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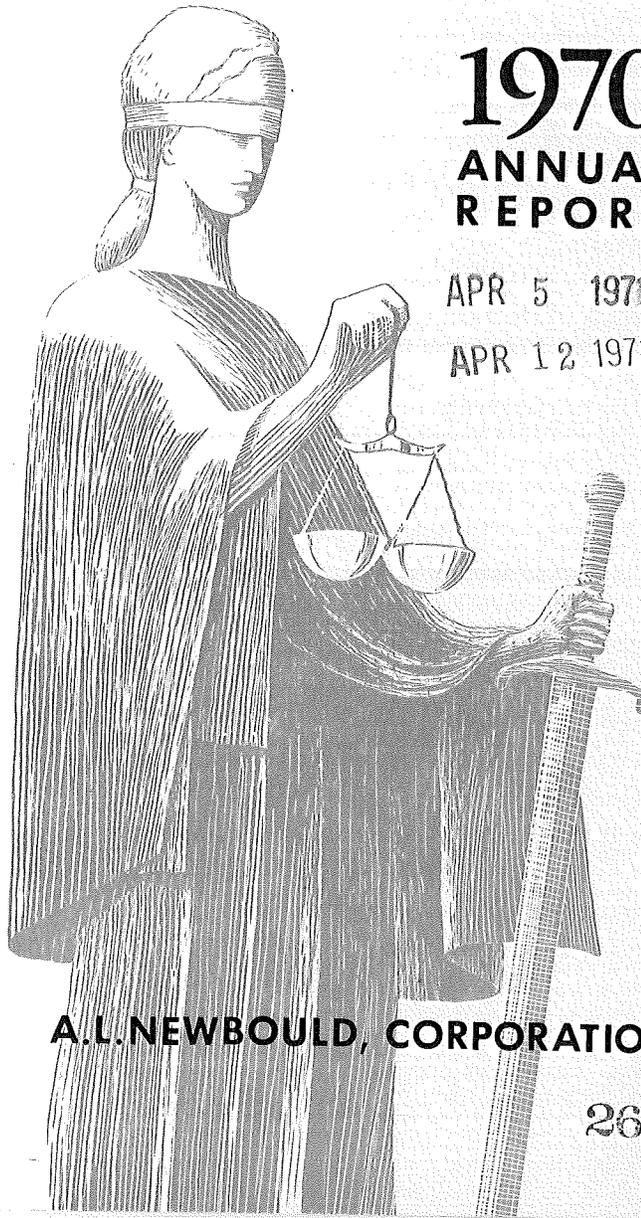
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City Council
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SEATTLE CITY COUNCIL

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CITY OF SEATTLE
LAW DEPARTMENT
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1970
ANNUAL
REPORT

APR 5 1971 *Judiciary and Personnel*
APR 12 1971 *On File*

A.L. NEWBOULD, CORPORATION COUNSEL

269400

CITY OF SEATTLE
LAW DEPARTMENT
ANNUAL REPORT
1970

A. L. NEWBOULD, Corporation Counsel
JOHN P. HARRIS, Chief Assistant Corporation Counsel

ASSISTANTS CORPORATION COUNSEL

G. GRANT WILCOX	E. NEAL KING
THOMAS J. WETZEL	JAMES B. HOWE, JR.
ARTHUR T. LANE	DONALD H. STOUT
GORDON F. CRANDALL	MYRON L. CORNELIUS
CHARLES R. NELSON	PHILIP M. KING
JAMES M. TAYLOR	RICHARD E. MANN
LAWRENCE K. McDONELL	ROBERT M. ELIAS
J. ROGER NOWELL	JACK B. REGAN
JORGEN G. BADER	ROBERT B. JOHNSON
PHILIP L. BLEYHL	

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, 1970, as required by Section 12, Article XXII of the City Charter.

The main focus of the Law Department's attention during 1970 was to meet the challenge resulting from new city programs, organizations, and personnel and in doing so our goal has been to educate, as well as formulate a sound legal framework within which City policy can be implemented. Although the ultimate test of much of our effort in this regard must necessarily be left to the future, one cannot help but note the impressive number of lawyers' hours committed to preparation of the nearly one hundred formal written opinions rendered by the Law Department during the year and to innumerable hearings, meetings and conferences, both formal and informal, for the purpose of providing advisory assistance and guidance. Our accomplishments here and in the other facets of the Law Department's operation would have been impossible without the extensive experience, dedication, and professional competence displayed by my Assistants, Claim Division personnel, and secretarial staff in carrying out their respective assignments and I wish to take this opportunity to express my appreciation to them.

