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CITY OF SEATTLE LAW DEPARTMENT

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APR 20 1970 *On File*

1969 ANNUAL REPORT

SEATTLE CITY COUNCIL
APR 1 10 55 AM '70



A. L. NEWBOULD, CORPORATION COUNSEL

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported
and Adopted

Your Committee on JUDICIARY AND PERSONNEL

APR 20 1970

to which was referred THE WITHIN CITY OF SEATTLE LAW DEPARTMENT 1969 ANNUAL REPORT

WOULD RESPECTFULLY REPORT THAT WE HAVE CONSIDERED THE SAME AND RESPECTFULLY RECOMMEND THAT THE SAME BE PLACED ON FILE.

Janette Williams
J & P
Chairman

Chairman

CONTINUED

CONTINUED

CITY OF SEATTLE
LAW DEPARTMENT
ANNUAL REPORT

1969

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A. L. NEWBOULD

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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, 1969, as required by Section 12, Article XXII of the City Charter.

The measure of a department's accomplishments can never be adequately reflected in statistical material or case summaries such as contained in the report that follows and this is perhaps especially true of the Law Department this past year. 1969 was a year of change and transition for the Executive and Legislative Departments of the City and a year that saw the creation of Departments of Human Rights, Community Development, and General Services, as well as a parking Commission. In addition, 1969 saw the commencement of the ambitious and imaginative Seattle Model City Program and the continuation of other federally-assisted programs such as the Urban Renewal and Open Space programs. In this year of change and transition, of new departments, new programs and difficulties that accompany a growing city, the Law Department personnel actively participated by providing experienced imaginative legal guidance. As always, the exciting challenge, in addition to resolving current legal issues, has been the early identification of emerging problems and advice to the City's officers concerning appropriate procedures so as to provide the soundest possible legal base for the implementation of future programs and policies.

The volume and complexity of the opinions prepared and the legislation drafted by the Law Department in 1969 reflect the above general comments. The department rendered 63 written opinions during 1969, an increase of 18 over 1968, and prepared 736 ordinances and resolutions, 142 more than in 1968.

A substantial increase over the preceding year was also experienced in the prosecution of ordinance violations, which is a rapidly expanding area of responsibility for the department. 6,000 additional cases were handled in the three departments of Seattle Municipal Court, and on appeal to King County Superior Court 352 more Municipal Court convictions were disposed of than in 1968. Night court sessions were started in Department #3 of the Seattle Municipal Court in 1968 and these sessions, which were continued in 1969, are now held on alternate Wednesdays. In addition, Saturday morning sessions were commenced in 1969 in Department #1 of the Municipal Court. A total of seven Assistants are now assigned to the prosecution of ordinance violation cases in Municipal Court, King County Superior Court, the Court of Appeals, and the Supreme Court, and in addition three special Assistants, two of whom were formerly Assistants in this department,

have been retained for the purpose of handling the Saturday morning sessions in Municipal Court. I am considering the assignment of an Assistant who is well-qualified and experienced in the supervision of all aspects of criminal litigation to direct this expanding phase of our departmental activity.

The proposal of the Seattle-King County Bar Association for the establishment of a Municipal Criminal Law Revision Commission to produce a modern criminal code for The City of Seattle, authorized by Ordinance 96511, was presented to the Mayor on September 3, 1969. This is an excellent and forward-looking proposal and I wish to express my appreciation to the Bar Association and the University of Washington Law School for their considerable efforts in producing this most difficult first step in the preparation of a modern criminal code. Unfortunately the City Council has not as yet been requested to authorize implementation of this proposal and it is hoped such a request will soon be made so that this important project can be carried out without further delay.

There were localized instances of civil disorder on several occasions during the year which resulted in a large number of arrests within a short period of time. On these occasions the persons arrested were quickly and efficiently processed by the Police Department and, where appropriate, released by the Seattle Municipal Court on bond or on their personal recognizance. This successful experience was the result of careful planning and preparation by the Police Department, the Municipal Court, the Seattle-King County Bar Association as well as this department, and it is anticipated that in the event of large-scale disorder, persons arrested will be processed with due regard for the protection of their constitutional rights and the efficient administration of justice.

I wish to express my appreciation to the Executive Department for submitting and the City Council for approving a salary schedule for the Law Department which will allow us to remain competitive in the all-important area of recruiting and retaining qualified professional personnel. I also wish to acknowledge and express our appreciation for the fine cooperation we have received from the other departments of City government during the past year in connection with litigation, as well as advisory and other matters handled by this department. And finally I wish to thank my Assistants, the Claim Division personnel and the the secretarial staff for the professional skill, enthusiasm, and dedication which they have devoted to the performance of their assigned tasks.

Respectfully submitted



A. L. NEWBOULD
Corporation Counsel

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 1969.

	Pending Dec. 31, 1968	Commenced during Year 1969	Ended during Year 1969	Pending Dec. 31, 1969
Condemnation suits	5	9	2	12
Damages for personal injuries	96	75	63	108
Damages for other than personal injuries	29	36	28	37
Injunction suits	9	15	9	15
Mandamus proceedings	0	7	2	5
Habeas Corpus	2	11	10	3
Certiorari Writs	4	6	4	6
Miscellaneous proceedings	75	70	50	95
Sub-total	220	229	168	281
Appeals from Municipal and Traffic Courts	324	910	810	461
Grand Total	544	1139	978	742

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1968	96	\$4,780,803.45
Commenced since January 1, 1969	75	3,006,242.09
Total	171	\$7,787,045.54
Tried and concluded since January 1, 1969	63	1,704,238.82
Actions pending December 31, 1969	108	\$6,082,806.72*

* Includes 7 cases in which amount of damages is unspecified.

