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CITY OF SEATTLE
LAW DEPARTMENT

Annual Report

1958

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Corporation Counsel

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CITY OF SEATTLE
LAW DEPARTMENT
Annual Report

1958

A. C. VAN SOELEN, *Corporation Counsel*

ALFRED L. NEWBOULD.....*First Assistant*
JOHN A. LOGAN.....*Principal Trial Assistant*
G. GRANT WILCOX.....*Assistant*
CHARLES L. CONLEY.....*Assistant*
GEORGE T. MCGILLIVRAY.....*Assistant*
RAYMOND H. SIDERIUS.....*Assistant*
WILLIAM W. BROWN.....*Assistant*
FRANK W. DRAPER.....*Assistant*
JOHN P. HARRIS.....*Assistant*
ARTHUR T. LANE.....*Assistant*
C. D. FRANSEN.....*Assistant*
THOMAS J. OWENS.....*Assistant*
ROBERT M. ELIAS.....*Assistant*
BRUCE MACDOUGALL.....*City Prosecutor*
PETER K. STEERE.....*Junior Assistant*
FAYE FORDE.....*Secretary*
JOHN F. COOPER.....*Claim Agent*

Foreword

The within annual report of the Law Department for 1958 was prepared under the direction of the Corporation Counsel, an elective officer who is the principal attorney or counsel for the City of Seattle, a municipal corporation, and he is the head of the Law Department created by Article XIII of the City Charter. He, with an appointive staff of 17 assistants, is the legal adviser to, and represents all departments in the city government, including the Seattle Transit System, in all litigation and claims against the city. Two of such assistants are full-time city prosecutors in the Municipal Traffic and Police Courts, and two others are in charge of appeals from such courts to the Superior Court. He also appoints, subject to civil service charter provisions, employes in the Claim Division who investigate and process all claims against the city under the direction of the City Claim Agent; and also a secretarial and stenographic staff. The present Corporation Counsel is A. C. Van Soelen.

The volume of trial work done by the legal staff in 1958 is indicated in the within tabulation, which includes 110 personal injury cases (80 in 1957) asking \$3,118,407, of which 38 (27 in 1957) were won by the city outright; in 14 cases (21 in 1957) plaintiffs recovered \$51,000 (\$233,385 in 1957); the remaining 58 cases were settled for a total of \$164,113. This is a most exceptional record and reflects great credit on the present staff.

Also included is reference to the processing in 1958 of 1,476 claims aggregating some \$5,700,000, mostly involving transit operation, of which some 900 involving \$3,228,000 were settled for \$445,000, and the balance recommended for rejection. Filing of claims for damages against the city is the precedent to the bringing of such an action under Charter Article IV, Sec. 24 and RCW Ch. 35.31.

Seven condemnation suits of unusual magnitude and importance were disposed of in 1958, including right of way for the Tolt River Pipeline, under Ordinance 86134, Cause No. 514489, for which the city paid \$228,764. Especially noteworthy was the acquisition of some 38 acres of land in the vicinity of the present Civic Auditorium and Ice Arena as a site for a Civic Center development. Negotiations with the property owners occupied several months and appraisal expense was heavy, but these negotiations conducted by the Law Department with the aid of expert appraisers, resulted in reducing the number of contests to three cases. The total awards for the land taken, much of which may be used temporarily under a leasing arrangement for the

Seattle Century 21 Exposition, aggregated \$4,356,961, which was paid from the Civic Center Development Bonds 1956 Fund.

During the year 1958 the City Prosecutor assisted the Municipal (Police) Court with a calendar of 16,128 cases other than traffic, resulting in fines and forfeitures in the amount of \$143,562. In the Municipal (Traffic Court) an Assistant Corporation Counsel assisted with a calendar of 376,058 traffic cases resulting in fines and forfeitures amounting to \$2,063,872.

An unprecedented number of appeals from the Municipal Courts (293 Traffic and 155 Police) to the Superior Court were disposed of in 1958. In 126 Traffic and 62 Police Court Appeals, convictions or pleas of guilty resulted and 88 Traffic and 45 Police Court appeals were abandoned by the defendants and remanded to the trial courts for enforcement of the original judgments.

