

**Evanston City Council  
Closed Session  
Aldermanic Library  
October 28, 2002**

PRESENT: Aldermen Newman, Wynne, Bernstein, Kent, Moran, Engelman, Rainey

NOT PRESENT AT  
ROLL CALL: Alderman Jean-Baptiste

ABSENT: Mayor Morton and Alderman Feldman

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

GUEST: Mark Smolens and Rick Jones, Ryan, Smolens & Jones

PRESIDING: Mayor pro tem Kent

START: 5:40 p.m.

City Clerk Mary P. Morris announced in the absence of Mayor Morton, nominations for the election of a Mayor pro tem were in order and, in accordance with Council Rule 14.7, Alderman Kent was next on the list of Aldermen by seniority who have not served as Mayor pro tem. Alderman Bernstein nominated Alderman Kent and moved that the nominations be closed and that Alderman Kent be elected Mayor Pro Tem. Seconded by Alderman Rainey. Motion carried. No nays.

Alderman Engelman moved that City Council convene into Closed Session to discuss matters of litigation, and minutes pursuant to 5ILCS 120/2 (c) (11)and (21). Seconded by Alderman Wynne.

Roll Call - Voting aye – Newman, Wynne, Bernstein, Kent, Moran, Engelman, Rainey Voting nay – none. Motion carried. (7-0)

**Litigation**

City Manager Roger Crum requested a decision on the annual request from the Vineyard Christian Fellowship to hold religious services on Christmas Eve and New Year's Eve. No objections were raised.

Mr. Crum reported that Alderman Feldman was not here due to a weather-delay in his flight.

1<sup>st</sup> Assistant Corporation Counsel Herb Hill stated they would continue discussion on outstanding litigation report with Rick Jones and Mark Smolens here.

Mr. Hill reported the Wendy Leopold case was settled for \$75,000. Alderman Rainey asked the deduction on the reserve. \$150,000; praised the work done by Mark Smolens.

**Thurman Paul vs. City**

Mr. Smolens stated the demand is \$900,000. Mr. Jones stated the police officers were not served and they filed a motion to dismiss. Four officers and allegations are the same. There are two pieces of litigation: wrongful death and violation of civil rights. Mr. Smolens noted in the last meeting the question was asked why officers were there. He recalled the Wallace case where two officers were called to take the son to a hospital for psychiatric evaluation. They had a horrible forum, tried the case, lost and settled. This time they have a better forum. Judge Alesia is a former police officer. Pretrial order to be filed next week. And have the list. Mr. Ryan got a hold of Standish Willis, attorney for the plaintiff. The state police were brought in regarding allegations in this case and took statements from who was there and they are consistent with the depositions. There is no evidence of strangulation due to a crushed windpipe. The medical examiner is calling this a homicide on the basis of testimony of Rodriguez. Police officer Larry Davis, a big guy struggled to get Cedric Paul onto the stretcher. Officers were asked to come to the upper floor where he was.

At this time Alderman Jean-Baptiste was present.

Mr. Smolens explained that officer Larry Davis approached Cedric Paul who was seated at a table, noting that Officer Davis is well spoken and will make an excellent witness. Mr. Paul would not get on the stretcher, got up and walked out of the room. They did not want him to get on the elevator. They tried to put handcuffs on him and struggled to get him cuffed and onto the stretcher. A paramedic tried to get his legs. Officer Davis had his arm around his chin, not around his throat. Paul was screaming and yelling threatening to sue. They got him handcuffed when he was on his knees and were going to pick up him. He is obese and weighs more than 300 lbs. He said he could not breathe so they placed him face down without cuffs and started ministering to him. The paramedics tried to intubate him but were unable to do so. Dr. Kaufman states the reason for the fracture to the upper portion of the neck occurred as a traumatic intubation attempt. That is where the injury occurred. They could not get him intubated and took him to St. Francis hospital where more attempts were made to intubate him and he was pronounced dead.

Mr. Ryan contacted Mr. Willis with written demand in packet. Settlement demand is \$900,000. They claim \$1.5 million for wrongful death, \$500,000 for pain, suffering, \$15,000 for funeral and total expenses \$2.9 million.

Mr. Smolens said the medical examiner's testimony is a problem. They have put together an entire file, which Dr. Lifshulz did not see. Dr. Kaufman claims that Cedric Paul did not suffer from strangulation because there was no restriction of the airways. Strangulation is worst case scenario. Officer Larry Davis handcuffed and put him on the ground, at that point he had trouble breathing, exacerbated by the drug Atavan.