Of the 63 personal injury actions concluded in 1969, 4 involving \$139,037.45 were won outright. In 2 cases in which \$290,000.00 was claimed, plaintiffs recovered \$38,475.00. Of the remaining 57 cases in which plaintiffs claimed \$1,275,201.37, 7 involving \$100,800 were covered by insurance and the other 50 cases, involving \$1,174,401.37 were settled or dismissed without trial for a total of \$98,225.00.

3. Segregation—Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1968	29	\$ 457,613.13
Commenced since January 1, 1969	36	1,579,724.78
Total	65	\$2,037,337.91
Tried and concluded since January 1, 1969	28	110,384.98
Pending December 31, 1969	37	\$1,926,952.93*

* Includes 2 cases in which amount of damages is unspecified.

Of the 28 cases involving damages other than personal injuries concluded in 1969, 9 involving \$1,345.31 were won outright. In 4 cases involving \$2,286.81 plaintiffs recovered \$1,476.93. The remaining 15 cases involving \$106,752.86 were settled or dismissed without trial for a total of \$3,925.58.

The above actions concluded in 1969 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	36	\$74,026.86
Engineering Department		
Sidewalk (1 case covered by insurance)	8	18,600.00
Street (2 cases covered by insurance)	14	19,475.00
Miscellaneous	8	1,247.56
Park Department	2	1,750.00
Light Department	5	3,295.56
Fire Department (1 case covered by insurance)	3	70.60
Police Department		
(2 cases covered by insurance)	7	22,926.45
Sewer Utility	5	1,061.25
Health Department		
(1 case covered by insurance)	1	0
Garbage Utility	1	0
Water Department	1	150.00

4. Appeals and Extraordinary Writs:

At the close of 1968, 19 appeals involving the City were pending in the State Supreme Court, one was pending in the United States Supreme Court, and one in the United States Circuit Court of Appeals.

In 1969, eight new appeals were filed in the State Supreme Court, and two appeals filed in the Court of Appeals. One appeal was transferred from the State Supreme Court to the Court of Appeals and one case in which the City prevailed in the State Supreme Court was appealed to the United States Supreme Court.

The City prevailed in six of the nine cases involving the City in which the State Supreme Court rendered a decision in 1969 and three cases were remanded to Superior Court for a new trial. In addition, appeals in three cases in which the City had prevailed in lower court were dismissed; one for want of prosecution, and two by agreement of the parties. The City also prevailed in one appeal before the United States Supreme Court, the one appeal before the United States Court of Appeals, and the single case in which the State Court of Appeals rendered a decision.

On December 31, 1969, 14 appeals were pending in the State Supreme Court, one in the United States Supreme Court, and two in the State Court of Appeals.

5. Miscellaneous Cases:

Fifty miscellaneous cases were completed in King County Superior Court during 1969, of which the City lost four and won or otherwise disposed of 46; 95 cases are still pending.

In addition, nine injunctive actions were tried and won by the City; 15 actions are pending. Two mandamus actions were tried and won by the City; five are pending. Four writs of certiorari were completed and won during 1969; six others are pending. Ten habeas corpus writs were processed; three are pending.

6. Antitrust Damage Actions:

Two new cases alleging damages arising out of violations of federal antitrust statutes were commenced, involving liquid asphalt and water meters. Three cases, involving steel and concrete pipe, chlor-alkali products and brass mill tube and pipe products, were concluded by settlements. One case involving children's library books is still pending.

II.

CLAIMS IN 1969

The Claims 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 1969:

	Number	Amount Involved
On file January 1, 1969.....	1,875	\$16,212,051.96
Referred for investigation.....	1,200	15,899,132.59
Closed without payment.....	480	6,054,474.98
Suits filed.....	137	3,809,153.27
Claims paid.....	722 (Asked)	352,317.89
		(Paid) 182,535.95
On file December 31, 1969.....	1,736	\$21,895,238.41

Payment of \$182,535.95 in settlement of 722 claims involving the various departments of the City was effectuated by 122 ordinances which were prepared and presented to the City Council or through the Transit System. Following is a tabulation showing in detail the department involved, the fund from which the settlement was appropriated and the amount paid:

	Number of Claims	Amount Paid
DEPARTMENT (Fund)		
Seattle Transit System*.....	277	\$ 75,079.99
Engineering:		
Sewerage Utility Fund.....	57	13,371.68
Emergency Fund (Engineering Dept.)		
Sewerage Utility (Reimbursable).....	155	44,037.86

Storm Sewer.....	23	10,225.78
Sidewalk.....	14	3,566.75
Construction.....	4	797.95
Construction (Reimbursable).....	4	2,539.70
Sanitary Sewer.....	3	1,772.82
Street.....	28	1,594.07
Traffic.....	3	660.03
Emergency Fund (Other Depts.)		
Police.....	28	1,243.39
Seattle Center.....	3	820.62
Park.....	4	159.58
Lighting Department.....	84	17,839.23
Water Department.....	35	8,826.50
Total.....	<u>722</u>	<u>\$182,535.95</u>

*The Transit System computed the cost of claims and suits to be 1.55% of the gross revenue of the system for the year.

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

In addition, 9 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 1969 OPINIONS BY NUMBER

- 5310 Authority of Department of Parks & Recreation to participate financially in Neighborhood House recreation program.
- 5311 Widow of fireman killed while employed in other than Fire Department duties entitled to pension benefits under RCW 41.18.080.
- 5312 Licensing and regulation of door-to-door salesmen.
- 5313 Use of proceeds of fire protection facility General Obligation Bonds to construct waterfront fire station on alternate site.
- 5314 Appeal from Board of Adjustment to City Council necessary as Board now constituted.
- 5315 State Urban Renewal Law will permit City to undertake Neighborhood Development Program subject to certain limitations.
- 5316 President of City Council serving as Acting Mayor may ballot to fill vacancy in elective office.