Appellate litigation is another facet of the department's operation which deserves special mention. Our appellate record was once again excellent, the City's position having been upheld in nine of the ten cases decided by the State Supreme Court and Court of Appeals in 1970 in which it was a party.

1970 marked the beginning of a new decade and because of this some interesting statistical comparisons have been made elsewhere in this report, between the department's activities in 1960 and 1970, which span a decade that saw the City's population decrease.

Looking again to the future, I see increasing public concern and resultant City legislation in the environmental field and consequently the staff has been preparing to meet this challenge and to provide positive legal guidance through this and the other difficult problems which the City will be facing.

Finally, the members of my staff join me in thanking those officers and employees of the City who have given us the kind of unstinting cooperation during the past year which is essential to the successful implementation of our departmental duties.

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 1970.

	Pending Dec. 31 1969	Commenced during year 1970	Ended during year 1970 (1960)	Pending Dec. 31 1970
Condemnation suits	12	10	(14)	9 (19) 13
Damages for personal injuries . . .	108	86	(86)	79 (102) 115
Damages for other than personal injuries	37	26	(41)	27 (39) 36
Injunction suits	15	17	(5)	9 (3) 23
Mandamus proceedings	5	9	(1)	6 (4) 8
Habeas Corpus	3	17	(0)	16 (0) 4
Certiorari Writs	6	2	(0)	3 (0) 5
Miscellaneous proceedings	<u>94</u>	<u>88</u>	<u>(27)</u>	<u>64</u> <u>(19)</u> <u>118</u>
Sub-total	280	255	(174)	213 (186) 322
Appeals from Municipal and Traffic Courts	<u>461</u>	<u>840</u>	<u>(417)</u>	<u>872</u> <u>(367)</u> <u>430</u>
Grand Total	741	1,095	(591)	1,085 (553) 752

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1969	108	\$6,082,806.72
Commenced since January 1, 1970	<u>86</u>	<u>8,085,560.90</u>
Total	194	\$14,168,367.62
Tried and concluded since January 1, 1970	<u>79</u>	<u>3,931,249.20</u>
Actions pending December 31, 1970	115	\$10,237,118.42*

*Includes 3 cases in which amount of damages is unspecified.

Of the seventy-nine personal injury actions concluded in 1970, eight involving \$127,120.50 were won outright. In four cases in which \$250,926.14 was claimed, plaintiffs recovered \$29,372.15. Of the remaining sixty-seven cases in which plaintiffs claimed \$3,553,202.56, twenty-two involving \$1,984,682.72 were covered by insurance and the other forty-five cases, involving \$1,568,519.84 were settled or dismissed without trial for a total of \$128,750.00.

3. Segregation—Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1969	37	\$1,926,952.93
Commenced since January 1, 1970	<u>26</u>	<u>125,709.83</u>
Total	63	2,052,662.76
Tried and concluded since January 1, 1970	<u>27</u>	<u>613,829.97</u>
Pending December 31, 1970	36	\$1,438,832.79

Of the twenty-seven cases involving damages other than personal injuries concluded in 1970, one involving \$184,713 was won outright. In seven cases involving \$17,229.60 plaintiffs recovered \$9,033.02. The remaining nineteen cases involving \$411,887.37 were settled or dismissed without trial for a total of \$11,300.00.

The above actions concluded in 1970 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.....	37	\$58,736.64
Engineering Department—		
Sidewalk (1 case covered by insurance)—	7	1,400.00
Street.....	5	4,500.00
Lake Washington Bridge Tunnel.....	1	80,000.00
Lake Washington Sewer Separation Contract..	1	65,600.00
Miscellaneous (1 case covered by insurance)....	9	650.00
Park Department.....	4	13,500.00
Light Department.....	7	8,455.03
Fire Department.....	1	0
Police Department—(26 insurance cases).....	31	353.20
Sewerage Utility—(1 case covered by insurance)..	6	9,500.00
Seattle Center—(1 case covered by insurance)..	2	195.30
Health Department—(covered by insurance)....	1	0
Urban Renewal.....	1	0
Water Department.....	2	1,000.00
Comptroller.....	1	500.00

4. Appeals and Extraordinary Writs:

At the close of 1969, fourteen appeals involving the City were pending in the State Supreme Court, one was pending in the United States Supreme Court, and four in the State Court of Appeals.

