

**Evanston City Council
Closed Session Minutes
Aldermanic Library
March 14, 2005**

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

ABSENT: Aldermen Kent and Feldman

STAFF: Judith Aiello, Julia Carroll, Herb Hill, Vince Jones, Gavin Morgan, Elke Purze,

PRESIDING: Mayor Lorraine H. Morton

START: 6:14 p.m.

Alderman Bernstein moved that Council convene into Closed Session for the purpose of discussing matters related to litigation, personnel, real estate and executive session minutes pursuant to 5ILCS Section 120/2 (c) (1) (5) (6) (11) and (21). Seconded by Alderman Rainey.

Roll call. Voting aye – Moran, Tisdahl, Rainey, Newman, Jean-Baptiste, Wynne, Bernstein. Voting nay – none. Motion carried. (7-0)

Minutes

Closed session minutes of February 28, 2005 were accepted without change.

Personnel

City Manager Julia Carroll stated that she had put the City Manager evaluation process on several meetings back but Council never got to it. She understood the City Manager evaluation process was the responsibility of the Rules Committee which did not meet due to a lack of quorum and offered to bring criteria back at a future date. She wanted to work with Council on this so that next January she would not be surprised when she is being evaluated. She did not know past practices. Alderman Rainey said that past practices were spotty and not very efficient, so any suggestions she had would be helpful. Alderman Rainey asked if she had a format. Ms. Carroll has several formats from other cities that she could share and go from there. She asked if they wanted to talk about that at the next Rules Committee meeting. Alderman Moran said the precursor to the manager evaluation has been that Council develops a list of issues related to the City; then they discuss and debate where they are on the issues. He suggested this be changed a bit because they tend to get off on what is being done well or not, instead of evaluating the manager's performance. He suggested they evaluate the manager rather than the successes and failures of the city. Mayor Morton asked that materials be sent to each alderman. They discussed when the Rules Committee would meet and decided to aim for the May Rules Committee meeting when the new Council is seated.

Litigation – Kahn vs. City

1st Assistant Corporation Counsel Herb Hill said the only litigation was the Kahn case which was a police pursuit that ended in an accident at Sheridan Road and Touhy Avenue in which Mr. Kahn was killed. A pretrial was set for March 23 at noon before Judge Nudelman. The City's last offer to settle was \$400,000 and the plaintiff was down to \$1.9 million. The Shah case was settled for \$2.1 million. Judge Nudelman has assessed this case could settle for \$1.1 to 1.2 million. Mr. Hill asked for authority up to \$1.2 million to settle; said they have already had three or four pretrials; and it was his turn to come back with an offer. The problem is they cannot verify the amount of Mr. Kahn's income. He thought this would be settled based on emotion by a jury. Either they settle or take it to trial. He said that Judge Nudelman knows the facts, respects Dick Ryan and his value is close to \$1.1 to \$1.2 million. Aldermen Wynne/Newman asked what that was based upon. Mr. Hill said the fact that a man died, his wife will probably come in from India and this would cost less than to try this case. His wife has diabetes, is an amputee and needs support. There are other psychological factors. They are dealing with an innocent person who as a passenger was killed. The survivor, Mr. Shah will testify at the trial as will Kahn's daughter from California. The City's officer testimony was that he was not pursuing which puts the City in a difficult position. The City of Chicago

police reported Evanston police were shooting down the street. They don't believe that is right because there were other police cars responding. He said it is purely on the emotion and a person is dead.

Alderman Newman said this was never an issue about liability, but has always been about the value of a death. The support Kahn was giving was nebulous. Say it was \$5,000 a year for 100 years, would be \$500,000. Plaintiff has the burden of proof. There are no tax returns. Everybody is counting on a jury. He recalled the cause of this accident was a thief who stole a wallet from somebody at the Lucky Platter, fled and was stopped by a police officer then tried to run over the police officer. He asked what the plaintiff can prove up. Mr. Hill thought it would be decided on emotion. Alderman Newman pointed out on the Shah case that Shah had over \$800,000 in medical expenses due to this crash. In response to Alderman Wynne, Mr. Hill stated that Mr. Shah has made a remarkable recovery. Mr. Hill explained this was the risk of having a decedent who was innocent, supported his family and the value of that support. From Judge Nudelman's perspective, he has gotten plaintiff down and this is a roll of the dice. He believes he could get it to \$1.2 million. Alderman Rainey asked how Kahn's wife would be brought here. Mr. Hill said the attorneys would fly her in. Alderman Rainey asked if there was any confirmation that Mr. Kahn had obtained visas for his family in 1999. There was no confirmation of that. Mr. Hill said they have been without any tax returns for 9-10 months. Alderman Newman asked why they cannot be sanctioned. Mr. Hill said they have a money lender who will testify that \$300 a month was sent to India and \$100 a month to the daughter in California. If Khan's wife does not come there is not much of a case. Mr. Hill said they have to believe the attorneys would bring her in to testify about how her life has been shattered.

