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SEATTLE CITY COUNCIL
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CITY OF SEATTLE

LAW DEPARTMENT

1967 Annual Report

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Judiciary and Personnel

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A. L. NEWBOULD
Corporation Counsel

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1967

A. L. NEWBOULD, *Corporation Counsel*

JOHN P. HARRIS, *Chief Assistant Corporation Counsel*

Assistants Corporation Counsel

G. GRANT WILCOX	E. NEAL KING
CHARLES R. NELSON	JORGEN G. BADER
GORDON F. CRANDALL	JAMES M. TAYLOR
ARTHUR T. LANE	J. ROGER NOWELL
THOMAS J. WETZEL	JAMES B. HOWE, JR.
ROBERT M. ELIAS	THOMAS O. MCLAUGHLIN
JAMES G. LEACH	JACK B. REGAN
ROBERT B. JOHNSON	RICHARD H. WETMORE

GEORGE S. MARTIN

Cover Picture: Assistants Corporation Counsel Robert B. Johnson, James G. Leach and Robert M. Elias in Seattle Municipal Court, Department No. 2.

A. L. NEWBOULD

Corporation Counsel

SEATTLE

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

Submitted herewith is the annual report of the Law Department of The City of Seattle for the year ending December 31, 1967, as required by Section 12, Article XXII of the City Charter.

The outstanding achievement for 1967 was again the department's exceptional record in representing the City before the Washington State Supreme Court and other appellate courts. The City's position was upheld in sixteen of the nineteen cases decided by the State Supreme Court, and in the two cases decided by the Court of Appeals, Ninth Circuit, in which the City was a party. These cases are reported in detail elsewhere in the report. The U.S. Supreme Court decided one case, *See v. Seattle*, adversely to the City, ruling that under the Fourth Amendment of the U.S. Constitution, a judicially issued warrant must be secured to conduct a Fire Department safety inspection of premises where the owner or occupier has refused entry for such purpose. However, the Court outlined practical grounds for the issuance of such warrants, and the fire inspection program has continued, with an inspection warrant having thus far been issued in one instance where the owner of certain commercial premises refused entry for such inspection.

Over the past four years the department has devoted considerable time to reviewing existing City legislation and where necessary redrafting or recommending the repeal of outdated ordinances. This project was substantially completed in 1967, with the exception of two major areas — criminal legislation and the License Code. Negotiations were initiated with certain individuals and associations, including the Seattle-King County Bar Association, looking toward the adoption of a program for the updating and revision of the City's criminal legislation.

The cover of this report, which depicts three Assistants Corporation Counsel assigned as City prosecutors of the Municipal Court Departments, serves to focus attention on the department's expanding role in an area of increasing public interest and concern, i.e. the prosecution of those charged with violating municipal ordinances. These prosecutions and the handling of related appeals to the Superior and Supreme Courts continue to require an increasing commitment of Law Department personnel and supervisory time, and this trend will un-

doubtedly continue as the City's population increases and Municipal Court processes continue to reflect the demand for more formalized proceedings and increased attention to the ultimate goal of equal justice for all. Examples of recent and pending changes follow: 1967 brought a change in the manner of charging defendants on complaint. Complaints are now reviewed and signed by an Assistant Corporation Counsel unless the charge is one for drunkenness or a traffic offense. Recommendation has been made to the City Council to dispense with the handling of individuals found intoxicated on public streets through the criminal process, and as the Council has not yet acted on such recommendation, the handling of these individuals continues to consume the time of the police, this office and the Municipal Courts. Tentative inquiries have recently been made, seeking a practical and effective method of providing counsel for indigent Municipal Court defendants. Effective support was given to a bill introduced in the 1967 session of the State Legislature to create a much needed additional department of Municipal Court and said bill was enacted into law. Each of these efforts exemplifies the response being made by this department and others in the critical and rapidly changing field of municipal law enforcement.

The members of my staff during 1967 demonstrated a high level of professional competence and a personal commitment to the successful completion of their respective assignments, for which I express my appreciation.

Respectfully submitted,

A. L. Newbould

A. L. Newbould
Corporation Counsel

April 1, 1968

I.

GENERAL STATEMENT OF LITIGATION

1. Tabulation of Cases:

The following is a general tabulation of suits and other civil proceedings commenced, pending and ended in the Municipal, Justice, Superior, Federal and Appellate courts during the year 1967.

	Pending Dec. 31, 1966	Commenced during Year 1967	Ended during Year 1967	Pending Dec. 31, 1967
Condemnation suits	5	3	3	5
Damages for personal injuries	109	86	89	106
Damages for other than personal injuries	35	31	28	38
Injunction suits	11	7	10	8
Mandamus proceedings	1	5	6	0
Habeas corpus	1	11	12	0
Certiorari writs	5	4	6	3
Miscellaneous proceedings	84	55	75	64
Monorail property damage	22	0	0	22
Street vacation fee refunds	34	1	35	0
Sub-total	307	203	264	246
Appeals from Municipal and Traffic Courts	239	724	779	184
Grand Total	546	927	1043	430

2. Segregation — Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1966	109	$5,026,985.60
Commenced since January 1, 1967	86	4,123,801.87*
Total	195	$9,150,787.47*
Tried and concluded since January 1, 1967	89	3,704,494.51
Actions pending December 31, 1967	106	$5,446,292.96*

Of the 89 personal injury actions concluded in 1967, 13 involving $838,883.20 were won outright. In 10 cases in which $715,580.18 was claimed, plaintiffs recovered $35,232.50. Of the remaining 66 cases in which plaintiffs claimed $2,150,031.13, 14 involving $808,124.98 were covered by insurance and the other 52 cases, involving $1,341,-906.15 were settled or dismissed without trial for a total of $78,257.00.

*Includes 6 cases in which amount of damages is unspecified.

3. Segregation — Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1966	35	$1,021,101.55
Commenced since January 1, 1967	31	292,800.25
Total	66	$1,313,901.80
Tried and concluded since January 1, 1967	28	247,320.01
Pending December 31, 1967	38	$1,066,581.89

Of the 28 cases involving damages other than personal injuries concluded in 1967, 2 involving $101,490.00 were won outright. In 13 cases involving $61,000.73 plaintiffs recovered $18,196.10. Of the remaining 13 cases involving $84,829.28, 11 were settled or dismissed without trial for a total of $19,275.42 and 2 cases were covered by insurance.

The above actions concluded in 1967 involving both personal injuries and damages other than personal injuries are further classified as to department or activity involved as follows:

	Number	Amount Paid
Transit System	48	$ 86,244.31
Engineering Department		
Sidewalk (1 case covered by insurance)	14	16,305.00
Street (2 cases covered by insurance)	9	6,625.80
Miscellaneous (1 case covered by insurance)	12	6,653.70
Park Department	2	200.00
Building Department	1	0.00
Light Department (4 cases covered by insurance)	9	16,009.04
Water Department	3	17,545.42
Fire Department (covered by insurance)	1	0.00
Police Department (5 cases covered by insurance)	13	$ 1,127.75
Seattle Center Department (covered by insurance)	2	0.00
Sewer Utility	3	250.00

4. Appeals and Extraordinary Writs:

At the close of 1966, twenty-two appeals involving the City were pending in the State Supreme Court, two in the United States Court of Appeals, Ninth Circuit, and two in the United States Supreme Court. Forty-two new appeals, one petition for a Writ of Certiorari, one petition for a Writ of Mandamus, and one petition for a Writ of Habeas Corpus were filed in the State Supreme Court in 1967.

