

**Evanston City Council
Closed Session
Aldermanic Library
November 11, 2002**

PRESENT: Aldermen Jean-Baptiste, Bernstein, Moran, Engelman, Rainey, Feldman, Newman

NOT PRESENT AT
ROLL CALL: Aldermen Wynne and Kent

ABSENT: None

STAFF: Judith Aiello, Maureen Barry, Kathleen Brenniman, Roger Crum, Doug Gaynor, Herb Hill, Frank Kaminsky, Bill Stafford, Elke Tober

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

PRESIDING: Mayor Morton

START: 6:13 p.m.

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

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

Minutes

October 28, 2002 Closed Session minutes were accepted as submitted.

Litigation Report

City Manager Roger Crum announced that 1st Assistant Corporation Counsel Herb Hill would continue review of major litigation. Mr. Hill stated a pretrial memorandum was filed on the Cedric Paul Case. The city made an offer of judgement of \$40,000 with no response. There was a demand to CoMed of \$25,000 and none to Albany Care. Two new cases are Bowen vs. City and Hicks vs. City.

Mr. Smolens explained the final pretrial order was designed by Judge Will to settle cases. He and the attorney from Albany Care did the most work. They got objections from Attorney Willis who did not think Mr. Paul's medical history was important. Judge Alesia is ill. The judge will bring the attorneys in for a status conference and may send this to Magistrate Ashman. He did not consent to try the case before Magistrate Ashman. Mr. Smolens did not think that Willis wanted to try this case. He noted it was a good case for medical history relating to the death and so far he had not received a stamped copy from Willis.

Alderman Moran questioned the use of the term homicide by the medical examiner to describe this death. Mr. Smolens noted it was a term of art within pathology. It is significant that homicide death is an intentional act by another as opposed to accidental. It was homicide for the coroner but was not intentional. Judge Alesia let this in. He noted one paramedic has gone to work for the Chicago Fire Department and CoMed is out of business.

Alderman Wynne was present at this time.

Mr. Hill noted that Dr. Kaufman had more detailed records on Cedric Paul's medical history than the medical examiner. Mr. Smolens said they got records from Dr. Lifschulz but did not receive his notes leading to the conclusion. He did not think that Judge Alesia would treat the city unfairly. He laid out defenses of Albany Care and CoMed and noted this gives the other side of the picture – offsets the strangulation call by the coroner with the man's prior medical history of breathing problems and administering of Ativan which can exacerbate breathing problems. However, the medical examiner has a lot of weight.

In response to Alderman Bernstein, Mr. Hill confirmed a post mortem examination was done by the medical examiner and the state did not examine Mr. Paul's body. The state interviewed the police officers, paramedics and Albany Care staff but did not render an opinion as to the cause of death.

Mr. Smolens on defense exposure referred to Rule 68 offer of judgement, which allows two weeks to respond. An offer of \$40,000 was made October 31 exclusive of attorneys fees of \$25,000 for a total of \$65,000. If the case does not settle and plaintiff was to recover \$39,999 they could not collect attorney's fees. If he does not hear from the attorney, they can make another offer. He had sent a letter to Willis asking about receipt of the stamped copy and the Rule 68 offer.

Alderman Newman thought that the strategy was to have partnership defense with Albany Care. It seemed like they were giving up a lot if Ativan caused the problem. Mr. Hill pointed out they were dealing with someone who was out of control. Police got there and dealt with it. This was an obese man with a long medical history. He noted Willis had settled the Walsh case for less than \$100,000 and Cedric Paul had no relationship with his son or cousin.

Alderman Rainey asked the status of the son? Mr. Smolens said that he lives with his mother in Detroit. He explained that each month Albany Care does a program plan and family members are invited to participate. Cedric Paul signed off that he did not want family involved.

Bowen vs. Officer Ricks

Mr. Hill explained that the plaintiff is the son of a former city employee. This accidental shooting occurred at the White Hen on Emerson Street. The demand is \$150,000 and they have been offered \$10-15,000. The police officer did nothing improper. Reviewed by internal affairs, the officer acted appropriately. The original charge of aggravated battery was plea-bargained down to battery. Mr. Smolens explained that this was in front of Judge Norval and is now before Magistrate Geraldine Brown who has been accommodating to attorneys. She is clear, reads everything and is far more on top of cases than many judges. Mr. Hill recalled that Gerry Brown served on the Board of Ethics and reviewed construction contracts on the main library.