In 1970, five new appeals were filed in the State Supreme Court, and eleven appeals were filed in the Court of Appeals. Seven appeals were transferred from the State Supreme Court to the Court of Appeals. The City prevailed in four of the five cases involving the City in which the State Supreme Court rendered a decision in 1970. In addition, appeals in two cases before the State Supreme Court and one case before the State Court of Appeals in which the City had prevailed in lower court were dismissed by agreement of the parties. The City also prevailed in the single appeal before the United States Supreme Court, and in the five cases in which the State Court of Appeals rendered a decision. In one case decided by the State Court of Appeals, a petition for review has been filed with the State Supreme Court.

On December 31, 1970, six appeals were pending in the State Supreme Court and sixteen in the State Court of Appeals.

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5. Miscellaneous Cases:

Sixty-four miscellaneous cases were completed in the King County Superior Court during 1970, of which the City lost ten and won or otherwise disposed of fifty-four; one hundred eighteen cases are still pending.

In addition, nine injunctive actions were tried, of which the City won eight and lost one; twenty-three injunctive actions are pending. Six mandamus actions were tried, two were won by the City and four were lost; eight are pending. Three writs of certiorari were completed and won during 1970; five others are pending. Sixteen habeas corpus writs were processed; four are pending.

6. Antitrust Damage Actions:

Three cases alleging damages to the City from violations of federal antitrust laws are still pending, involving water meters, liquid asphalt and children's library books. At year's end the City was contemplating action against the major automobile manufacturers as a result of the elimination by all of such companies of a discount for government fleet sales.

The liquid asphalt and water meter cases have been consolidated with cases from other federal districts for purposes of discovery. The library book case is in final negotiations and an acceptable settlement offer is expected shortly.

II

CLAIMS IN 1970

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 1970:

	Number (1960)		Amount Involved (1960)	
On file January 1, 1970.	1,736	(1463)	\$21,895,238.41	(\$5,180,497.72)
Referred for investigation.....	1,150	(1109)	14,832,225.22	(4,766,598.46)
Closed without payment.....	525	(599)	5,247,472.04	(3,354,084.94)
Claims paid.....	489	(689)	(Asked) 471,816.45	(3,035,285.17)
		(Paid)	124,020.29	(418,551.95)
On file December 31, 1970.	1,738		\$24,886,393.92	

Payment of \$124,020.29 in settlement of 489 claims involving the various departments of the City was effectuated by 128 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	Amount Involved
DEPARTMENT (Fund)		
Seattle Transit System*	242	\$75,104.14
Engineering:		
Sewerage Utility	36	12,698.60
Storm Sewer	9	1,926.70
Sidewalk	18	6,508.75
Construction	9	3,768.00
Sanitary Sewer	1	105.29
Street	24	3,312.61
Traffic	5	1,267.23
Lighting Department	86	10,915.88
Water Department	17	4,850.43
Fire Department	1	4.20
Executive Department	1	35.00
Emergency Fund (Other Departments)		
Police Department	30	2,136.78
Seattle Center	2	39.60
Parks and Recreation Department	8	1,347.08
Total	<u>489</u>	<u>\$124,020.29</u>

*The Transit System computed the cost of claims and suits to be 1.48% of 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 ninety-six written legal opinions on close questions of law submitted by the various departments of City government, and involving considerable legal research.

In addition, twenty-six 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 1970 OPINIONS BY NUMBER

- 5373 Police have no duty under RCW 9.54.130 and RCW 10.79.050 to seize allegedly stolen property held by pawnbrokers.
- 5374 "Longevity pay" is part of "salary" under RCW Ch. 41.20.
- 5375 City responsibility in sale of property in slide area.
- 5376 Pension benefits of Emil Vallet's widow.