The City prevailed in sixteen of the nineteen appeal cases decided by the State Supreme Court in 1967 in which it was a party. The City also prevailed in three additional cases involving petitions to the Supreme Court for Writs of Certiorari, Mandamus, and Habeas Corpus.

In the United States Supreme Court in 1967 one case was decided against the City and the City's position was upheld in the other. Both appeals to the United States Court of Appeals, Ninth Circuit, were decided in favor of the City and in one of these cases an appeal to the United States Supreme Court has been requested.

On December 31, 1967, twenty-three appeals were pending in the State Supreme Court, and one in the United States Supreme Court.

5. Miscellaneous Cases:

Seventy-five miscellaneous cases, including twenty-five collection cases, were completed in King County Superior Court during 1967, of which the City lost 5 and won or otherwise disposed of 70; 64 cases are still pending.

In addition, ten injunctive actions were tried, the City winning 8 and losing 2; 8 actions are pending. Six mandamus actions were tried and won by the City; none are pending. Six writs of certiorari were completed and won by the City during 1967; three others are pending. Twelve habeas corpus writs were processed; none are pending.

Advisory assistance was provided to the Civil Service Commission as requested with regard to several dismissal hearings and certain other matters before the Commission.

Claims for past due accounts, certain costs incurred by the City, and damages to City vehicles and property were forwarded by other departments to this department for collection. By suits and settlement we have collected a number of these claims and forwarded the same to the City Treasurer.

One hundred-eleven garnishments were handled during 1967. Ninety-two were completed without court action; 19 were answered by the City.

II.

CLAIMS IN 1967

The Claim Division of the Law Department investigates all claims filed against the City, and in the event of litigation assists the legal staff pending ultimate disposition of the case. The following tabulation reflects the Claim Division's activities during 1967:

	Number	Amount Involved
Claims on file January 1, 1966	1,515	$57,514,025.50
Claims referred for investigation	1,139	34,257,700.95
Claims closed without payment	476	1,238,889.94
Claims on which suit filed	113	5,438,633.42
Claims paid	462	(asked) — 459,451.47
		(paid) — 131,574.62
Claims on file December 31, 1967	1,603	84,634,751.62
Breakdown of claims paid:		
Seattle Transit System	239	78,746.99
Engineering Department	126	32,890.73
Other Departments	97	19,936.90
	462	$ 131,574.62

The total amount paid on claims and suits involving the Seattle Transit System during 1967 was $164,991.30. The Transit System computed the cost of claims and suits to be 1.46% of the gross revenue for the year.

Payment of $52,827.63 in settlement of 223 claims involving other departments of the City was effectuated by 98 ordinances which were prepared and presented to the City Council by the Claim Division. Following is a tabulation showing in detail the department involved, the fund from which the settlement was appropriated and the amount paid:

DEPARTMENT (Fund)	Number of Claims	Amount Paid
Engineering:		
Sewerage Utility Fund	80	$19,997.34
Garbage Collection & Disposal Fund	1	75.84
LID Surplus Funds	1	968.77
Emergency Fund: (Engineering Department)		
Sidewalk	12	3,907.30
Street	17	1,931.73
Storm Sewer	12	5,947.45
Sewer	1	9.00
Construction	2	53.30
Emergency Fund (Other Departments)		
Park	4	2,760.80
Police	3	84.42
Seattle Center	2	2,680.82
Lighting Department:		
"Other Miscellaneous Expense"	71	8,267.02
Water Department	17	6,143.84
Total	223	$52,827.63

III.
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 50 written legal opinions on close questions of law submitted by the various departments of City government, and involving considerable legal research.

In addition, 13 opinions on L.I.D. bond issues were requested by and rendered to the City Employees' Retirement System.

The following is a chronological resume of the written opinions rendered to the various departments of the City government throughout the year:

INDEX OF 1967 OPINIONS BY NUMBER

5218 Authority of Seattle Center to enter contract guaranteeing purchase of concession equipment.
5219 Payment of retirement allowance to wife in accordance with divorce decree.
5220 No liability for removal of television antennae from park property after notice.
5221 Questions as to Maternal and Infant Care Program.
5222 Public garage licenses do not become "property" of surviving corporation upon merger.
5223 CATV franchise amendments may not impose new burdens without grantee's consent.
5224 Effect of belated collection of civil service examination fee.
5225 Protection of City street tree plantings.
5226 Effect of 1963 Elections Act on term of office of incumbents.
5227 Delivery of food products and raw milk to members of "natural foods" association.
5228 Background music at Seattle Center — payment of fees for use of copyrighted material.
5229 Employees' Retirement and Death Benefit System — right of surviving spouse not a designated beneficiary.
5230 License required by Ordinance 62662 for incidental loan business.
5231 "Good cause" for authorizing taxicab license transfer.
5232 Franchise for construction and maintenance of telephone lines and fixtures within corporate limits.
5233 Additional Municipal Court Department under 1967 Senate Bill 328.
5234 Police pension coverage while on "leave of absence."
5235 Municipal Building parking plaza.
5236 Two-year statute of limitations applicable to delinquent street use permit fees.
5237 Brokerage commissions on liquor sales are not subject to City's business tax. (Ordinance 72630)
5238 Qualifications of applicant for planned unit development permit.
5239 Cabaret license may be required for theatrical performances accompanied by sale of food and refreshments — Amusement license not required of non-profit corporation.
5240 Petitions for enactment of ordinance prohibiting burning or desecration of American flag. (C.F.s 258314, 258303)
5241 Concession contracts not limited as to term and may be let without bids.
5242 Transit Commissioners not covered by Travel Accident Insurance Program at City expense.
5243 Authority of City to advance travel expenses.
5244 Variance appeal under Section 26.25 of Zoning Ordinance must

be supported by evidence.

5245 Rights of City as riparian owner on Bitter Lake.

5246 Effect of repeal of RCW 39.24.010 on Charter 5% preference to Washington manufacturers.

5247 Application of Ch. 139, Laws of 1967, to City contracts for public works.

5248 Application of Ch. 139, Laws of 1967, to City purchases and contracts.

5249 Donation of Transit property to Northwest School for the Retarded.

5250 General rules applicable to lease of Seattle Center facilities.

5251 Control of activities and conduct on Seattle Center grounds.

5252 Teen-age Dance Ordinance not in conflict with State law.

5253 Fees for exclusive private use of unopened and unimproved street areas.

5254 Collective bargaining under Ch. 108, Laws of 1967, Ex. Sess.

5255 East Allison Street from Fuhrman Avenue East to harbor line as a dedicated street area.

5256 Federal manufacturer's excise tax on automobile parts and accessories not deductible from gross proceeds of sales under business tax ordinance.

5257 Six-year statute of limitations applies to retroactive billing for unmetered fire protection service based on written agreement.