An additional illustration of the growth in volume and complexity of the city operation during 1958 reflected by the above data, is that the Law Department prepared 423 general ordinances and 57 resolutions as against 369 ordinances and the same number of resolutions in 1957.

The report in detail for 1958 follows:

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1958

To the Mayor and City Council of the City of Seattle:

Gentlemen: Pursuant to Section 12, Article XXII of the City Charter, I herewith submit the annual report of the Law Department for the year ending December 31, 1958.

I. GENERAL STATEMENT OF LITIGATION

1. Tabulation of Cases:

The following is a general tabulation of law suits and other court proceedings commenced, pending and ended in the Superior, Federal and Appellate courts during the year 1958, including appeals from the Municipal courts.

	Pending Dec. 31 1957	Commenced during Year 1958	Ended dur- ing Year 1958	Pending Dec. 31 1958
Condemnation suits.....	6	12	7	11
Damages for personal injuries.....	128	115	110	133
Damages other than for personal injuries	46	27	41	32
Injunction suits.....	7	8	11	4
Mandamus proceedings	2	3	2	3
Miscellaneous proceedings.....	21	8	12	17
Sub-Total	210	173	183	200
Appeals from Municipal and Traffic Courts	190	412	448	154
Grand Total	400	585	631	354

2. Segregation — Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1957.....	128	\$3,719,790.77
Commenced since January 1, 1958.....	115	2,470,074.98
Total	243	\$6,189,865.75
Tried and concluded since January 1, 1958.....	110	3,118,407.47
Actions pending December 31, 1958.....	133	\$3,071,458.28

Of such personal injury actions, 110 involving \$3,118,407 were tried or otherwise disposed of in 1958, as against 80 involving \$2,215,510 in 1957; 38 involving \$1,541,033.56 were won outright; in 14 cases involving \$363,098.64, the plaintiffs recovered only \$51,195.55. The remaining 58 cases involving \$1,214,275.27 were settled or dismissed without trial for a total of \$164,113.00.

Of the 115 personal injury actions begun during the year 1958, a large portion involving \$2,132,862.33 are based on alleged negligence in connection with the operation of the Municipal Transit System.

3. Segregation — Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1957.....	46	\$477,647.47
Commenced since January 1, 1958.....	27	120,500.81
	73	\$598,148.28
Tried and concluded since December 31, 1957.....	41	240,626.43
Pending December 31, 1958.....	32	\$357,521.85

Of the total of 73 cases, involving damages other than personal injuries, 41 involving \$240,626.43 were disposed of during the year 1958 of which 15 involving \$30,188.01 were won outright. In 12 cases involving \$57,018.59 the plaintiffs recovered \$3,092.00. The remaining 14 cases involving \$153,419.83 were settled or dismissed without trial for a total of \$10,499.00.

The total expense for claims and suits involving the Transit System was \$358,980.91 in 1958. This is 3.76% of the gross revenues of the System for the year.

4. Supreme Court:

There were eight appeals involving the city pending in the Supreme Court, December 31, 1957, and twelve new appeals were filed in 1958. Ten were decided in 1958, the city won five and ten were still pending, including four cases in which we filed *amicus curiae*, to-wit: *City of Tacoma v. Taxpayers*, *A. A. Hull v. Albert Hunt*, *Warner v. Ambrose*, 153 Wash. Dec. 215, and *King County Employees v. State Retirement Board*.

5. Miscellaneous Cases:

Eleven injunction actions were tried — ten won and one lost; four are pending, one of which is in the Supreme Court. Two mandamus

actions were tried — one won and one lost; and three are still pending. Twelve miscellaneous cases were disposed of during the year — nine won by the City, two lost and one settled. One of the nine cases won was a false arrest action brought against the Chief of Police and police officers involving \$110,000. The case settled was *Guy F. Atkinson Co., et al. v. City*, brought in the Federal District Court, claiming extras for work on the Ross Dam powerhouse. The amount claimed was \$1,398,357.46 and was settled for \$271,848.18 with the assistance of special counsel retained by the City to analyze the claims and to defend the suit, in which the agreed judgment was paid from the Light Department Construction Fund.