- 5317 Washington State Highway permits should be worded to eliminate any inconsistency between the terms of such permits and of existing agreements with State.
- 5318 Special zoning restrictions for waterfront property construction.
- 5319 Unlawful discrimination may be cause for revocation or suspension of city license.
- 5320 Restoration of service credit of former City employee pursuant to RCW 41.04.090 cannot be effected without authorizing ordinance.
- 5321 Conditions upon which variance from Minimum Housing Code can be authorized on appeal.
- 5322 Jurisdiction of City Council to hold hearings on shift changes in Police Department.
- 5323 Bid specification for patented article or process "or approved equal."
- 5324 Claim of earlier re-employment date under veteran's preference and payment of back salary barred by 3-year statute of limitations.
- 5325 Agreement for use of old Fire Station No. 23 as multi-purpose neighborhood facility.
- 5326 State safety standards apply to "spider staging" used in washing Municipal Building windows.
- 5327 Revocation of licenses and nuisance abatement—narcotics violations.
- 5328 Twenty-five years of police department service required for retirement under RCW 41.20.050.
- 5329 Partial appeals from Board of Adjustment unauthorized.
- 5330 Proposed limitation of Railway use of franchise right of way.
- 5331 Effect of Substitute House Bills No. 33 and 42 on authority of City to license, inspect and regulate sale of meat and poultry.
- 5332 City may not grant permit or lease to abutting owner or lessee for exclusive use of street area for parking purposes.
- 5333 Use of proceeds of fire protection facility General Obligation Bonds to rehabilitate fire station in lieu of construction of new facility.
- 5334 City may not permit the construction of buildings in South Washington Street.
- 5335 Duty of Chief of Police to issue license to carry concealed weapon in accordance with RCW Chapter 9.41.
- 5336 City may not reimburse police officer for damage to personal vehicle incurred while on duty.
- 5337 Meaning of terms "elector," "resident," "citizen," "taxpayer," as qualifications for elective city office.
- 5338 Improvements on land acquired by City may be disposed of without bid.
- 5339 Duty of telephone utility to underground facilities and conform to revised street pattern in Urban Renewal Project area.

- 5340 Certain pinball machines are unlawful gambling devices.
- 5341 Vacation of South Washington Street, C.F. 262552.
- 5342 Review of opinion re granting permit or lease for exclusive use of street area.
- 5343 City Firemen's Pension Fund entitled to portion of tax on fire insurance premiums under RCW 41.16.050.
- 5344 City without authority to adopt criminal or other regulations relating to handling and delivery of the U.S. mails.
- 5345 Administratrix of estate of deceased employee not entitled to death benefit and contributions of deceased employee where former wife was named as beneficiary prior to divorce from deceased.
- 5346 Encroachment of certain structures on park property and alley.
- 5347 Railroads obligation to maintain certain bridges.
- 5348 Effect of Ch. 71, Laws of 1969, Ex. Sess. on Heating Equipment Dealers license.
- 5349 Legislation required to grant non-active duty pension service credit.
- 5350 RCW 41.20.085—Police widow's pension conditioned on five years of marriage prior to officer's retirement.
- 5351 Employee's spouse at date of retirement entitled to Retirement System survivor's annuity.
- 5352 Ch. 236, Laws of 1969, Ex. Sess. (Eminent domain relocation).
- 5353 Statutes of limitations have no effect upon time for making election under Chapter 291 § 1, Ex. Session, Laws of 1969.
- 5354 Application of Tommy L. Huff for Detective Agency license.
- 5355 Municipal police power extends to fraud in misrepresenting zoning.
- 5356 Preemption of municipal taxation of "insurers or their agents" by Laws of 1969, Ex. Session, Ch. 241, § 9 does not bar taxation of insurance brokers or solicitors.
- 5357 All offices in the City service except those designated by or pursuant to Charter Art. XVI § 11 are in the classified civil service.
- 5358 Effect of Ch. 193, Laws of 1969 (Ex. Sess.)—Contracts for securities deposits.
- 5359 Insurance coverage for firemen assigned to "Mobile Coronary Care Unit."
- 5360 Validity of taxing different categories of businesses under the City's business tax at differing rates.
- 5361 RCW 35.43.130—L.I.D. "plans and assessment maps."
- 5362 Proposed cooperation ordinance for Operation Breakthrough.
- 5363 Business Tax Ordinance cannot be amended to provide for revocation of business license upon conviction of fraud in the conduct of a business.
- 5364 City may regulate feeding of pestiferous birds.

- 5365 Taxicab permit transfer conditional on sale of taxicab business of owner or operator.
- 5366 Fluoridation of Seattle's water supply.
- 5367 Rights of abutting owners to use unimproved street areas.
- 5368 Application of Ordinance 62662, § 5(g) to "the business of operating or conducting a burglary and police alarm system for hire."
- 5369 No statutory authority for police pension fund contributions by councilman on leave of absence from Police Department.
- 5370 City Councilman on unpaid leave of absence from Police Department eligible for membership in City Employees' Retirement System.
- 5371 Suits for injuries against Monorail train operators.
- 5372 Proposed contract of insurance covering false arrest, etc.

IV.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1969, this department prepared 652 ordinances and 84 resolutions; and an additional 122 ordinances were prepared for the settlement of 722 claims.

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.

109 garnishments were handled during 1969. 68 were completed without court action; 59 were answered by the City and the costs collected were transmitted to the City Treasurer.

1,956 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$25 million were examined and approved.

Legal papers served and filed during 1969, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 1534 in all, were handled by Process Server Forest A. Roe.

V.

PROSECUTION OF CRIMINAL ACTIONS

1. Municipal Court—Department No. 1

During the year 1969 Assistant Jack B. Regan, acting as City Prosecutor, handled a calendar of 16,585 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 \$167,408.50.

