When the van arrived at the police station he could not walk out. While in the paddy wagon he apparently fell onto the floor. There are benches on both sides with a metal partition down the middle. He said it would have been hard to keep one's balance. The police officers have no idea of what occurred. Mr. Bledsoe underwent surgery and ultimately died. In response to Alderman Rainey, he said that toxicology tests showed that Mr. Bledsoe had been drinking beer. He was interviewed but did not know what happened. No deposition was taken. There were no bruises on Mr. Bledsoe's body. Mr. Ryan does not see how the plaintiff can prove the case. Someway his head was hit and he suffered a fractured vertebrae. A video camera in the police department sally port flashes stills. That tape was retrieved and played by Officer Jan Sowa. Now it cannot be played and may inadvertently have been erased. It was placed in a locked room, played once, then a different machine was used and it could not be played. ADT is trying to figure out how to play it. Mr. Ryan stated this case is before Judge Lynne Egan who is very competent. Plaintiff's attorney is Paul Wolfe who is very aggressive. Officer Sowa gave a deposition that the tape worked and the second time it did not. Alderman Moran thought the plaintiff could claim the only way he could have been hurt is that those holding him must have done something wrong. Mr. Ryan stated that Mr. Bledsoe had some control. Alderman Newman noted that putting him in the van with handcuffs could be negligence. Alderman Rainey confirmed that when Mr. Bledsoe was admitted to the hospital he had a fractured vertebrae and no trauma to his body. Mr. Hill said he hit his head on the metal partition. Alderman Rainey asked if there were other cases of people being injured while in the van? No. Mr. Ryan stated they cannot prove he was beaten. Alderman Newman asked if any third party was in the van? No. Alderman Newman recommended, considering the numbers and injury, that they try to settle for \$250-300,000 because the case could spin out of control. Alderman Engelman asked if Mr. Bledsoe died as the result of these injuries? Yes and wrongful death is charged. Mr. Ryan said that he died as the result of paralysis due to injury and was on a respirator. He has a child. Alderman Engelman asked if his child is an adult? Mr. Ryan said he had no relationship with his family, had been arrested 88 times and was somewhat deranged. His arrests are not admissible because none were felonies. Alderman Engelman asked about his behavior in the community and relationship with family. Mr. Ryan said this was not a substantial case but if he was injured in the van it was bad. Alderman Engelman said if the tape was available it would show he was healthy when he got in. Mr. Ryan said the tape doesn't work. Alderman Bernstein thought the 88 arrests were symbolic of self-flagellation. Chief Kaminski said Mr. Bledsoe bothered others by poking bicycle wheels with a stick, etc. Was this method (paddy wagon) standard transportation? Chief Kaminski noted there was plastic on the seat to prevent sliding. Mr. Ryan stated that vans now have seat belts and handcuffs are removed before people enter them. Alderman Rainey asked to accept the case at \$500,000. Mr. Hill will keep Council informed. Alderman Newman suggested \$200,000 was acceptable.

Thurman Paul (Cedric Paul, decedent) vs. City

Mr. Ryan explained that Cedric Paul was confined at Albany Care due to his mental condition. He was supposed to have been transferred for medical attention by private paramedics but refused to go voluntarily. Police were called to get him into to go with private paramedics. Witnesses say police officers did nothing wrong. The police tried to get him onto the ground and handcuff him but when he was on the ground he had trouble breathing. Handcuffs were removed Mr. Paul was obese. The medical examiner Dr. Lifschultz ruled his death a homicide due to strangulation. Another pathologist will testify with a different opinion. Illinois State Police investigated this incident. Mr. Paul had a fracture on the right side of his neck. Alderman Engelman asked why were the Evanston police taking an individual out of a private facility that he did not want to leave? It was noted that shortly before this incident Mr. Paul had been hospitalized for breathing problems. Chief Kaminski stated the director of Albany Care requested police be called to stand by. A private ambulance was called. When Mr. Paul was asked to get onto the stretcher he snapped. Alderman Engelman was not hearing that Cedric Paul was attacking anybody. Mr. Hill stated that the police stepped in to persuade him to leave the building. Mr. Paul moved toward the police officers and when he went down they tried to handcuff him. The question was asked, who were the prime people to escort him out? Alderman Newman asked if Dr. Lifschultz said what indicates homicide by the police? Mr. Hill stated they have to have a second doctor. It is hard to say that somebody could be strangled while he was talking. There was no report that police strangled him but efforts were made to intubate him by the private paramedics. They don't want the medical examiner on the stand. Mr. Paul was not married and had no children. Alderman Engelman noted a relationship with his sister and that he visited the sister's home where he had trouble breathing. Mr. Ryan stated he had a respiratory problem. No witnesses say his neck was touched. Mr. Ryan said there are no records from Methodist Hospital or from the sister. Mr. Hill noted this is the same attorney who settled the Walsh case. Alderman Kent questioned the man's outside life and the Albany Care staff knowing he might snap. Mr. Hill was asking for \$250,000 to solicit response and \$100-250,000 to settle. Alderman Bernstein observed there were three pockets: Albany care, paramedics and the city (police). Mr. Ryan stated this case is not in the million category.

Wendy Leopold vs. City

Mr. Hill reported that he will ask to settle this in two weeks. Plaintiff demanded \$400,000, then \$200,00 and now is at \$100,000. Trial date is January 2003. This involved a fall by Ms. Leopold who claimed an uneven sidewalk as she exited the EPCO paint Store at Harrison and Green Bay Road. She had serious injuries to her right leg that required two surgeries. Alderman Newman suggested \$100,000. Mr. Hill stated Ms. Leopold has the same attorneys as Prado-DeVaul.

George Klujewski vs. City

Mr. Hill reported they are getting statements that Mr. Klujewski was told he could swim at Lighthouse Beach.

Mr. Hill reminded all that matters discussed were confidential.

Alderman Newman moved no settlement until after summary judgment and to get the demand first on Cedric Paul.

Mr. Ryan stated the hearing Wednesday on the Prado-DeVaul would be heard before Judge Levin and assumed they will be denied summary judgement.

At 6:57 p.m. Alderman Wynne moved that Council convene into open session and recess for standing committee meeting. Seconded by Alderman Jean-Baptiste. Motion carried. No nays.

Mary P. Morris,
City Clerk

At 6:57 p.m. Alderman Jean-Baptiste moved to convene into open session and recess. Seconded by Alderman Feldman. Motion carried unanimously.

Mary P. Morris,
City Clerk