Six hearings relating to removal of civil service employees were participated in before the Civil Service Commission, in which the removal was sustained in five cases.

Rule 19 of the Rules of Pleading, Practice and Procedure, which provides in part for motions for summary judgment, proved valuable in the cases of *Norma Smith v. City* and *Catherine Content v. City*. Both of these were personal injury cases, plaintiff Smith asked \$17,000 and plaintiff Content \$15,000 damages.

In these cases initial investigation revealed that the allegations of the complaints could not be supported by oral testimony and were insufficient to impose liability on the City. Prior to the adoption of Rule 19 it would have been necessary to prepare for trial and subpoena witnesses to establish the City's defense. Here, the City moved for summary judgment supporting the motion with affidavits of the important witnesses and both cases were dismissed after brief argument. In each case a time-consuming and expensive trial was avoided and yet the ultimate result was the same as if a full trial on oral testimony had been held.

Twenty-two accounts were referred to the Law Department in 1958 and ten actions were commenced for the Lighting Department for unpaid light and power bills and damages to City Light property. By suits and settlements we have collected \$2,083.21, and forwarded the same to the City Treasurer. Two hundred and thirty-nine (239) garnishments were handled during 1958. Two hundred and five (205) were completed without court action; thirty-four were answered by the city and the costs collected were transmitted to the City Treasurer.

Claims for damages to city vehicles and property were forwarded by other Departments to this department for collection. By suits and settlements, we have collected on a number of the claims and forwarded the same to the City Treasurer.

**II.
CLAIMS IN 1958**

	Number	Amount Involved	
Claims for damages, dormant, on file Dec. 31, 1957, and against which the statute of limitations has not run	1868	\$7,376,476.26	
Claims for damages, active, and referred to this depart- ment for investigation Dec. 31, 1957, to Dec. 31, 1958	1406	4,988,010.38	
	No.	Amount Claimed	Amount Paid
Claims disposed of during 1958:			
Settled	895	\$3,227,771.61	\$444,802.40
Rejected	581	2,424,639.42	
	1,476	\$5,652,411.03	
Some of the above settled claims were in suit and settled in con- junction with Claim Agent.			
Amount Involved			\$1,214,275.27
Amount of Settlements			164,113.00
Number of Seattle Transit System accident reports investigated December 31, 1957, to December 31, 1958.....			2,354
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports.....			11,682

**III.
MUNICIPAL (POLICE) COURT**

During the year 1958 the City Prosecutor, Bruce MacDougall, assisted the court in handling a calendar of 16,128 cases involving city offenses other than traffic, in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$143,562.93.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1958 a calendar of 376,058 traffic cases resulted in fines and forfeitures amounting to \$2,063,872.75. Seventeen (17) drivers' licenses were revoked and 3,654 suspended; 778 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

MUNICIPAL COURT APPEALS

An unprecedented number — four hundred and forty-eight (448) — appeals from the Municipal Courts (293 Traffic, 155 Police) were disposed of in 1958, being principally handled by Assistant Corporation Counsel Thomas J. Owens. In one hundred and eighty-eight (188) cases (126 Traffic, 62 Police) convictions or pleas of guilty were entered. In fifty-six (56) cases (46 Traffic, 10 Police) the court and juries found the defendants guilty after trial. In twenty-three (23) cases (13 Traffic, 10 Police) the appellants were acquitted. Forty-eight cases (20 Traffic, 28 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. One hundred thirty-three (133) appeals (88 Traffic, 45 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of \$12,989.60 in fines and forfeitures was collected by this department in connection with these appeals and transmitted to the City Treasurer. Mr. Don Hall was continued on detail by the Chief of Police on a part-time basis to assist by way of service of process, commitments of the defendants, interviewing of witnesses, receiving their statements and keeping detailed records of the appeals. This work is of much value to both the Police and Law Departments.

IV.

OPINIONS

During the year, in addition to innumerable conferences with city officials concerning municipal affairs, of which no formal record is kept, this department rendered 91 written legal opinions on questions submitted by the various departments of the city government.