5258 Seattle authorized to execute assignments and agreements authorized by Ordinance 96042.

5259 Amendment 18 to the Washington State Constitution restricts the use of gasoline tax funds in aid of rapid transit.

5260 Certain contractual commitments may be accepted and enforced in connection with rezonings.

5261 Community college buildings subject to zoning, building and other regulatory City legislation.

5262 City not required to pay King County Hospital for prisoner emergency hospital and medical care.

5263 City property at 1027 Harbor Avenue S.W. may be sold, leased or exchanged if interests of City require.

5264 Charter amendment required to establish several locations for regular Council meetings — such amendment may be submitted at only general municipal election.

IV.

PROSECUTION OF CRIMINAL ACTIONS

1. Municipal Court — Department No. 1

During the year 1967 Assistant James G. Leach, acting as City Prosecutor, handled a calendar of 17,368 cases other than traffic in

Department No. 1 of the Municipal Court, resulting in the imposition and collection of fines and forfeitures in the amount of $176,609.00.

2. Municipal Court — Department No. 2

In Department No. 2 of the Municipal Court, Assistant Robert M. Elias, acting as City Prosecutor, handled a docket of 34,744 traffic cases for the year 1967 resulting in fines and forfeitures amounting to $551,048.00. Traffic bureau forfeitures for the year amounted to $2,627,438.00 for a total of $3,178,486.00.

3. Municipal Court — Department No. 3

A third department was added to the Municipal Court in September, 1967 and Assistant Robert B. Johnson, acting as City Prosecutor, handled a docket of 4,960 traffic and other cases resulting in fines and forfeitures amounting to $69,748.00.

4. Municipal Court Appeals

779 convictions in the Municipal Courts (508 Traffic, 271 Police) were disposed of on appeal in 1967, as follows: 221 appeals (94 Traffic, 127 Police) were abandoned by the defendants and remanded to the Municipal Courts for enforcement of the original fines and sentences. In 317 cases (249 Traffic, 68 Police) convictions on pleas of guilty were entered. In 148 cases (92 Traffic, 53 Police) the court or jury found the defendants guilty after trial. In 59 cases (50 Traffic, 9 Police) the defendants were acquitted. In 34 cases (20 Traffic, 14 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away or other causes. A total of $43,971.64 in fines and forfeitures and Superior Court costs in the amount of $1,088.50 were collected by this department in connection with these appeals and transmitted to the City Treasurer.

Mr. William B. Anderson was detailed by the Chief of Police on a part-time basis to assist by way of service of process, commitments of defendants, interviewing of witnesses, receiving their statements and keeping detailed records of the appeals. Mr. Anderson's efficient performance of this assignment was of great value to both the Police and Law Departments.

V.
ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1967, 466 ordinances and 64 resolutions; an additional 98 ordinances were prepared for the settlement of 223 claims.

1175 surety bonds totaling in excess of $36 million, and other miscellaneous instruments, were examined and approved.

Legal papers served and filed during 1967, including condemnation

suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 1,812 in all, were handled by Process Server Forest A. Roe.

U.S. SUPREME COURT CASES — 1967

See v. Seattle, 18 L.ed 2d 943.

In this case, the U.S. Supreme Court reversed the conviction of Mr. See for violation of the Seattle Fire Code for refusing to admit a fire inspector into his locked warehouse for the purpose of conducting a fire inspection. The *See* opinion follows the companion case of *Camara v. Municipal Court of San Francisco,* 18 L.ed 2d 930, in which the court held that the Fourth Amendment to the United States Constitution bars prosecution of a person who refused to permit an ordinance enforcement inspection of his place of habitation without a judicially issued warrant, and overruled the case of *Frank v. Maryland,* 359 U.S. 360 (1959) to the extent in conflict. The *See* decision, which extends this new rule of law to inspections of commercial premises, is summarized in the following language:

> "We therefore conclude that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure."

If the owner refuses entry for inspection purposes, the court indicated that a warrant authorizing such entry may be obtained from a judicial officer upon a showing of "probable cause." On the question of facts which must be presented to support "probable cause" the court in *Camara* states that:

> " * * * it is obvious that 'probable cause' to issue a warrant to inspect must exist if reasonable legislative and administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based on the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling."

Subsequent to these decisions, Fire Department personnel were refused entry to certain commercial premises in which they sought to conduct a routine fire inspection as part of their program for the annual inspection of all commercial premises in the City. Application was then made to Seattle Municipal Court, Department No. 1, for issuance of a warrant authorizing an inspection of the premises "for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire." Said fire inspection warrant was issued by the court on November

9, 1967, after a hearing at which the property owner in question appeared in person and by counsel.

This case was argued in the U.S. Supreme Court by Corporation Counsel A. L. Newbould.

Nave v. City, 17 L.ed 2d 513.

Appellant in this case was arrested December 20, 1961 and charged with two ordinance violations, i.e., driving straight ahead in a lane reserved for right turning vehicles and resisting arrest. The State Supreme Court in 1963 reversed appellant's conviction of said violations and ordered the complaint against him dismissed (*Seattle v. Nave,* 62 Wn.2d 446).

On December 6, 1963 appellant filed a claim for damages against the City in connection with his 1961 arrest and later commenced a civil action against the City seeking recovery of damages in the amount of $3,355,200, alleging that he had been falsely arrested and imprisoned.

The Superior Court granted the City's motion to dismiss this action on the grounds that a claim had not been filed with the City within the time required by statute and the State Supreme Court affirmed this ruling *(Nave v. Seattle,* 68 Wn.2d 72).

Mr. Nave then appealed to the U.S. Supreme Court which granted the City's motion to dismiss, stating in a *per curiam* opinion that "the appeal is dismissed for want of a substantial federal question." Appellant's petition for rehearing was denied *(Nave v. Seattle,* 17 L.ed 2d 803).

This case was tried and argued by Assistant Charles R. Nelson.

U.S. Court of Appeals, Ninth Circuit — 1967

City v. Public Utility District No. 1 of Pend Oreille County, 382 F.2d 666.

Although the construction of the Boundary Dam was completed in 1967, litigation concerning the acquisition of the site was still in the process of being resolved. Public Utility District No. 1 of Pend Oreille County had authorized the City to enter upon the site for construction purposes but reserved the right to litigate the matter of compensation due it by reason of the City's need to acquire certain shorelands and the adjoining uplands owned by the P.U.D., including those which provided natural abutments for the dam. The condemnation action had been heard in 1964 before the United States District Court for the Eastern District of Washington, Northern Division, which decided that the City was not required to pay power-site values for the acquisition of such property and accordingly rejected all of the P.U.D.'s evidence which was based upon this theory of valuation on the grounds that it necessarily assumed the acquisition of an FPC license for which the P.U.D. had been an unsuccessful competitor. The court adopted the

City's comparable sales approach to land valuation and fixed the value of the shorelands at $14,569.00 and that of the uplands at $1,430,000.

The P.U.D. appealed the court's valuation ruling to the U.S. Court of Appeals, Ninth Circuit, and the City cross-appealed, contending that no value should be assigned to the shorelands or to the power site value of the condemned uplands on the grounds that since the United States would not have been required to make such compensation then neither should the City as its licensee.