Alderman Moran said it was hard to value this at \$1.2 million and understood the emotional appeal. The unpredictable part is loss of life which is worth something to a jury. He was thinking about \$500-600,000 for loss of life and they would have to pay significant money to settle the case; \$1.2 million was pushing it. He suggested they try to shoot for something under a million. Mr. Hill needed to have movement to get them back to the table. Judge Nudelman is the only chance to settle until the day before the trial. Mr. Hill said he could go to \$750-800,000 and negotiate. The case won't settle for \$600,000. Alderman Wynne asked if Kahn had any job skills and his educational background. Mr. Hill said they have no information that Mr. Khan was a civil engineer. She asked the standard of living of the family in India. Mr. Hill does not have their status in India but \$300,000 would go a long way in India. Mr. Hill said this man came to this country, worked hard, sent money back to India, and had a heating/air conditioning business. His wife will testify he was a good husband. Alderman Newman pointed out this man did not play by the rules; did not file tax returns and was here for five years. Mr. Hill said that would be pointed out in a trial. He was between 48-52 years of age. Mr. Hill will pursue the status of his green card.

Alderman Jean-Baptiste suggested a jury would look at this differently than they are. Mr. Hill explained the judge thinks they would settle for \$1 million and told him what he said to the plaintiff. He told them this case is worth roughly \$1 million. Alderman Tisdahl moved to settle for \$900,000 - \$1 million. Alderman Bernstein said the jury would not be lawyers but workers who have been precluded from working because this man was a HVAC operator in the black market and was probably living here as an illegal alien because he had no green card. An attorney would go after that after settling on the death. \$1.2 million seemed high especially after hearing about the recent conservatism of juries.

Alderman Rainey wanted to know who was deciding whether the offers were acceptable. Mr. Hill did not know. His impression was the attorney was free lancing for the wife and daughter. Alderman Rainey asked if this lawyer was jacking up the file. Mr. Hill said the attorney is trying to get the highest amount he can. She asked that when they make the next offer, they ask that the rejection be confirmed. Alderman Moran recommended they go to \$750,000 instead of \$900,000. If they are going to get to \$900,000, they don't start there. They will negotiate back and forth. He thought their job was to force the plaintiff to come in at \$1 million or a little less. Mr. Hill said he always leaves the room with city money in his pocket. He would do \$750,000 if the judge told him it would settle. \$1.2 million is the ultimate cushion in this case. Alderman Newman said his experience in front of judges is that they don't like it when people don't file tax returns. There is an obligation by the plaintiff to prove damages. Death cases are decided in part by income of the decedent. He wanted to hear from the City attorney's experience before juries in death cases because this is like paying off a claim without any ability to evaluate the claim. Alderman Moran said in front of a jury the attorney would say there were no tax returns but don't punish the wife/daughter for that. Alderman

Newman noted the wife/daughter say they were getting \$300 a month. Alderman Newman thought they could take a step and go to \$750,000; suggested they go back to Judge Nudelman and tell him of the City's concern about how the plaintiff is proving up damages. He asked did they not have an obligation to the taxpayers not to just settle cases. Mr. Hill stated they have an obligation to minimize the potential exposure. In this case emotion could run away with logic. This is a situation with the wife coming in to testify and a husband that was killed and was innocent. \$750,000 can get him through this stage and if another pretrial is needed. He thought the number to settle may be higher.

Alderman Jean-Baptiste asked if the judge has all the information. Yes. He would go with the \$750,000; asked what Dick Ryan thinks about this. Mr. Ryan believes the case would settle for less than one million but acknowledges a risk factor and that this man was killed instantaneously. There are pictures of the crash scene which are not easy to digest. The driver can also testify. Mr. Hill said \$750,000 is adequate for where they are going. If they want to settle, no judge has spent more time than Judge Nudelman on this case. Alderman Jean-Baptiste asked Mr. Hill to investigate who the attorney is consulting. Mr. Hill will confirm as best he can. Alderman Moran thought the attorney is probably calling the shots with the wife in India. \$750,000 was authorized to settle.

Litigation Report – Franklin case

Mr. Hill reported they have a case going to the U.S. Supreme Court. It involves a man named Franklin (employee) who was arrested for drug use. The City lost the case in the Circuit Court. The City is petitioning the court on balancing the rights of an individual not to self incriminate versus the right of the employer to find out what conduct affects employment. There is a right to not incriminate oneself. Is there a procedure and does the municipality have a duty to inform the individual that he has the right to remain silent. Ian Johnson filed an amicus brief, and Franklin picked up a Washington, D.C. law firm. The judgment is \$100,000 plus back pay. The spin-off is in the Quadri case where they have a police officer they cannot question that is in pay status but not in employee status. That is Mr. Horemus. The probationary officer was let go.

Sale of City-owned Real Estate – 2022 Central Street

Ms. Carroll said the appraisal done by the library was low and they probably should get another one. This was up to Council and they could always reject a bid they think is too low. They want to sell through a sealed bid process. Alderman Rainey suggested the city would get more money through a broker and that they did not need another appraisal. Mr. Carroll believed the property value is more than \$300,000 and wanted to get a second appraisal which she thought would show a substantially higher value. The difference between the broker's sale price and the appraisal was large. It was agreed to get another appraisal.

At 7:03 p.m. Alderman Bernstein moved that the Council convene into open session and recess. Seconded by Alderman Rainey Motion carried unanimously.

Mary P. Morris,
City Clerk