Also, the City Employees' Retirement System requested opinions on 28 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1958, 423 ordinances, 57 resolutions; and in addition 122 ordinances were prepared for the settlement of 398 claims.

One thousand six hundred ninety-four bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$42,795,583.81.

NOTES ON SEATTLE CASES IN STATE SUPREME COURT, 1958

Capitol Hill Methodist Church v. Seattle and Group Health Coop. of Puget Sound, 152 W.D. 305:

Plaintiffs in this action sought to enjoin the vacation of East John Street between 15th and 16th Avenues North. From a point of substantive law, the court reaffirmed the conclusion that the vacation of city streets is a power which belongs to municipal authorities and a "political function" not to be reviewed by the courts in the absence of "collusion, fraud, or the interference with a vested right," and the court also clarified to some extent that the so-called "private easements" rule, holding that such easements arise only in favor of property abutting on the street area vacated, or property for which the vacated street is necessary for reasonable access.

This appeal was also an important addition to Washington case law on procedure, as the defendant city represented by Assistant Corporation Counsel Charles V. Hoard, and the defendant Group Health by attorney Jack R. Cluck had applied for and obtained a summary judgment in the Superior Court, thereby presenting to the Supreme Court its first opportunity to review Rule of Pleading, Practice and Procedure 19, 34A Wn.(2d) 81, as amended. The court held that as the pleadings raised no "genuine issues of material fact upon which the outcome of the litigation depends," the Superior Court properly granted the defendants' motion for summary judgment.

Keesling v. Seattle, 152 W.D. 205:

This case arose out of the alleged trespass by a Seattle Lighting Department pole on plaintiff's premises for which so-called "nominal" damages were allowed in the sum of One Dollar per day, amounting to \$1,328.45, which was disallowed on the city's appeal. The decision also has importance as a reaffirmation by the court of the rule announced in *International Contracting Co. v. Seattle*, 74 Wash. 662, 134 Pac. 502, that under the Seattle Charter, "the filing of a claim is a condition precedent to maintaining an action where damages do not appear on the face of the contract," where a contract is relied on. The late Glen E. Wilson represented the city in the trial court and wrote the brief on appeal.

M. V. Clarke v. City:

The voluntary dismissal of this appeal by the plaintiff in the latter part of 1958 culminated more than three years of litigation which commenced in 1955 with the case of *DeGrief v. Seattle*, commented on in our report for 1957. As a result, the municipal court of the city is now in operation pursuant to Chap. 290, Laws of 1955.

Hodges v. Lawrence, 51 Wn.(2d) 356:

On appeal from an order of superior court discharging a Writ of Habeas Corpus, the supreme court held that a city jail sentence for conviction of violation of a city ordinance "does not begin to run until a defendant is in custody, and the period during which there is a delay in taking him into custody does not count as service of the sentence."

Nibarger v. City, 153 W.D. 208:

Involved an appeal by the city after judgment based on a jury verdict and arose out of plaintiff's fall on an icy sidewalk subsequent to a heavy and intermittent snow fall.

The supreme court opinion turned on the issues of constructive notice as inferred from a lapse of time during which "a dangerous condition is permitted to continue."

The court held in this connection that "as a matter of law, fifteen hours is insufficient to constitute constructive notice."

On the question of negligence the court concluded:

"From January 16th to January 19th city crews worked clearing snow and sanding streets on a twenty-four hour basis in two twelve-hour shifts, including Saturday and Sunday. They gave their first attention to trouble spots and complaints. The sidewalk in question was not shown to have deserved a priority, in the attention of street crews, by reason of its condition or location. Under these circumstances, as a matter of law, the city was not negligent."

We feel that the *Nibarger* case is a valuable addition to the snow and ice sidewalk case law in this state and presents a rational approach to the city's duty of care under such circumstances. Early in 1959, the city was directed to answer a petition for rehearing filed by the plaintiff — respondent, and such petition for rehearing was denied by the court on March 18, 1959.