The Circuit Court ruled against the City on its cross appeal but in its favor on the valuation issue, holding that the District Court had not erred in striking the P.U.D.'s evidence of power site value. The P.U.D. is now seeking a review of said decision by the U.S. Supreme Court.

Notaras v. Ramon, 383 F.2d 403.

Appellant in this case was arrested without a warrant at about 10:00 P.M. on January 20, 1964 by Seattle police officers who had probable cause to suspect that he had committed grand larceny. He was held in City jail until about 10:00 A.M., January 22, 1964, a period of about 36 hours, while detectives investigated the suspected larceny. On the morning of the 22nd the detectives concluded that there was insufficient evidence to charge appellant with having committed the larceny and he was charged with two ordinance violations of which he was ultimately acquitted (drunkenness and resisting arrest) and was released on his own recognizance.

Subsequently appellant brought a civil damage action in U.S. District Court for the Western District of Washington, Northern Division, against Chief of Police Ramon and other police officers, alleging that by virtue of such detention without charge or possibility of bail they had violated his civil rights under the federal civil rights act (42 U.S.C. § 1983). This civil action was tried in District Court and at the conclusion of the trial the court dismissed the action and ruled that appellant's detention from the time of his arrest until the filing of the misdemeanor charges was for a period no longer than reasonably necessary for a prompt and expeditious investigation of appellant's participation or lack of participation in the larceny.

An appeal was taken from this decision to the U.S. Court of Appeals for the Ninth Circuit which affirmed the judgment of dismissal on the grounds that " it is a defense to an action for damages against police officers under 42 U.S.C. § 1983 that the officers reasonably and in good faith believed that their conduct was lawful," and that a determination that the officers in the instant case had so acted was "implicit in the district court's findings."

This case was tried and argued by Assistant Charles R. Nelson.

Puget Sound Alumni of Kappa Sigma, Inc., et al., and Northwest Steel Rolling Mills, Inc. v. City, 70 W.D.2d 218.

The King County Superior Court ruled in the above consolidated actions that the plaintiffs were entitled to recover from the City, with interest, payments which had been previously made by them in connection with the vacation of certain City streets; that the City was permanently enjoined from charging "any street vacation fee other than a $100 filing fee"; but that plaintiffs were not entitled to recover on the theory of a class action on behalf of all persons not parties to the suit who had made such payments since April 1, 1960.

Both the City and plaintiffs appealed from portions of this judgment, and the State Supreme Court, in an *en banc* decision filed January 12, 1967, with two judges dissenting, allowed plaintiffs' recovery of said street vacation payments, with interest, but held that the Superior Court had correctly dismissed plaintiffs' attempt to recover on behalf of all other persons making such payments and that, since the class action was not allowed, the injunction entered by the Superior Court could not be sustained, and therefore vacated the same.

The court stated that "Neither the state statutes nor the city charter" authorized imposition of such charges, and that the City had required "the payments in question without the enactment of an ordinance as required by its city charter for the exercise of legislative authority."

Subsequent to the above decision a bill (Senate Bill 419) amending RCW 35.79.030 to authorize such payments was introduced during the Extraordinary Session of the Fortieth Legislature and was enacted as Chapter 129, Laws of Washington 1967, Extraordinary Session. Said Chapter 129, which became effective July 30, 1967 provides in part that the ordinance vacating a street or alley "may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated."

The imposition of such charges by The City of Seattle pursuant to said statute was then authorized by Ordinance 96020 approved by the Mayor on August 9, 1967.

This case was tried and argued by Assistant John P. Harris and former Assistant William L. Parker.

City v. Drew, 70 W.D.2d 383.

The sole issue presented in this case was the constitutionality of Section 29 of Seattle Ordinance 16046 which provided that:

"It shall be unlawful for any person wandering or loitering

abroad, or abroad under other suspicious circumstances, from one-half hour after sunset to one-half hour before sunrise, to fail to give a satisfactory account of himself upon demand of any police officer."

The respondent was convicted in Municipal Court of violating said ordinance and on appeal the Superior Court granted his motion to dismiss the complaint on the grounds that the ordinance was unconstitutionally vague.

The Supreme Court affirmed the judgment of dismissal, holding that the phrases (1) "wandering or loitering abroad," (2) "abroad under other suspicious circumstances," and (3) "a satisfactory account of himself," were impermissibly vague, and that under the ordinance a citizen would not be able to know the dividing line between innocent loitering and criminal loitering.

The court further held that "the right of a law enforcement officer to inquire of persons wandering abroad at night is limited to those persons whose *conduct* gives the officer reason for alarm that they are engaged in unlawful activity."

The court in its opinion set forth the loitering or prowling provision of the Model Penal Code, Proposed Official Draft § 250.6 of the American Law Institute, as containing "the best considered comment laying down certain guidelines." A loitering ordinance based on the Model Penal Code draft was subsequently prepared and was enacted by the City Council (Ordinance 95876) as an amendment of said Section 29 of Ordinance 16046. A challenge to the constitutionality of Ordinance 95876 was rejected by the Seattle Municipal Court, Department No. 1, in the case of *City v. Fairbrother and Wagner*, which is separately reported herein.

This case was tried by former Assistant Richard C. Nelson and argued by former Assistant Denny E. Anderson.

State ex rel. Devonshire v. Superior Court, 70 W.D.2d 606.

In this case the Supreme Court upheld an Adjudication of Public Use entered by the King County Superior Court authorizing the condemnation of permanent rights for an existing monorail system. The Monorail had been erected for the 1962 World's Fair and was continued under a temporary street use permit; it occupied an aerial easement over the property at 5th Avenue North and Denny Way under certain temporary lease agreements. The lessors and owners of that property contested the adjudication, claiming the condemnation was beyond the powers of the City, not supported by substantial evidence showing a public use and necessity, and was precluded by terms of the lease for a temporary aerial easement. The Superior Court ruled that the legislature, by RCW 35.60 and RCW 35.22.305, as well as RCW 35.22.280(6) and RCW 8.12.030, envisioned not only that The City of

Seattle "could and probably would acquire the existing monorail system as an adjunct to the Century 21 Exposition grounds, but also that the City would be vested with the power to purchase or condemn, if required, such private easements or property as were appurtenant to the continued maintenance, operation, and control of the system in conjunction with the civic center." Evidence of the public necessity was established by these facts:

> "... as many as 50,000 persons have visited the Center during the course of one day. Many of the visitors utilized the monorail system in traveling to and from the Center, the evidence revealing that more than a million passengers were transported on the Monorail System during the eight-month period from May thru December 1965. The evidence further demonstrates that but for the Monorail System, the vehicular traffic congestion engendered by the volume of visitors would be extreme and virtually unmanageable."

Finally, the court held that the power to condemn a permanent easement could not be restricted by a provision in the lease agreement. The cause was thereupon remanded to Superior Court for trial to ascertain the damages, if any, resulting to abutting properties by reason of the installation and operation of the Monorail.

This case was tried and argued by Assistants G. Grant Wilcox and Jorgen G. Bader.

City v. Jackson, 70 W.D.2d 708.