- 5377 Proposed "Affirmative Action Program" to increase minority employment in Public Works.
- 5378 Power of City to impose a business tax upon banking institutions.
- 5379 City Council and not Police Pension Board has responsibility of providing for payment of medical benefits of police officers after March 1, 1970.
- 5380 Assistant Chief Fuller not entitled or required to elect prior to September 1, 1969 to retire at pension higher than 50% of captain's salary.
- 5381 Zoning Ordinance does not authorize temporary nonconforming construction by agreement.
- 5382 Application of veterans preference to competitive examinations for office of Chief of Police under Charter Art. VI, Sec. 2.
- 5383 Estate of deceased employee entitled to contributions to Retirement System where former husband divested of all interest by divorce decree and property settlement.
- 5384 Veterans' preference in civil service examinations under Ch. 269, Laws of 1969, Ex. Sess.
- 5385 "Use variance" authorized by Section 26.25 of Zoning Ordinance (86300).
- 5386 Authority of City to compensate private citizen injured while aiding police.
- 5387 The 1969 amendment of RCW 48.14.040 bars imposition of City's business tax upon insurance agents as to any portion of the July-August-September 1969 tax period.
- 5388 Sick benefits under Washington law enforcement officers' and fire fighters' retirement system are not obligation of Firemen's Pension Fund unless City Council provides for payment therefrom.
- 5389 Laws of 1970, Chapter 101 does not empower City to impose a business tax upon banking institutions.
- 5390 Police Pension Board without authority to set aside a lawfully granted service retirement.
- 5391 Redeposit of withdrawn contributions by reappointed police officer payable to the Washington law enforcement officers' and fire fighters' retirement system.
- 5392 Replacement of city employee representing bargaining unit at legislature, RCW 41.56.220.
- 5393 Ch. 271, Laws of 1969 (Ex. Sess.) applicable to rearrangement of platted lots.
- 5394 Longevity pay included as "salary" in determining "escalator" pension benefits.
- 5395 Traffic Code imposes duty to set parking meter rates on Traffic Engineer.
- 5396 Historical Preservation Ordinance for Pioneer Square area.
- 5397 Fire Fighter on disability not transferred to Washington Law Enforcement Officers' and Fire Fighters' Retirement System.

- 5398 Payment of disability leave allowances and medical benefits under Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act.
- 5399 Police Officer's pension credit for military service rendered prior to March 1, 1970.
- 5400 Refund of pension contributions of police officer terminating employment after March 1, 1970.
- 5401 Job trainees entitled to Article XVI § 10 preference if Civil Service Commission determines that they perform "regular service."
- 5402 Computing RCW Ch. 41.20 benefits for police officer retired under Washington law enforcement officers' and fire fighters' retirement system.
- 5403 Property specially benefited by proposed improvement may not be deleted from local improvement district.
- 5404 Payment in lieu of vacation time to fireman on "disability leave" not authorized by Vacation Ordinance (No. 86799).
- 5405 Statutes and procedures for annexation of territory to City.
- 5406 Frequency of observation and/or inspection of automatic boilers under Sec. 142(b) of Ordinance 48022 (License Code).
- 5407 Whether a U.S. Coast Guard officer and his wife who last resided in Seattle in 1966 are presently entitled to register to vote in Seattle.
- 5408 Sufficiency of charge in demand for recall.
- 5409 Fireman on inactive status because of off-duty injury did not "serve" as member of fire department during such inactive status.
- 5410 Pension increases of police officers and increases of pension benefits of widows and children of police officers under RCW 41.26.250 and 41.26.260.
- 5411 Power to dismiss Municipal Court employee resides in the judges of the Municipal Court.
- 5412 Use of proceeds of public park and recreation facilities bonds to improve alley.
- 5413 Impounding boats docked at City harbor facilities.
- 5414 Effect of Washington Meat Inspection Act (RCW Chap. 16.49A) on authority of City to license and regulate sale of meat.
- 5415 City Comptroller should not issue warrants for pension benefits approved by Municipal Firemen's Pension Board in view of questionable statutory authority for such benefits.
- 5416 Contribution of police officer for provisional service should be paid in to Police Relief and Pension Fund.
- 5417 City has no authority to permit operation of sidewalk cafe.
- 5418 Use of portion of Valley Street acquired for Bay Freeway for park purposes.
- 5419 Climbing of Wedgewood Rock may be prohibited.
- 5420 Pay differential for assignment as "Detective Sergeant" or "Investigator Sergeant" may under certain circumstances be