O'Brien v. Seattle, 152 W.D. 479:

This action arose out of an accident allegedly caused by the city's failure to remove or cover old, unused street car tracks. The jury had returned a verdict for the city and the trial judge granted plaintiffs' motion for new trial, from which order the city appealed.

The court following its previous decision of *De Young v. Campbell*, 151 W.D. 315, held that the question of the city's negligence under the facts recited was one for the jury even though the street car tracks in question were of standard construction.

The Supreme Court affirmed the order granting a new trial, primarily on the grounds that certain inadvertent remarks by the court's bailiff to and during the course of the jury's deliberation and concerning an instruction of the court might well have been prejudicial to the plaintiffs' cause.

Klise v. Seattle, 153 W.D. 354:

The facts on this appeal involved the sliding during heavy rainfall of property in which a city sewer was located, and the resulting broken sewer caused property damage—not an unusual event or case in this city. The issue of fact in these cases generally is whether the slide in question caused the sewer break or whether excess pressure in the sewer caused the break and the resulting flow of water caused the slide. Practically the solution of the issue is one for expert engineering testimony. Legally the issue is one for the jury and the court so held in the *Klise* case, placing an additional burden of evidence on the city under the doctrine set forth in *Kind v. Seattle*, 50 Wn.(2d) 485, which holds that an inference of negligence of the city's part, arises from the damages occasioned by an instrumentality "under the exclusive control" of the city.

Hatzenbuhler v. City, 49 Wn.(2d) 691:

This appeal involved the permanent injury of a minor arising out of an alleged defect in West Roxbury Street between 11th and 12th Avenues. The city offered evidence that the city limits extended close to the north edge of the paved portion of the street and therefore did not include the entire street area, but the supreme court held that this evidence was immaterial here, as the city's duty to the traveling public in connection with maintenance and repair extends to the full width of the street regardless of the location of the precise line of the city limits, and such duty is "co-extensive with the invitation to the public to use the road or street . . ."

**APPEALS IN WHICH THIS DEPARTMENT APPEARED AS
AMICUS CURIAE**

Hull v. Hunt, 153 W.D. 109:

We submitted an *amicus* brief to the court in this cause at the request of the supreme court as the issues raised on the appeal involved the city's Building Code and Zoning Ordinance.

Two conclusions of law were reached by the city, both of which have important administrative implications, as follows:

1. The Seattle Building Code does not require that an application for a building permit be made by an owner or one otherwise

legally interested in the property to which the application relates.

2. The right to construct a particular building accrues at the time application is made for a building permit, "if a building permit is thereafter issued," and will be governed by the Zoning Ordinance in effect at the time of such application.

King County Employees Association v. State Employees Retirement Board, 153 W.D. 628:

At the request of the City's Retirement Board we filed an *amicus* brief in this cause due to a departmental opinion of the supreme court holding in effect that the annuity table to be applied to an employee under this State Retirement System in computing his annuity upon retirement was the table in effect at the time he entered the system. We expressed concern, as the applicable language in the State Statute (R.C.W. 41.40.190) is almost identical with that appearing in the City Retirement Ordinance (78444 § 14 (a) (1)).

In an *en banc* opinion filed February 27, 1959, the departmental opinion was modified and the court states as follows:

"It is first necessary to determine whether the Retirement Board has the power to adopt new mortality tables from time to time, and to make them applicable to all members who have not retired prior to the effective date of the order adopting the new tables. We believe the answer is in the affirmative."

The importance of the cause was, of course, the actuarial soundness of the city's retirement system and we are indebted to the firm of Coates, Herfurth and England, consulting Actuaries, for their assistance in evaluation of the actuarial questions involved.

Warner v. Ambrose, 153 W.D. 215:

This appeal arose out of an auto collision between two private parties and raised the issue of the effect of a Yield Right of Way sign and the authority of the Traffic Engineer to erect the same. The City Engineer had requested that we watch the case for possible effects on the city's traffic sign installation.

We filed an *amicus* brief on appeal contending in part that the issue of whether the Traffic Engineer, under the direction of the City Engineer and Board of Public Works, had authority to erect the sign in question for the purpose of regulating traffic, was not material, as the signs were at least a *de facto* warning sign and to be obeyed by travelers on the public street.