Appellant in this case was charged in Seattle Municipal Court with "willfully and unlawfully causing a loud and disturbing noise" at certain premises. Upon conviction he appealed to the Superior Court where the case was tried *de novo* with a jury and was again convicted.

On appeal to the State Supreme Court appellant contended that the criminal complaint in question had been signed by an unauthorized person contrary to the provisions of J. Crim. R. 2.01, RCW Vol. 0 and that the Municipal Court therefore had no jurisdiction to proceed with the case. However, the appellant had entered a plea on the complaint and proceeded to trial and the Supreme Court held that appellant had thereby waived his right to challenge the sufficiency of the complaint, that the defect was not fatal to the validity of the proceedings and that it had not been shown that a substantial right of the appellant had been prejudiced by the defect in the complaint.

It was also urged on appeal that appellant was denied his constitutional right of trial by a fair and impartial jury. This argument was based upon an affidavit of one of the jurors suggesting in general terms that the verdict resulted from racial prejudice on the part of certain unidentified members of the jury.

The court observed that upon *voir dire* examination there was no evidence of racial prejudice and that the affidavit did not contain specific factual allegations indicating any racial bias in general or against the appellant in particular. Appellant's conviction and sentence was affirmed.

The case was tried and argued by former Assistant Denny E. Anderson.

Romerein v. Erlandson, 70 W.D.2d 904.

Subsequent to the passage and approval of Ordinance 93643 which vacated 8th Avenue between James and Jefferson Streets on the petition of the Seattle Housing Authority, appellant in this case sought to refer said ordinance to a vote of the people. 14,312 signatures were required in order to invoke the referendum, and on March 25, 1965, the 29th day after approval of the ordinance by the Mayor, 12,086 signatures were filed with the City Comptroller. On March 26, 1965, the 30th day after approval, 4,147 additional signatures were filed, but were not verified in accordance with our opinion to the Comptroller dated March 31, 1965, that such additional signatures were not timely filed since they had not been filed before the day fixed for the taking effect of the ordinance as required by Charter Article IV, Section 1J, which was the thirtieth day after approval by the Mayor, i.e., March 26, 1965.

The appellant's action to require the Comptroller to verify the additional signatures was dismissed by the King County Superior Court and on appeal the State Supreme Court affirmed this ruling, and in its opinion stated in part as follows:

> "The referendum procedure requires that the petitions must be filed *before* the ordinance takes effect. Those petitions tendered after March 25 were not timely filed. The 30-day provision means that a petitioner has up to but not including 30 days in which to file his petition before the ordinance goes into effect."

This case was tried by former Assistant William L. Parker and argued by Assistant John P. Harris.

King County v. City, 70 W.D.2d 957.

In this action King County contended that the City was indebted to it in the amount of $4,037 for the hospital care at Harborview Hospital of its prisoners who were unable to pay therefor and who did not qualify for public assistance. The trial court sustained the City's defense that there is no statutory duty on the part of the City to pay for the medical services furnished such persons and denied liability.

The County appealed from this ruling to the State Supreme Court which affirmed said ruling, holding that "the legislative mandate to the county maintaining a county hospital is clear as to (1) the patients

it is to receive and (2) who is to pay for the care furnished," and that there is no requirement, either by statute or court rule that the City "do anything more, when the 'jail physician' orders hospitalization of a prisoner, than to deliver him to an institution where such services are provided."

This case was tried and argued by former Assistant John A. Hackett.

City v. Stone, 71 W.D.2d 96.

The appellant in this case was convicted upon a retrial in King County Superior Court of nine counts of overtime parking. Appellant's previous conviction upon the same charges had been reversed and a new trial awarded *(City v. Stone*, 67 Wn.2d 886) on the ground that a portion of the Seattle ordinance regulating overtime parking (§21.66.-.180 of Ordinance 91910) was unconstitutional insofar as it purported to make the owner of a vehicle responsible for a parking violation regardless of whether he had actually parked the car, the court stating that § 21.66.180 establishes "only a *prima facie* responsibility upon the registered owner, which he has the right to rebut, if he can."

In considering the appeal taken from the retrial, the Supreme Court stated that the Superior Court's findings on said retrial revealed "that appellant was the owner and operator of the overparked automobile; that he had received nine traffic tickets which had been attached to said automobile; that he had not been present when the automobile had been tagged; that he had disregarded such tickets and thereafter had been arrested" and further that appellant "made no effort to rebut the *prima facie* case thus made."

In a *per curiam* opinion, the State Supreme Court affirmed the conviction, holding that appellant had offered "no question of merit not raised on the prior appeal and decided adversely to him."

This case was tried and argued by former Assistant Woodford B. Baldwin.

City v. Schaffer, 71 W.D.2d 588.

In this case the appellant was convicted in Municipal Court and subsequently in Superior Court in a trial *de novo* without a jury of three violations of Seattle Ordinance 64599 governing the manufacture, import and transport, possession, distribution, use or sale of liquor. Appellant did not testify or present any evidence at the trial.

On appeal it was contended that the Superior Court erred "in holding that its verdict was sustained by the evidence" and in holding that "a mere statutory presumption is sufficient to sustain a finding of guilty as opposed to merely a *prima facie* case."

With respect to the first assignment of error the Supreme Court held that since error had not been assigned to the Superior Court's findings of fact they would be accepted as the established facts of the case and

that they "established appellant's guilt — beyond a reasonable doubt." The second assignment of error was not considered by the court as it was not supported by argument in appellant's brief.

Although error was not assigned to this specific point the court observed that appellant had argued that the judgment and sentence imposed by the Municipal Court was in excess of its jurisdiction. In disposing of this contention the Supreme Court noted that upon trial *de novo* in the Superior Court, the Superior Court has complete jurisdiction without reference to any alleged irregularities which may have occurred in the lower court.

The case was tried and argued by former Assistant Denny E. Anderson.

State ex. rel. Duvall v. The City Council, 71 W.D.2d 450.

The Supreme Court of the State of Washington on June 15, 1967 rendered its *en banc* decision in the above case relating to the route selection for the R. H. Thomson Expressway in the vicinity of the Arboretum.

Mr. Duvall and several other property owners affected by the selection of Route B, which had been recommended by the City Engineer after hearings conducted before the City Council in May and June 1966, appealed to the Superior Court from the adoption by Ordinance 94320 of findings made by the City Council designating said Route B along the westerly edge of the Arboretum as the route for the R. H. Thomson Expressway between Aloha and Calhoun Streets.

Following the May and June hearings but before findings could be adopted by ordinance, Chapter 75, Laws of 1965 Extraordinary Session became effective, in some respects altering RCW Ch. 43.52, the statute under which said limited access highway hearings are held. The new enactment contained no clause specifically preserving pending proceedings and Mr. Duvall urged before the court that the City's authority to proceed had been revoked by the 1965 legislation and that the City was required to give new notice, hold new hearings and otherwise proceed from the beginning under the new enactment.

On appellant's motion for summary judgment the King County Superior Court remanded the proceedings to the City Council. The trial court did not review the Council record of the proceedings or consider on the merits the findings adopted by Ordinance 94320.