Albany Care is also a defendant. Five employees are defendants. Standish Willis will make demand of other attorneys. Mr. Willis settled the Phillip Walsh suicide, where personnel did not check him when they were supposed to and he hung in the same position for 46 minutes. The case settled for \$80,000. \$450,000 was the original demand, which went down to \$300,000. Mr. Smolens noted there are lots of risks there are anti-municipal/police sentiments. Law Enforcement sentiment has changed since 9/11.

Mr. Paul was 37-years old and has a 17-year-old son. There is no evidence of any relationship. Mr. Paul visited a cousin in Flossmoor where he experienced breathing problems. He had only gotten back from the hospital when somebody stole his radio and he got angry, so police were called.

Alderman Rainey questioned the policy of police going out if it is not a criminal complaint. Why go to Albany Care to help out? Chief Kaminski stated they had a private ambulance. If there is a disturbance the Albany Care staff calls 911. Alderman Rainey no brainer like extra help. She asked he had a whole series of life threatening illness what attributing. Mr. Smolens traumas shows intubation, cardiac arrest. It took four police officers and a paramedic to get him down. Alderman Rainey asked if a person is intubated do these symptoms apply? Yes. Dr. Kaufman disagrees with the medical examiner. The medical examiner gets people at the morgue while Kaufman is a pathologist and saw him. Alderman Bernstein confirmed that the state's attorney was called to investigate this death. Four police officers are defendants. Punitive damages worst case cannot be indemnified. Guys have personal assets on the line. For officer Larry Davis this was a traumatic event and he cried when they took the deposition. Difficult when they do their job and it does not work out. Bernstein confirmed Dr. Kaufman is a pathologist and Dr. Malone at St. Francis is an emergency room physician and could not get Mr. Paul intubated. Witnesses. Mr. Smolens said the next step is to draft a response to Mr. Willis. Nobody says he choked.

Alderman Newman asked if they could tell Albany House that they are not getting involved anymore? Negotiate with Albany Care with them to contribute and get off the hook. Mr. Smolens noted that Mr. Paul has a long list of problems, endangering workers, Etc. Alderman Newman asked if Albany Care had considered settling? Mr. Smolens said a firm in his building have insurance and CoMed has insurance.

Alderman Bernstein asked about counts against Albany Care. Negligent in Code Yellow. They called one hour before police came. They called Mr. Pauls' doctor who urged them to get him in and administered Atavan. He would not get on the stretcher. There is an allegation that the paramedics were negligent in attempting to subdue him. Police officers ended up cuffing his hands, which required two sets of cuffs and feet. Dr. Kaufman says that positional asphyxiation could have contributed to death.

Alderman Moran asked why Lifschultz concluded this was a homicide? Mr. Smolens said homicide is when death is intentional. He was not saying murder. Dr. Kaufman agreed it was positional asphyxiation and accident. Something bad can happen when struggling. Alderman Engelman noted if Lifschultz rules out trauma by intubation, he is medical examiner has 20-years experience doing autopsies which is in conflict with a paid expert. How much is Willis looking for? Started with \$900,000. Will take

significantly less. Number Mr. Hill and Mr. Smolens \$300,000, new offer \$150,000. Has a 17-year old kid don't understand why Albany Care looking for money. Trial? Next three-four months. Mr. Hill authority is given in toto. Not where they end up. Would come under \$250-300,000. Considerable risks. Medical examiner versus paid expert. Authority to begin negotiations authorized at \$25,000. Need direction.

Four police officers defendants, punitive damages worst case cannot be indemnified. These men have personal assets on the line. For Officer Davis it was a traumatic event; cried when they took the deposition. Difficult when the officer does his job and it does not work out.

Alderman Bernstein, confirmed that Dr. Kaufman is a pathologist, Dr. maloney and emergency room physician who could not get Mr. Paul intubated. Mr. Smolens said the next step would be to draft a response to Willis. No body says choked Maloney.

Alderman Newman asked if the city could tell Albany house that the city was not getting involved anymore? Or negotiate with Albany Care with them to contribute and gett off the hook. Mr. Smolens said that Mr. paul has a long list of problems, endangering workers, etc. Alderman Newman asked if Albany Care is considering settling? Mr. Smolens said the law firm representing them is in his building and they have insurance. The paramedics CoMed has insurance.

Alderman Moran asked if \$25,000 was on the table? NO. Mr. Hill had just received the demand. He was asking for the maximum ceiling to negotiate. He would start off at a lower number and go up. \$25,000 is on the low side. Mr. Smolens suggested \$80,000. Alderman Rainey commented that Mr. Paul was totally uninsured and on SSI. Attorney says worked up. \$25,000 Smolens has 100 hours of work on this case. She asked if there were toxicology reports? Yes. Dr. Kaufman says he had Ativan which exacerbated his heart, pulmonary disease, was agitated and resisted when being strapped. He was also on psychotropic medicine.

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