The court concurred in this contention, holding that "it must be

presumed that such traffic control device was lawfully placed, or chaotic results would ensue."

The court also indicates the effect on the normal right of way rule of a Yield the Right of Way sign as follows:

"The legislature has declared in words that the favored position of the driver approaching from the right in non-arterial intersections does not exist at those intersections where the Yield the Right of Way device is installed."

COMMENTS AND CONCLUSION

The Law Department Budget for 1958 was \$228,110, plus an emergency appropriation of \$5,000 for court costs. The increased volume of trial, advisory and administrative work in 1958 is indicated in the foregoing tabulation and is referred to in the foreword.

The increase in condemnation work has resulted in the assignment of an additional assistant at practically full time to this work and the continually increasing number of appeals from the Municipal Courts—293 Traffic and 155 Police—to the Superior Court in 1958, has necessitated assigning an additional assistant practically full time to this work also, which leaves us short on the advisory side of the legal staff. This, together with the difficulty of replacing specialists whose services were lost in 1957, has, among other things, necessitated the employment of private counsel on an hourly and per diem basis in connection with three matters as follows: Claims of the contractor for extra work on the Ross Dam Powerhouse necessitated several months' intermittent employment of private counsel specializing in contract litigation. Suit was eventually brought by the contractors, *Guy F. Atkinson & Co., et al. v. City*, in the Federal Court for \$1,398,357 but was settled by agreement for \$271,848, payable from the Light Department Funds.

It also became necessary during 1958 to employ private counsel to make the necessary preparations for the hearing before the Federal Power Commission in the city's application for a license for a hydroelectric project at Boundary on the Pend Oreille River, being F.P.C. Project No. 2144.

Also in October, 1958, an application was made on behalf of the city to the International Joint Commission for an order supplementing the Commission's order of 1942 pursuant to the Treaty of 1909 between the United States and Great Britain involving the flooding of certain Crown Lands in British Columbia by a proposed raising of Ross Dam to elevation 1725, on condition that the city pay any damages to the property to be flooded, concerning which the agents of the Province of

British Columbia and the agents of the City of Seattle agreed was the sum of \$255,508 in 1952, and an agreement was prepared accordingly in 1953, which the Province refused to execute. The city was represented by Senator Farris of Farris, Stultz, Bull & Farris of Vancouver, B. C., at the hearing before the I.J.C. at Ottawa, Canada, also attended by Chief Assistant Corporation Counsel A. L. Newbould. Preparations for the hearing before the F.P.C. on the Boundary Project and the hearing before the I.J.C. were both expedited at the request of Mayor Clinton.

The increase in litigation in particular resulted in an increase in the legal stenographic work of the office, which is a specialty, and it became necessary to reorganize such work upon the resignation of an experienced law stenographer—a civil service classification which has been dormant for several years and which should be activated.

It has also become necessary because of the increase in the work load of the Claim Division to request the City Council and the Civil Service Commission to make possible the advancement from the base position of Claim Investigator in the Claim Division, preferably by assignment of experienced employes to the position of Assistant Claim Adjuster, along the lines suggested in the Booz, Hamilton and Allen survey referred to in our 1957 report; and this has now been authorized by the City Council, to the members of which I express my appreciation.

While it has been difficult to adequately fill the appointive positions of Assistant in this department which have been vacated in recent years by retirement and death, particularly on the advisory side of the office, I am glad to advise that the trial work, in particular, assigned to the younger assistants, has been taken care of exceptionally well by them; and I wish to express my appreciation for the capable manner in which the ever increasing volume of work in the department has been so well taken care of by the entire staff, to the members of which I express my thanks.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

The Argus Press



Seattle

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported
and Adopted

Your Committee on Judiciary
to which was referred the within CITY OF SEATTLE LAW DEPARTMENT ANNUAL REPORT, 1958,

would respectfully report that we have considered the same and respectfully recommend that

THE SAME BE PLACED ON FILE.

..... Chairman
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.....
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Paul J. Alexander Chairman
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