In an opinion reversing the trial court the Supreme Court agreed with the City's position that the 1965 state legislation in question was an amendment of RCW Ch. 43.52 and did not summarily nullify proceedings prior to its effective date. Specifically, the Supreme Court ordered that:

"The summary judgment is set aside and the cause remanded to

King County Superior Court with instructions to proceed to a consideration on the merits of the issues raised in the respondent's writ of review . . . "

Thereafter, in a hearing on the merits the Honorable F. A. Walterskirchen of the King County Superior Court found in favor of the City on each of the property owners' contentions, which were as follows:

1. The ordinance adopting Route "B" and seven of the findings made in support of that route are unsupported by material and substantial evidence and are arbitrary and capricious;
2. In computing the cost of the respective routes the City Council erroneously used the "substitution theory of value" to appraise the Arboretum lands;
3. Selection of Route "B" over Modified Route "S" was arbitrary and capricious;
4. The notice of the May 25, 1965 hearing was inadequate.

On January 12, 1968 a notice of appeal to the State Supreme Court from Judge Walterskirchen's decision was received.

This case was was tried and argued by Assistants G. Grant Wilcox and Jorgen G. Bader.

Lone Star Cement Corporation v. City, 71 W.D.2d 553.

This case involved an interpretation of the second paragraph of Section 6 of the Seattle Business Tax Ordinance 72630. Section 6 allows "persons maintaining an office, plant, warehouse or other business establishment which is partly within and partly outside of the city . . . " to apportion gross receipts to ascertain the gross proceeds of sale of the business attributable to business activity within the City. Citing Section 6, Lone Star Cement sought to exclude from the business tax the receipts of products sold at its Concrete, Washington plant for delivery to points outside Seattle. The City resisted, since the billings and collections for those sales were processed through Lone Star's state headquarters and only sales office which is located in Seattle. The City asserted that Paragraph 2 of Section 6, drafted in the singular, applied only to the unique situation of a building physically astride the City's boundary, and that Lone Star's Seattle activity comprised a necessary and decisive factor in the completion of its Concrete sales transactions.

Upon review the Supreme Court upheld Lone Star Cement's position. The court held that Section 6 was not restricted to buildings bisected by the City boundary and that the business activities of Lone Star's Seattle office were not decisive factors in establishing or holding the market for products sold at Concrete, Washington for delivery to places outside the City of Seattle.

This case was tried by former Assistant Jerry F. King and argued

by Assistant Jorgen G. Bader.

Mercy v. Seattle and Housing Authority of Seattle, 71 W.D.2d 545.

In this case the Housing Authority applied for and the City by Ordinance 93537 granted an exception from the off-street parking requirements of the Zoning Code for a proposed 300-unit apartment house for disabled or retired elderly persons of low income known as Jefferson Terrace. Appellant, a property owner in the vicinity, sought an injunction to prevent such action by the City Council and contended that, rather than granting the requested exception by ordinance, it was necessary for the City to follow the procedural steps outlined in the Zoning Code for variances, including referral to and action by the Board of Adjustment. The City relied upon express authority in the Housing Cooperation Law to grant such exceptions and the King County Superior Court ruled in favor of the City and the Housing Authority, denying the requested injunctive relief.

The Supreme Court affirmed the Superior Court ruling, holding that the City Council has the power "under the pertinent provisions of the Housing Cooperation Law (Laws of 1939, Ch. 24, §§ 4 and 7, RCW 35.83.030 and 35.83.060, above quoted), to directly except or exempt by appropriate resolution, or ordinance, the housing authority from off-street parking requirements of the Seattle Zoning Code."

This case was tried and argued by Assistant Gordon F. Crandall.

City v. Muldrew, 71 W.D.2d 887.

The appellant in this case was charged in Seattle Municipal Court with the offense of willfully agreeing to commit an act of prostitution. Upon her conviction she appealed to the Superior Court where she was again convicted after a *de novo* trial. Upon appeal to the Supreme Court she urged that the Superior Court erred in refusing to accept her defense of entrapment.

The evidence which appellant alleged constituted entrapment was a statement of a police officer asking how much it would cost for the action. The evidence indicated that following this question the appellant advised that the sum would be twenty dollars. The officer obtained a hotel room, paid appellant, and placed her under arrest after she had partially disrobed.

In affirming the conviction the court reiterated its recognition of the defense of entrapment but held that in order to be successfully invoked the criminal design must originate in the mind of the police officer and not with the accused. The court further observed that the accused must be lured or induced to commit a crime she had not intended to commit, that if the criminal intent originates in the mind of the accused an officer may, when acting in good faith, make use of deception, and that the testimony demonstrated that the officer did no

more than afford appellant an opportunity to commit the crime.

In an appeal predicated upon "substantially the same facts" in the case of *City v. Muldrew*, 72 W.D.2d 557, the Supreme Court in a *per curiam* opinion affirmed the conviction and adhered to its previous holding without elaboration.

These cases were tried and argued by former Assistants Denny E. Anderson and Thomas O. McLaughlin.

Donald A. Dahl v. J. D. Braman, et al., 71 W.D.2d 707.

In this case a taxpayer instituted an action against the Mayor and City Council and members of the Seattle Transit Commission to obtain a judgment declaring that Article XXIII of the City Charter establishing the City Transit Commission was null and void as being in violation of the State Constitution and RCW 35.92.060. The taxpayer alleged that under RCW 35.92.060 only the Mayor and City Council acting as the legislative authority are authorized to operate the City's transportation system. He thus contended that state law conflicted with, and overrode City Charter Article XXIII which authorized such operation by an appointive transit commission. The Superior Court rejected such contention and on appeal the Supreme Court affirmed, holding that there is no such conflict between Charter Article XXIII and RCW 35.92.060 and that said Charter article is not unconstitutional.

The case was tried and argued by Assistant Arthur T. Lane.

Oden v. Seattle, 72 W.D.2d 221.

In this case the appellant, a watermain contractor, alleged that the City was liable to him under the following facts: Appellant installed a watermain for Pee Wee Investment, Inc., a land development company, on an oral contract calling for payment of $2,256. Pee Wee did not pay for the work, however, and appellant was unable to collect the debt or foreclose a lien on the property. Later, after Pee Wee gave the City its bill of sale for the watermain which was connected to the City's water system, appellant sued the City on the theory that it had taken his property without paying compensation.

The Superior Court ruled in favor of the City and the Supreme Court affirmed its determination that the pipe had become fixtures and a part of the realty and stated that appellant had expected his payment from "either Pee Wee or its mortgagees and never from the City" and that "there is no basis, in law or in equity, whereby this became a responsibility or liability of the City."

This case was tried and argued by Assistant Gordon F. Crandall.

City v. Wright, 72 W.D.2d 546.

The appellant in this case was convicted in Municipal Traffic Court

and in Superior Court after a trial *de novo* of driving an automobile while under the influence of intoxicating liquors and negligent driving after being involved in an accident on a roadway which had all the appearances of being a public street, but which in fact was owned by the Union Pacific Railroad. On appeal appellant contended that the City's Traffic Code had no application to private property and hence his conviction could not stand. The Supreme Court rejected this contention and affirmed the conviction. The court stated that "When the public is invited to use property, privately or publicly owned, a city of the first class may enact regulations governing the public use thereof which relates to public safety or health" and held that since the roadway in question was commonly and customarily used by the public with the consent of the owners thereof, it was subject to the provisions of the Traffic Code (Ordinance 91910) in accordance with the definition of "Way open to the public" contained in that ordinance.