2. Municipal Court—Department No. 2

Assistant Robert M. Elias handled a docket of 26,202 traffic cases for the year 1969 resulting in fines and forfeitures amounting to \$328,931.34. Traffic Bureau forfeitures for the year amounted to \$2,666,462.50, for a total of \$2,995,393.84.

3. Municipal Court—Department No. 3

Assistant Robert B. Johnson handled a docket of 28,294 traffic and other cases for the year 1969 resulting in fines and forfeitures amounting to \$287,190.50.

4. Municipal Court Appeals

Appeals from 810 convictions in the Municipal Courts (344 Traffic, 466 Police) were disposed of in King County Superior Court in 1969, as follows: 249 appeals (80 Traffic, 169 Police) were abandoned by the defendants and remanded to the Municipal Courts for enforcement of the original fines and sentences. In 248 cases (142 Traffic, 106 Police) convictions on pleas of guilty were entered. In 157 cases (68 Traffic, 89 Police) the court or jury found the defendants guilty after trial. In 43 cases (25 Traffic, 18 Police) the defendants were acquitted. In 44 cases (11 Traffic, 33 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes. A total of \$30,275.34 in fines and forfeitures and Superior Court costs in the amount of \$871.10 were collected by this department in connection with these appeals and transmitted to the City Treasurer.

Mr. William B. Anderson was again 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.

STATE SUPREME COURT CASES—1969

Seattle v. Evans, 75 W.D. 2d 234.

On two separate occasions appellant was convicted of prostitution in Seattle Municipal Court. Both convictions were appealed to the Superior Court and after trial *de novo* appellant was again convicted by the judge sitting without a jury. The two cases were consolidated on appeal to the State Supreme Court.

Appellant's contention that she had been "entrapped" on both occasions was held by the Supreme Court to be "untenable for the reason that the trial court in each case specifically found that the defendant was not lured or enticed to agree to commit the crime" and since appellant did not assign error to such findings "they become the established facts of the case."

The Supreme Court nevertheless examined the record and found nothing in either case to indicate that appellant was "entrapped," and held that "the evidence shows that the defendant in both instances, simply took advantage of opportunities afforded by the officers to commit the offenses she intended to commit."

This case was tried and argued by Assistant Richard H. Wetmore.

Farrell, et al. v. Seattle, 75 W.D.2d 554.

In this case the trial court had held that residential zoning on the southwest quadrant of the intersection of North 46th Street and Fremont Avenue North was arbitrary and capricious and that plaintiffs' petition to rezone the property for business purposes should have been granted. The City appealed, and the Supreme Court reversed the trial court's judgment. In its opinion, the Supreme Court said:

"The extension of the existing business zone requested by respondents was in effect in encroachment into a residentially zoned area and the desirability of such action was a reasonably debatable matter when considered with respect to the entire area. The planning commission, after hearing and considering all of the testimony, exhibits and arguments both for and against, decided the question adversely to respondents and the city council adopted that decision. When there is room for an honest difference of opinion as to the desirability of rezoning a particular property, the action of the zoning body when exercised honestly and with due consideration, cannot be characterized as arbitrary or capricious. *Bishop v. Town of Houghton*, *supra*; *Lillions v. Gibbs*, 47 Wn.2d 629, 289 P.2d 203 (1955)."

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

Hendrix v. Seattle, 76 W.D.2d 144

This case involved an 18-year-old indigent charged in Seattle Municipal Court with two separate violations of Section 1 of Ordinance 16046 (disorderly conduct). Prior to trial the Municipal Court judge advised defendant of his right to counsel and offered him time and opportunity to obtain counsel, but denied defendant's request for court-appointed counsel, and defendant was not represented by counsel at the trial. Upon conviction defendant filed notice of appeal to the Superior Court and separately petitioned the Superior Court for a writ of certiorari to review the Municipal Court's refusal to supply him with counsel. The Superior Court on review sustained defendant's contention that he had a constitutional right to appointment of counsel without cost, and remanded the cause to the Municipal Court with directions to supply counsel to the defendant at public expense.

The City appealed to the State Supreme Court contending that prosecutions in municipal court are for "petty" offenses to which the constitutional right of court appointed counsel does not apply. The State Supreme Court sustained the City's contention, holding that although everyone accused of crime has a right to counsel, he does not have a constitutional right to counsel at public expense when charged with an ordinance violation in municipal court, noting that whether counsel shall be supplied in such cases is left to "the legislative and not the judicial branches of government."

On February 27, 1970 the United States Supreme Court denied a request that it review said decision. This case was prepared by former Assistants Denny Anderson, H. Joseph Coleman, and M. Wayne Blair, and was argued by Corporation Counsel A. L. Newbould.

Seattle v. Gerry, 76 W.D.2d 857

Appellant was charged in Seattle Municipal Court with failing to stop for a red traffic control signal and failing to stop and identify himself at the scene of an accident in which he was involved. Upon conviction he appealed to the Superior Court where the case was tried *de novo* without a jury and defendant was again convicted.

On appeal to the State Supreme Court appellant contended that incriminating statements made by him should have been excluded for the reasons that (1) although he had been advised of his constitutional rights, he did not understand them, and should have been allowed to testify about his limited educational and environmental background; and (2) that such incriminating statements were "the product of a legally privileged communication" since appellant's possible connection with the accident was first realized while he was making a report of the accident as required by state law (RCW 46.52.030) and Seattle Ordinance 91910, and that both the governing statute (RCW 46.52.080) and said ordinance provide that "No such accident report or copy thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident."

The Supreme Court reversed appellant's conviction on the ground that appellant should have been allowed to testify as to his lack of understanding, stating that "One's understanding is best explained by him whose subjective is involved, not by someone else."

In anticipation of a possible retrial, the Supreme Court stated that neither the accident report nor any of its details were before the trial court and its privileged nature was in no way violated; and that such report therefore had no bearing on the admissibility of appellant's confession.