Mr. Smolens described the incident at the White Hen; recalled that three years before Officer Ricks was called to the Bowen household where he shot their dog. Ricks was in uniform at the time of the shooting. The store clerk had called 911 because Bowen was fighting with him. Three NU students were in the White Hen at the time. When Bowen was taken to the hospital for his gunshot wound they found alcohol and drugs in his system. His cousin and the students say he was shot outside. Bowen claims he was shot in the store. Felony review concluded nothing improper was done. Mr. Smolens noted they gave Bowen a pass initially. He thought the case worth settlement for the cost of defense.

Mr. Hill said he tried to put himself in the plaintiff's shoes. An expert analyzed the tee shirt worn by Bowen. A second fellow, Bowen's cousin, testified that the shooting occurred with four officers around Bowen. They have the NU students inside who heard the shot, which occurred when Bowen rushed the officer. There has been no forensic test of the tee shirt. Plaintiff's testing was on alignment of the shirt. This case will go to trial in March/April 2003. Mr. Hill stated when they see the pretrial memorandum they will have a better idea about the case.

Alderman Newman asked what the store clerk said about why they were fighting? Mr. Smolens responded that it was not a robbery. They don't have stipulation of facts in the first case; had to stipulate to something. Mr. Hill stated that the clerk thought the two were shoplifting because one had a jacket over his arm. Bowen and his cousin saw the clerk looking at them, so Bowen threw a candy bar at the clerk who went to the deli area and got a knife. Then Bowen threw his coat at the clerk. Mr. Hill said there are video cameras at White Hens but this one stopped on October 16.

Alderman Moran asked if there were any injuries? Mr. Smolens stated that Bowen has a bullet in his shoulder. Alderman Bernstein confirmed that other police officers were not there when the shot was fired; asked why police were called to the Bowen home. There was a report of disturbance. Alderman Bernstein asked if officer Ricks was following procedure. Chief Kaminski stated that Officer Ricks fought for his personal safety and was trying to get the guy handcuffed and could not because he resisted. The clerk told the other guy to stay away. The NU witnesses are gone but could be brought back. Mr. Hill stated the store clerk quit shortly after this incident.

Alderman Kent stated the officer Ricks was the kind of police officer they want. Mr. Hill said no civil rights allegation was made here. Ricks came in, saw the scuffle, knew one was the clerk and when he tried to subdue Bowen he resisted. He will report after pre-trial memorandum.

Alderman Rainey asked when Sheila Bowen left the city and was she with the city when her son was deposed? Someone thought she left 18 months ago. She asked for a memo on why she left. Mr. Hill said something would be provided. Mr. Hill stated they had given Bowen a break. Alderman Jean-Baptiste confirmed this was his only conviction; said the process was not objective and the facts demonized this individual. He said unless they look at both sides they will be led to the slaughter like the \$11 million case and urged balance. Alderman Rainey stated if the clerk was racist it has nothing to do with the case. Alderman Jean-Baptiste said this case cannot be evaluated on \$15,000. Mr. Hill will provide all information as it unfolds. He stated they have to look at Officer Ricks and his conduct. Ricks tried to break up an altercation. Bowen was taller and weighed less than the officer so there was no great disparity in size. Ricks had taken out his service revolver. According to internal and external reviews he was justified in pulling his gun out. The scuffle occurred in and out of the store. Bowen rushed Ricks and the gun discharged. Officer Ricks and Bowen are of the same ethnicity. Alderman Newman urged they find the store clerk. Mr. Hill will report at the next meeting.

Chief Kaminski gave a brief report on an ongoing investigation. For three years the Evanston police have been working with the Drug Enforcement Agency and events are starting to unfold. They have a series of indictments but not at street level sellers. DEA operation's first indictment is Carl Edwards, a distributor. More indictments are coming and these are significant people in the community. This must be kept quiet because police are still doing buys and the fact of an indictment will be out there. They now have 10-12 key people videotaped involving substantial amounts of drugs. Council will be kept posted. Alderman Newman asked what unit did the work and did officers at ETHS help? Chief Kaminski stated the NET group did this. Alderman Newman confirmed that all involved were of less than sergeant rank. Alderman Wynne asked how the DEA became involved? Chief Kaminski stated the department asked for their help. Alderman Rainey asked, as this unfolds, will it have implications for street corner groups? Chief Kaminski said the DEA likes to flip people and he will bring in those who worked on this.

At 7:18 p.m. Alderman Bernstein moved to convene into open session and recess. Seconded by Alderman Jean-Baptiste. Motion carried unanimously. The Council then recessed in order to attend standing committee meetings.

Mary P. Morris,
City Clerk