The court further held that "the questioned ordinance does not conflict with, nor is it repugnant to any existing state traffic regulation."

This case was tried and argued by Assistant J. Roger Nowell.

City v. Jones, 72 W.D.2d 557.

This case involved an appeal to the Supreme Court from appellant's conviction of agreeing to commit an act of prostitution.

Appellant contended that there was insufficient evidence of such an agreement to support the Superior Court's verdict. Without reciting the facts the Supreme Court in a *per curiam* opinion affirmed the conviction and stated that appellant's arguments had been reviewed carefully and found to be without merit.

This case was tried by former Assistant Denny E. Anderson and argued by former Assistant Thomas O. McLaughlin.

City v. Rhodes, 72 W.D.2d 690.

After being convicted in Seattle Municipal Court and in Superior Court upon a trial *de novo*, of the charge of aiding and abetting in the illegal sale of intoxicating liquor, appellant contended on appeal to the State Supreme Court that the evidence was insufficient to sustain the verdict of the jury and the sentence of the court.

A State Liquor Board Inspector, testifying on behalf of the City, stated that upon request appellant had sold him a bottle of whisky. Appellant's testimony was that he, the City's witness, and a third person had each contributed toward the purchase of the bottle of whisky from a fourth person and that he was not a seller but one of the purchasers.

In affirming the conviction the Supreme Court stated that where there is a conflict in the testimony it is the function of the jury to resolve that conflict and that it was evident that the jury had believed

the prosecution's witnesses.

The case was tried by former Assistant Woodford B. Baldwin and argued by former Assistant Thomas O. McLaughlin.

City v. Hill, 72 W.D.2d 778.

This case involved a 62-year-old, chronic, addictive alcoholic from the City's "skid road" area who had been arrested 98 times for public drunkenness since 1946. Following his 99th arrest on May 4, 1966, when appellant was found sprawled on a public sidewalk in downtown Seattle, the American Civil Liberties Union undertook the defense of appellant and argued in the Seattle Municipal Court, King County Superior Court and State Supreme Court proceedings that it was unconstitutional to criminally convict and punish a chronic alcoholic for being drunk in a public place. The thrust of the argument was that appellant was suffering from a disease (alcoholism) and that to convict and punish criminally such an individual simply for exhibiting publicly a "symptom" of his disease violates the cruel and unusual punishment clause of the Eighth Amendment to the Federal Constitution as well as a similar provision in Article 1, Section 14 of the State Constitution.

The State Supreme Court rejected the appellant's contention, upheld the City's ordinance forbidding drunkenness in public and, in affirming the conviction, stated in part that:

> "Laws forbidding drunkenness in public bear a manifest relationship reasonably connected to the public peace, health, safety, morals and welfare, and thus fall within the city's police power to enact and enforce them."

The court further said that appellant's "arguments that there are better ways to handle alcoholics than methods now employed by the City are undoubtedly sound, but should be addressed to the legislative and executive branches of government where the money is raised, appropriated and allocated, personnel engaged and facilities established to carry out the rehabilitative policies."

This case was tried and argued by Assistant J. Roger Nowell.

NOTEWORTHY SUPERIOR COURT AND MUNICIPAL COURT PROCEEDING IN 1967

The following cases were prepared and tried by Assistant Gordon F. Crandall:

Northwest Cablevision, Inc. v. City.

In this case plaintiff, owner of an existing CATV franchise, contended that the City's action in granting three new CATV franchises was void in view of the concluding sentence of Article IV, Section 16 of the City Charter of Seattle, which provides as follows:

"The city council shall not consider or grant any application for extension of the period of any franchise, *nor any new franchise covering all or any substantial part of the rights or privileges of any existing franchise,* until within three years of the expiration of the existing grant, and then only after submission to and approval by a majority vote of the qualified electors."

On May 26, 1967 the City's motion to dismiss the action was granted, the court accepting the argument of the City that the language quoted referred only to existing franchises and did not prevent the granting of new, competing franchises. Plaintiff appealed the ruling to the State Supreme Court.

Edwards, et al. v. City Council of Seattle.

In this case it was alleged that the City Council was about to hold a public hearing on an urban renewal plan for the Yesler-Atlantic Neighborhood Improvement Project as provided in RCW 35.81.060, but that it had not promulgated special rules of procedure for urban renewal hearings, and that it was bound to do so under the State Administrative Procedure Act (RCW 34.04). Plaintiff asked that the City Council be enjoined from holding the hearing until such rules were prescribed. The Honorable George H. Revelle denied a motion for a temporary restraining order and the public hearing was held as scheduled. The case is still pending, although the issues are essentially moot.

The following case was prepared and tried by Assistant James M. Taylor:

City v. Hayes.

In 1955 defendant Hayes applied for and received a permit to maintain a sunken barge at the foot of 5th Avenue N.E., on the north shore of Lake Union. When he was unable to furnish a bond in connection with such permit the City accepted in lieu thereof a written agreement under which defendant guaranteed removal of the barge upon the expiration of such permit. When, in 1962 the permit was cancelled and defendant failed to remove the barge as agreed, the City undertook the necessary work of removal and upon defendant's refusal to pay the costs of removal, brought an action to recover such costs.

It was defendant's contention at trial that the subject agreement was obtained by duress and that in any event 5th Avenue Northeast although platted in 1907, had never been opened or formally accepted by the City and was therefore not a public street subject to regulation by the City.

Granting judgment for $3,501.89 in favor of the City, the Honorable Story Birdseye held that the street known as 5th Avenue Northeast

had been dedicated as a public street by the platting of such street and no formal approval or acceptance was required by the City and that there had been no duress to invalidate defendant's agreement.

The following cases were prepared and tried by Assistant John P. Harris:

E. M. Greenwood v. City.

The plaintiff in the above case alleged that the City was indebted to him in the amount of $241,578.97 by reason of "representations and agreements" by the Mayor and City Council that he would be "reimbursed and compensated" for his loss and expenses sustained in connection with the termination of certain contracts, at the request of the City, relating to the improvement of his property at 4th Avenue and James Street.

The Honorable Story Birdseye granted the City's motion for summary judgment of dismissal of said case on the grounds that a timely claim covering the alleged damages had not been filed with the City Comptroller and further that plaintiff's allegations could not support an action for constitutional taking or damaging for which a claim would not have been required. The case is now pending on appeal.

Redman, et al. v. City. et al.

A temporary injunction had been entered in the above case preventing the City from issuing a license to hold a "Bull Fighting Exhibition in the Seattle Center Coliseum." At the trial of said action on the merits the Honorable William J. Wilkins ruled that the injunction would be made permanent on the grounds that such an exhibition would constitute a violation of the state law prohibiting the "chasing" or "worrying" of animals and would be a public nuisance, but that a "bull exhibition" could be held if it had the prior approval of the King County Humane Society.