This case was tried by former Assistant Denny Anderson and argued by former Assistant H. Joseph Coleman.

Rainier Avenue Corp. v. Seattle, 76 W.D.2d 967

In this case the plaintiff attempted to assert title to a portion of vacated Edmunds Place (Ordinance 86469) and a portion of vacated Rainier Avenue (Ordinance 33601) on the strength of a deed vesting in him all remaining right, title and interest of Frank D. Black and his wife, dedicators of that Plat of Columbia Supplemental No. 1, in which plat Columbia Park was also dedicated. The plaintiff contended that because the property abutting the vacated street areas was dedicated for Columbia Park and was never sold to private parties title to the vacated street area, when freed of the public easement for travel by the vacations, reverted to the dedicators of the Plat or their successors, not to the abutting owners, which, in this instance, would have been The City of Seattle as trustee for the public of Columbia Park.

The case was dismissed by the trial court at the conclusion of the plaintiff's presentation upon a challenge by the City to the sufficiency of the plaintiff's evidence. Plaintiff appealed and the case was reversed and sent back to Superior Court for a new trial on the grounds that the evidence, viewed in its most favorable light, established a prima facie case for plaintiff and that additional evidence was required in order to reach the merits of the City's arguments.

This case was tried and argued by Assistant G. Grant Wilcox.

Vallet v. Seattle, et al., 77 W.D.2d 11

Plaintiff, now deceased, was an Inspector in the Police Department, who at the time of his retirement indicated that he desired a "pension at one-half my salary as Inspector." Such pension was granted to him on January 6, 1965. In 1966 plaintiff claimed his pension should have been increased in accordance with the "escalator" formula contained in RCW 41.20.050. The City rejected this contention on the basis that plaintiff's retirement was based upon Laws of 1915, Ch. 40, § 2, which granted a *fixed* pension at one half pay regardless of rank, whereas the RCW 41.20.050 "escalator" formula limited pensions to "one-half the salary of captain." Plaintiff sued and the King County Superior Court held that he was entitled to the escalator formula contained in RCW 41.20.050, but without the limitation as to rank.

The Supreme Court reversed, and held that plaintiff should not have been retired under the provisions of the 1915 law, but should have been retired under what appeared to the court to be the more favorable provisions of RCW 41.20.050. The court then rejected the trial court's position that plaintiff was entitled to the "escalator" formula under RCW 41.20.050 without limitations as to rank, and instead, held that he was subject to the limitation, stating that the language of its past decisions "does not contemplate a situation whereby a pensioner is entitled to select the best parts of several pension acts relating to him."

This case was tried and argued by Assistant E. Neal King.

Apostle, et al. v. Seattle, 77 W.D.2d 57

The second, and hopefully the final appeal in the above case, involving the City's "University Addition-Northlake" urban renewal project, was decided in 1969. This case was commenced by a group of property owners seeking to have the court declare the City Council's determination of "blight" arbitrary and capricious. The first appeal, which remanded the case to the City Council for more specific findings, is reported in 70 Wn.2d 59 (1966).

On the second appeal, the State Supreme Court reversed the trial court's judgment enjoining further proceedings under the project, and directed that the complaint be dismissed. The elements of the decision were as follows:

(1) The trial court may not overrule the City Council's determination of blight merely because it believes the area is not blighted, and its province is only to determine whether the factual determination of blight is supported by sufficient evidence to prevent the City Council's determination from being arbitrary and capricious.

(2) The failure of Seattle's municipal authorities to enforce its Building, Fire and Health Codes in the area was no justification or excuse for the failure of property owners to comply therewith. The Supreme Court also recognized that it was common knowledge that the property would be taken in the near future for use by the University, and that this would naturally remove any incentive to make substantial private improvements.

(3) The motives of The City of Seattle and the University of Washington in desiring to qualify for federal aid through this particular urban renewal project were not an issue in this case as the property involved was, in fact, a "blighted area."

(4) A hearing on the issue of blight in an urban renewal proceeding is *legislative* in nature, rather than *judicial*, and therefore not subject to the stringent substantive and procedural safeguards that apply to a judicial hearing. By the same token the absence of procedural guidelines for the hearing on the issue of blight in an urban renewal proceeding does not constitute any failure of due process. An urban renewal hearing to determine whether an area is blighted does not affect any particular property, and no property can be taken thereafter except by voluntary sale through negotiation or by condemnation. Any property owner who believes that his property is being taken in violation of due process of law can have the question litigated in the condemnation proceeding.

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

Union Enterprise, Inc., et al. v. Seattle, 77 W.D.2d 191

Plaintiffs in this case were owners-lessors of a vessel-restaurant called "Surfside-9" which was moored at the south end of Lake Union. Electric service to such vessel was disconnected at a time when plaintiffs' lessees were \$417.33 in arrears in the payment of their electric bill. Since the vessel's bilge pumps had been operated by electricity, by the next morning it had sunk to the bottom of the lake, with an alleged loss to plaintiffs of \$194,713.

In upholding the trial court's entry of Summary Judgment in favor of the City, the Supreme Court held that the City's exercise of its statutory and ordinance authority to disconnect for non-payment of electric bills was proper and not "unconscionable," and that the tenants' assertions of prior willingness and ability to pay the bill were insufficient to preclude exercise of such statutory rights. The Court also held that the vessel's owners must in such connection bear the consequences of the tenants' delinquency.

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

STATE COURT OF APPEALS—1969

Seattle v. Cisel, 1 Wn.App. 236

After driving through an intersection, appellant was stopped and given a citation on a Washington Uniform Traffic Complaint on which were checked boxes indicating that she had "Failed to Stop" for a "Traffic Signal." Appellant was subsequently charged in Seattle Municipal Court with violating § 21.12.060 of the Traffic Code (failing to stop for red traffic signal). Upon conviction she appealed to the Superior Court where the case was tried *de novo* without a jury and was again convicted.