The following cases were prepared and tried by Assistants Thomas J. Wetzel and James B. Howe, Jr.

Remington v. Miller and City.

This was a sidewalk fall case which resulted in a verdict in favor of both the defendant City and the abutting owner. The accident occurred when the plaintiff tripped over a rose bush which was in the street right of way but outside the paved sidewalk area. Although the issue of contributory negligence was involved, it was also urged that the City is not responsible for accidents to pedestrians occurring in street area being used by an abutting owner for such purposes.

Clake v. City & Corporation of the Catholic Archbishop of Seattle.

In this case the plaintiff, while walking to her car, tripped and fell in a hole or break in the curb. Co-defendant made three separate

motions for summary judgment of dismissal and was finally dismissed from the case. The primary thrust of the City's defense in this case was that curbs are not designed, constructed or maintained as walkways, and that the City therefore had no duty to anticipate that plaintiff would be using the curb in this location as a walkway. With proof in the record of $2400 in special damages, the jury awarded a verdict of $2500.

Mamlock v. City and Koenig.

Plaintiff in this case while traveling on an arterial collided with the vehicle driven by co-defendant Koenig who was attempting to enter the arterial. The City was joined as a defendant on the grounds that a stop sign at the intersection had been missing for more than a year. Based on the testimony of co-defendant Koenig on deposition, it was urged that the missing stop sign was not a proximate cause of the plaintiff's injuries and the jury returned a verdict in favor of the City and against co-defendant Koenig.

The following cases were prepared and tried by Assistant J. Roger Nowell:

Sontag v. City.

Plaintiff in this case was an elderly lady who sued the City for damages which resulted when she tripped and fell on a public sidewalk. Plaintiff alleged that the City was negligent in its maintenance of the sidewalk; specifically, she alleged that the walk was not reasonably safe for pedestrian use because there was a ½-inch rise or offset running horizontally across the walk of which the City had knowledge.

During the trial of this case the court granted the City's request that the jury be taken out to the scene of the accident to view in person the alleged defect. It was urged that the ½-inch difference in elevation was inconsequential and simply too slight to constitute negligence in the maintenance of the sidewalk. The jury returned a unanimous verdict in favor of the City.

City v. Fairbrother and Wagner.

On July 14, 1967 the City enacted Ordinance 95876 making it unlawful to loiter or prowl under circumstances manifesting an unlawful purpose or warranting alarm for the safety of persons or property. The ordinance included as an example of such circumstances the failure to identify oneself upon request of a peace officer and as a condition to any arrest under the ordinance, peace officers were required to afford a suspect an opportunity to so identify himself whenever practicable.

Soon after its adoption, the Seattle "loitering" ordinance was attacked as unconstitutional in Department No. 1 of the Seattle Municipal Court in the consolidated cases of *City v. David L. Fair-*

brother and David M. Wagner. Fairbrother and Wagner had been arrested at 1:30 A.M. in the vicinity of an attempted burglary after both had refused to identify themselves to investigating police officers and were charged with violating the loitering ordinance. At a hearing held prior to trial of the charges against them defendants challenged the constitutionality of said ordinance on the following grounds :

1. The ordinance was unconstitutionally vague and indefinite.
2. The ordinance violated the privilege against self-incrimination.
3. The ordinance unconstitutionally shifted the burden of proof to the defendants.
4. The ordinance unconstitutionally impaired an individual's right to travel.

Municipal Judge James A. Noe resolved all four contentions against the defendants and upheld the validity of Ordinance 95876. On the issue of vagueness he ruled that police power legislation need only be subject to a reasonable degree of certainty, not precision, and that the words "loiter" or "prowl" when read in context with the rest of the ordinance were "sufficiently clear so that men of reasonable understanding" would not have to guess as to their meaning.

With respect to the self-incrimination argument the court held that the ordinance did not compel an accused to incriminate himself, but merely required that he be afforded an opportunity to dispel any suspicion before an arrest could be made.

As for the argument that the ordinance shifts the burden of proof to an accused, the court noted that no authority had been cited to support this contention and, in fact, the language of the ordinance was similar to the state burglary statute which has never been ruled unconstitutional by the State Supreme Court.

Finally, in rejecting the argument that the ordinance impaired an individual's right to travel, the court ruled that such right is not absolute and has historically been subject to reasonable regulation, as exemplified by the Federal prohibition against transporting women across state lines for immoral purposes.

At the subsequent trial on the factual issue of defendants' guilt or innocence, the court acquitted defendants, holding that under the evidence there was a reasonable doubt that they were prowling or loitering as charged.

STAFF CHANGES

Retirements

MOYNE C. ROBB:

On August 1, 1967, Assistant Claim Agent Moyne C. Robb retired after more than thirty years of outstanding public service in the Claim

Division of the Law Department.

Mr. Robb, who had had considerable prior experience in the casualty insurance field, was appointed to the position of Claim Adjuster in the Claim Division on January 1, 1937, and thereafter advanced to the position of Assistant Claim Agent, which he held for the past thirteen years.

Throughout his career with the City, Mr. Robb was noted for his sound judgment in evaluating claims, his courteous and efficient treatment of claimants, and for the consistent excellence and accuracy with which he carried out all of his assignments. He was held in high personal regard over the years by his associates in the Law Department and other City departments.

Resignations:

Assistants Denny E. Anderson, Woodford B. Baldwin, Thomas O. McLaughlin, and Robert G. Wallace resigned during the year to enter private practice. Mr. Baldwin first joined the staff as a law clerk while still in law school during the summer of 1964 and then returned after graduation and admission to the Bar in 1965. Since that time Mr. Baldwin had been primarily assigned to the trial of Municipal Court appeals in King County Superior Court and to the initiation of complaints in Department No. 1 of the Municipal Court. Mr. Anderson, who joined the staff in 1965, and Mr. McLaughlin, who started in 1964 and returned in 1967 following army service, were also principally assigned to the trial of Municipal Court appeals. Mr. Wallace who joined the staff in 1966 likewise handled such appeals as a primary assignment and also reviewed and processed Municipal Court complaints. In representing the City in the prosecution of Municipal Court appeals in King County Superior Court these men all combined outstanding personal demeanor with a high degree of professional competence and earned the respect of all those with whom they came in contact.

Mrs. Elsie McGrath, Secretary II, also resigned in 1967 after twenty years of dedicated service in the Law Department.

Appointments and Promotions:

There were six additions to the staff in 1967: Assistants Robert B. Johnson, formerly engaged in private practice in Snoqualmie, Washington; George S. Martin; Richard H. Wetmore, former Assistant U.S. Attorney in Fairbanks, Alaska; Jack B. Regan, former Deputy Prosecuting Attorney and Municipal Judge *pro tem;* William L. Johnson, Claim Adjuster I, formerly with the Transit System; and Kathleen L. Meegan, Secretary I, formerly with the Park Department.

CSS 20.14

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported and Adopted APR 29 1968

Your Committee on JUDICIARY AND PERSONNEL

to which was referred the within Report
would respectfully report that we have considered the same and respectfully recommend that

THE SAME BE PLACED ON FILE

..... Chairman

..... J&P Chairman