On appeal to the Court of Appeals appellant contended that the complaint was ambiguous in that it failed to specify whether the traffic signal for which she had failed to stop was red (a violation of Traffic Code § 21.12.060) or yellow (a violation of Traffic Code § 21.12.040). The Court held that there could be no doubt as to the constitutional sufficiency of the complaint; that six weeks before trial in Municipal Court appellant received a warrant setting out the exact ordinances which she was charged with violating; and that at the trial *de novo* in Superior Court "it was apparent that appellant had been totally free from any doubt as to the charge placed against her even prior to the trial in municipal court." The Court concluded that there was substantial evidence to support the finding that appellant failed to stop for a red light and affirmed the conviction. A petition for review was denied by the State Supreme Court.

The case was tried by Assistant Jack B. Regan and argued by Assistant Richard H. Wetmore.

BOUNDARY HYDROELECTRIC PROJECT LITIGATION

Pend Oreille Public Utility District No. 1 v. City of Seattle

The year 1969 saw the settlement of many years of litigation and dispute between the City and Pend Oreille Public Utility District No. 1 concerning the power sales contract for the output from the District's Box Canyon Hydroelectric Project. Pursuant to Ordinance 98050 the City entered into a settlement agreement with the District providing for payment to the District of certain previously withheld funds, and for a mutually agreeable method of future operation under such contract. The agreement also provided for the City's dismissal of its appeal to the State Supreme Court from an adverse Spokane County Superior Court decision regarding the interpretation of such contract, and also for dismissal by the District of its petition for certiorari to the United States Supreme Court from an adverse federal Court of Appeals decision (9th Cir.) regarding valuation of certain District property acquired by the City for its Boundary Hydroelectric Project. Also part of the agreement was a specific procedure for withdrawal by the District of certain amounts of power from the Boundary Project in compliance with a general directive therefor in the City's Federal Power Commission License for said project.

NOTEWORTHY SUPERIOR COURT PROCEEDINGS—1969

Peters and Apostle v. Seattle

Peters and Apostle v. McCormick

In the first of these cases plaintiffs, who purchased the Shearwater Naval Housing Project from the United States in 1966, sought by a petition for a writ of mandamus to establish that the City had failed to give proper notice of a zoning amendment in 1957 rezoning the property from RD 5000, under which construction of townhouses is permitted, to RS 5000 which does not permit such construction. The trial court held for plaintiffs and declared the amendment invalid, but in the same order restrained plaintiffs from submitting any application for building or use permits for the property unless the City failed to promptly initiate and diligently prosecute to a prompt conclusion a proposal to amend the ordinance as to such property in "not to exceed 60 days."

Thereafter the City did initiate a proposal to zone the property RS 5000, which was thereafter accomplished when the Mayor approved an ordinance to such effect within sixty days after the judgment was signed. Because of a City Charter provision however, the ordinance did not go into effect for 30 days after its approval by the Mayor.

Plaintiffs applied for a building permit after the 60 days had run but before the 30 days had elapsed, which was denied. Plaintiffs then commenced the second action, seeking a writ of mandamus to require issuance of the permit. The trial court concluded that the court in the first case had intended that all proceedings before the City Planning Commission and City Council should be concluded within 60 days, but did not intend that the 30-day period required by the City Charter for an ordinance to take effect be included as part of the time limit. The petition for mandamus was dismissed.

O'Keefe and Ferrucci v. Gandy, et al.

In this case plaintiffs alleged that, for various reasons, Seattle should be enjoined from selling the City's transit garage property adjacent to the Seattle Center to King County for use as the site for a domed stadium. The main thrust of plaintiff's argument was that the City could not sell public utility property without complying with RCW Ch. 35.94, which requires a call for bids and submission of the proposed sale to the voters for approval. The trial court held that a specific procedure established by Section 6 of Ch. 236, Laws of 1967 superseded the requirements of RCW Ch. 35.94, and rejected all of plaintiffs' remaining arguments, including a contention that the Washington State Stadium Commission had acted arbitrarily and capriciously in making its site selection recommendation, and dismissed the complaint.

Flo-villa corporation, et al. v. King, et al.

In this case plaintiffs, owners of shorelands and houseboats on Lake Union in Seattle, sought to enjoin construction of an apartment house over adjacent shorelands and to require demolition of an existing apartment building on grounds that the use of submerged land leased from the State as part of the lots was unlawful, that construction of a platform for the second apartment house to the property line violated a requirement of side yards for a residential structure, and that such construction would be contrary to the navigational rights of the public as articulated in the recent Supreme Court decision in *Wilbour v. Gallagher*, 77 W.D.2d 307.

The trial court rejected all of plaintiffs' arguments and in an unusual move requested that the Attorney General be invited to submit the views of the State as to the validity of State leases of the bed of Lake Union. An Assistant Attorney General responded and presented argument relating to the history of Lake Union, its harbor lines and the platting of its shorelands. Thereafter the court indicated that while some questions relating to the laying out of harbor lines and the validity of leases of the bed of the lake remained unanswered and that there was a need for official attention to such boundaries, it was reluctant to disturb vested rights in such properties in this case and adhered to its former conclusion, dismissing the complaint.

Air-mac, Inc. of Washington v. Seattle and Construction-Pamco

This case involved a claim for \$50,000 in structural damage allegedly sustained by plaintiff's building when the City's contractor installed the Diagonal Avenue trunk sewer adjacent to plaintiff's property in late 1966. Plaintiff claimed that as a result of the contractor's dewatering procedures in connection with the excavation for the sewer, its adjoining building was caused to subside and settle with great resulting structural damage. It contended that the contractor had been negligent in the performance of its work or, in the alternative, that the damage to its building constituted an inverse condemnation of its property for which it was entitled to be compensated by the City under the Washington State Constitution. Rejecting both contentions, however, a jury in King County Superior Court returned a verdict in favor of the contractor as well as the City. It concluded there was no negligence by the contractor and that any damage occurring to plaintiff's building was not proximately caused by the sewer installation and was thus not the responsibility of the City.

Seattle v. Madreen Carr, et al.

On January 23, 1969 defendant Carr and five other women were arrested in downtown Seattle and charged with loitering in a public place for the purpose of soliciting prostitution. Said arrests were the first of their kind to be made under a newly enacted City ordinance

aimed at controlling, if not eliminating, the increasing problem of open procuring and solicitation on the public streets. The defendants were convicted as charged in a joint trial in Municipal Court and each was subsequently convicted in separate trials in the Superior Court on *de novo* appeal. In the course of the trials the validity of the new City ordinance was expressly affirmed at all levels despite vigorous defense arguments on various grounds that the ordinance was unconstitutional. Further, throughout the remainder of the year approximately 650 additional arrests were made under the ordinance and the City's police problem with prostitution and other illicit sexual activity has been markedly curtailed.

Fridell and Sandbeck v. Seattle Civil Service Commission, et al.,

Plaintiffs were two police sergeants who brought this action after the following events occurred. In early 1969 two new positions of Lieutenant were created in the Police Department. At the time only one person, a Sgt. Price, was immediately eligible for appointment. Plaintiffs had passed a 1968 civil service examination for Lieutenant but were not yet eligible for appointment because they had not completed two years of service as Sergeant. At the request of the Chief of Police, such two year requirement of service as Sergeant was waived by the Secretary and Chief Examiner of the Civil Service Commission. The names of Sgts. Price, Fridell and Sandbeck were certified for appointment, and plaintiffs were thereafter appointed Lieutenant. Sgt. Price appealed the waiver of the two year requirement to the Commission. The Civil Service Commission reversed the action of the Secretary and directed that plaintiffs be returned to the rank of Sergeant, but declined to direct the appointment of Sgt. Price to the rank of Lieutenant. Plaintiffs then brought this action and Sgt. Price intervened. The trial court upheld the action of the Civil Service Commission in overturning the waiver, but directed that Sgt. Price be appointed Lieutenant upon the basis that he was the only person properly eligible for appointment when the Chief of Police attempted to appoint plaintiffs.

Hanson v. Seattle, et al.

Plaintiff, the former wife of a deceased City fireman, brought this action challenging a decision of the Firemen's Pension Board denying her application for pension benefits on behalf of her children. She and said deceased fireman had been divorced on February 7, 1962 and she was awarded custody of their two children. The 1955 firemen's pension act in RCW 41.18.010(6) defines "child" or "children" as "a fireman's child or children under the age of eighteen years, unmarried, and in the legal custody of such fireman at the time of his death." The pension board rejected the application on the ground that the children were not in the husband's legal custody at the time of his death, as required by the statute. The trial court agreed with the position of the pension board and dismissed plaintiff's complaint.

MacDonald v. Seattle

Plaintiffs brought suit for injuries to their 11-year old son who was injured while playing on the railway tram between the 10th and 11th tees at Jackson Park Golf Course. The electric tram is started, stopped or reversed by pushbuttons at the top and bottom of the tramway. The boy and some friends were trying to squash golf balls with the tram by placing a ball on the track under the wheel and then starting the tram car up the hill. While plaintiffs' son was reaching under the tram, one of his friends started the car in motion, causing the car to run over him. In the accident he sustained a fractured shoulder and a ruptured spleen and liver, but made a very good recovery with little or no residual injury.

On cross-examination the 11-year old boy admitted he realized there was some danger in what he was doing and that he fully recognized the risk of injury to himself if the cart were moved while he was under it. The jury brought in a unanimous verdict for the City, and the complaint was dismissed.

In the Matter of the Appeal of The City of Seattle from the confirmation of the reassessment roll of Local Improvement District No. 8, by Ordinance No. 547 of the City of Tukwila.

By Ordinance 547, the City of Tukwila, over-ruling objections from The City of Seattle, under Ordinance No. 8, assessed the City's transmission line right-of-way \$4,178.44 less a credit of \$600 in order to finance construction of certain watermains in East Tukwila. Four years previously, by Ordinance 445, Tukwila had executed an easement agreement with The City of Seattle acquiring an easement for three watermain crossings of the transmission line "for and in consideration of grantee's agreement not to assess the City (Lighting Department) property in connection with Tukwila Local Improvement Districts Nos. 8 and 9." The City appealed the assessment as a violation of the easement agreement. On August 28, 1969 the Superior Court granted summary judgment cancelling the assessment.

Citizens for Underground Equality, et al. v. Seattle

The City enacted Ordinance 98265 creating L.I.D. 6411 to improve Ann Arbor Avenue and other Streets in the Hawthorne Hills neighborhood by installing underground wiring in place of overhead lines. Mrs. Elizabeth M. Anderson, together with several neighbors residing within the district and some citizens outside the L.I.D. area, formed an association called Citizens for Underground Equality and sued to enjoin construction of the underground wiring project. The group alleged that Ordinance 98265 and the statutory authority for underground wiring, Chapter 144, Laws of 1957, Chapter 119, Laws of 1967, and Chapter 258, Laws of 1969, (Ex. Sess.) were all unconstitutional (1) as an improper loan of municipal credit because of the municipal contribution to the total cost and the installment payment system, (2) as

special taxation, (3) as violating "due process of law" by allowing the City to define boundaries ("Gerrymandering"), (4) as granting "special privileges and immunities" since some districts may not be able to afford underground wiring as a non-uniform flat rate taxation, (5) as confiscation where no special benefits allegedly arise, and (6) as "fundamentally wrong." The Superior Court granted summary judgment dismissing the complaint.

Shankland v. Seattle, et al.

In 1967 plaintiff, a member of the City's fire department, passed a civil service examination for the position of Lieutenant. In 1968 a new examination for Lieutenant was given and the results announced. Plaintiff did not pass this examination. Subsequent to the 1968 examination the grades from the two examinations were merged for purposes of making subsequent certifications for appointment. Plaintiff objected to this procedure, but the King County Superior Court agreed with the City's contention that the Civil Service Commission's procedure was required by Article XVI, §8 which provides that candidates obtaining passing grades "shall take rank upon the register as candidates in the order of their relative excellence as determined by examination, *without preference to priority of time of examination.*" The Court also rejected plaintiff's position that Article XVI, #8 did not apply to promotional examinations.

Hurley v. Seattle, et al.

Plaintiff brought suit against the City and two others for injuries suffered when the vehicle of one Hopkins collided with the vehicles of one Hanchett and plaintiff, which had not been moved after a previous accident. Plaintiff contended that the City police who had undertaken to investigate the previous accident were negligent in guarding the scene of the previous accident, that Hanchett's negligence in causing the previous accident was a proximate cause of the second accident resulting in his injuries, and that Hopkins' negligence in colliding with the earlier accident vehicles, was a proximate cause. In particular, plaintiff complained of the failure of the police to mark the first accident scene with flares while they pursued a speeder who had nearly run down one of the investigating officers.

The trial court denied the City's motions to dismiss based on the theory of discretionary immunity, and rejected the City's attempt to put in evidence on the issue of discretionary immunity. The jury absolved Hanchett, the first driver, of responsibility for plaintiff's injuries and brought in a verdict against the second driver Hopkins and the City in the sum of \$45,750, payment of which was shared equally by the City and Hopkins.

Nakamura and Garret v. Seattle

This case arose out of an uncontrolled intersection collision, wherein plaintiffs in the favored vehicle dismissed the other defendants and sought judgment against only the City on the grounds that in permitting a garage to "encroach" four inches into the street easement area, obstructing visibility at the intersection, the City was maintaining a nuisance, and that in failing to post warning signs for drivers approaching this intersection it was guilty also of negligence.

The trial court granted the City's challenge to the sufficiency of the evidence and ordered the dismissal of plaintiffs' case.

This case is now on appeal.

Frank Coluccio Construction Co. v. Seattle

In this case the low bidder on a sewer construction contract failed to complete and submit with his bid a form entitled "Contractor's Compliance Statement (Executive Order #11246)" in which the bidder was asked to represent whether he had or had not participated in a previous contract or subcontract subject to said Executive Order relating to equal employment opportunity. The City's Board of Public Works permitted the bidder to complete the form after bid opening and before award of a contract, and the next low bidder commenced this action to enjoin the award of a contract to the low bidder.

With the cooperation of the parties and the court, the case was set for immediate trial, and within three weeks of the date of filing the complaint the Superior Court issued an oral decision in favor of the City. The court found that there was no abuse of discretion in permitting the low bidder to complete and sign the form after bid opening as the failure to do so before bid opening was not intentional, gave that bidder no advantage over other bidders, and in any event all bidders would be bound by the equal employment opportunity provisions of the contract whether they signed the form or not.

Del Valle v. Seattle

In this case plaintiff sought Superior Court review by writ of certiorari of the denial of his petition to rezone property adjacent to the West Seattle Hospital, alleging that the City's land use regulations had been applied in an arbitrary, capricious, confiscatory and discriminatory manner.

After trial, the court held that plaintiff failed to show that the City had abused its discretion in denying the petition to rezone, that the validity of the classification of said property was "fairly debatable" and that the court could not therefore interfere. The case was dismissed.

Chia Chu George Hsieh et al. v. Civil Service Commission of The City of Seattle et al.

Plaintiffs, eighteen aliens employed by the City as provisional or temporary employees, challenged the constitutional validity of Seattle Charter Article XVI, Sec. 6 and Seattle Civil Service Commission Rule 4.01b requiring that applicants for civil service examination be citizens of the United States, alleging that such requirement denied to plaintiffs the equal protection of the laws in contravention of Article I, Section 12 of the Constitution of the State of Washington and of the 14th Amendment of the United States Constitution, and also conflicted with Article I, Section 8 of the Constitution of the United States, giving Congress power over aliens, and with The Immigration and Naturalization Act of 1952. The City contended that the citizens of Seattle have the right to require, by their Charter, that civil service employees be citizens of the United States.

The Superior Court concluded that Article XVI, Sec. 6 of the City Charter is intended to prohibit anyone other than citizens of the United States from applying for offices or places in the classified civil service, and held that:

“... the City of Seattle may constitutionally limit public employment to citizens of the United States . . .”

The Court's decision dismissing plaintiffs' complaint has been appealed to the State Supreme Court.

STAFF CHANGES

Resignations:

Assistants H. Joseph Coleman and Larry B. Alexander resigned during the year; Mr. Alexander to enter private practice, and Mr. Coleman to accept the position of Police Legal Advisor. Both joined the staff in 1968 and had been primarily assigned to the trial of Municipal Court appeals in King County Superior Court, where their professional competence and personal demeanor earned the high regard of their associates in the Law Department and the respect of those with whom they came in contact.

Mr. William L. Johnson, provisional Claim Adjuster I since 1967, rejoined the Seattle Transit System.

Appointments:

There were six additions to the staff in 1969: Assistant Myron L. Cornelius upon his graduation from Law school and admission to the Bar; Assistant Christopher M. Eagan, former VISTA (Volunteers in Service to America) lawyer; Assistant John W. Neikirk, formerly engaged in private practice in Seattle; Assistant Donald H. Stout, formerly engaged in private practice in Colorado; William G. Heurion, Claim Adjuster I, formerly with the Boeing Company; and Patricia Harrigan, Steno-Clerk II formerly in the City Council office.