- included as "salary" in computing "escalator" pension benefits of Sergeants.
- 5421 City subrogated to rights of member of Police Pension System for medical payments.
 - 5422 Widow eligible for RCW 41.20.085 "escalator" pension if married for five years prior to husband's retirement.
 - 5423 Required yard requirements of Zoning Code in RD Zones.
 - 5424 Authority of City to zone lands under navigable waters within City limits.
 - 5425 Variances to expand nonconforming uses and buildings.
 - 5426 City may not expend 1960 Street Improvement excess levy bond proceeds to implement abandonment of R. H. Thomson Expressway project.
 - 5427 Statutory prohibition of off-track race betting precludes City from authorizing and/or taxing such betting.
 - 5428 Disposition of abandoned vehicles by two truck operators pursuant to RCW 46.52.112 and 46.52.116—Effect as to City "Auctioneer" and "Motor Vehicle Wreckers" licenses under Sections 28 and 336 of License Code.
 - 5429 Payment of pension of retired police officer "voluntarily committed."
 - 5430 Eligibility for employment of landscape architect previously retained as consultant.
 - 5431 Seattle Central Waterfront.
 - 5432 Lease of State-owned land for housing of persons displaced by public improvements.
 - 5433 "Confidentiality" of fact of filing business and occupation license or tax return under § 19 of Ordinance 72630.
 - 5434 Proposed charter amendment abolishing Transit Commission and creating a transportation division as part of Department of Lighting.
 - 5435 "Fringe benefits" not part of "current prevailing rates" paid to skilled crafts temporarily employed under § 46.4 of Ordinance 97330.
 - 5436 Veteran's 10% examination preference under RCW 41.04.010 can only be used on first examination which he passes.
 - 5437 State law prohibits consumption of alcoholic beverages in municipal parks without permit or license.
 - 5438 Commercial enterprises—Central Waterfront Park.
 - 5439 Investigation as to campaign contribution statements filed in accordance with Charter Art. XVIII, Sec. 4.
 - 5440 Provision of electric service on easements not acquired by City.
 - 5441 Enforcement of Charter provisions relating to reporting of campaign contributions.
 - 5442 Membership by City in Joint Operating Agency for generation and/or transmission of electric power and energy.
 - 5443 City authorized to levy eight mills on property tax pursuant to Ch. 92, Laws of Wash. 1970, 2nd Ex. Sess.

- 5444 Call for bids for private operation of off-street parking facility.
- 5445 Recovery of lapsed service pension credits.
- 5446 Necessity of obtaining mortgage subordination on Utility Easements.
- 5447 Police Pensions—credit clerical and cadet service.
- 5448 Central Waterfront Park.
- 5449 Central Waterfront Park.
- 5450 Seattle authorized to execute Centralia Steam Electric Plant Project Agreements pursuant to Ordinance 98286.
- 5451 Certain Seattle Center Fun Forest games constitute gambling.
- 5452 Disability leave allowances under RCW 41.26.120 may not be denied because of "dissipation or abuse."
- 5453 Ordinance 96821 precludes issuance of street use permits for moorage of houseboats.
- 5454 Refusal to cross picket lines and "union shop" clauses in collective bargaining agreement with City employees.
- 5455 Bids required for demolition contracts.
- 5456 Street use permit fees for residential oil fill pipes in right-of-way.
- 5457 Modification of 1960 arterial bond issue program.
- 5458 Operation of Sand Point Naval Air Station as a military air base not a nonconforming use under Zoning Ordinance.
- 5459 Regulation of methods of sale of reading material on streets.
- 5460 Superintendent of Lighting responsible for filing Ross Dam application with Federal Power Commission.
- 5461 Vacation periods must be prescribed by ordinance on a "uniform basis."
- 5462 Beautification grants in connection with Forward Thrust projects may not be diverted to other uses.
- 5463 Forward Thrust Bond Fund for Westlake Park project.
- 5464 Effect of Ch. 146, Laws of 1963 authorizing sale of "Seattle Armory" to City.
- 5465 City regulation of state and school district swimming pools must be undertaken pursuant to RCW Ch. 70.90.
- 5466 Use of Neighborhood Improvement Bond funds for pedestrian overpass.
- 5467 The filling of existing City positions is an administrative rather than a legislative function.
- 5468 Positions of Traffic Violations Bureau warrants server are within the classified civil service; temporary appointments terminate when regular appointments are made.
- 5469 Charter qualifications for position of Superintendent of Buildings.

IV.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1970, this department prepared 619 ordinances and 109 resolutions; and an additional 128 ordinances were prepared for the settlement of 489 claims.

Advisory assistance was provided to the Civil Service Commission as requested with regard to 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.

130 garnishments were handled during 1970, 45 were completed without court action; 85 were answered by the City and in addition, 25 additional answers to 30-day continuing lien garnishments were filed.

1074 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$31 million were examined and approved.

Legal papers served and filed during 1970, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 2081 in all, were handled by the Process Server.

V.

PROSECUTION OF CRIMINAL ACTIONS

1. Municipal Court—Department No. 1

During the year 1970 Assistant Jack B. Regan handled a calendar of 15,942 cases in Department No. 1 of the Municipal Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$138,482.50.

2. Municipal Court—Department No. 2

Assistant Robert M. Elias handled a docket of 28,167 cases for the year 1970 resulting in fines and forfeitures amounting to \$388,450.50.

3. Municipal Court—Department No. 3

Assistant Robert B. Johnson handled a docket of 32,365 cases for the year 1970 resulting in fines and forfeitures amounting to \$403,370.65.

Traffic Violations Bureau forfeitures for the year amounted to \$3,057,662.55.

4. Municipal Court Appeals

Appeals from 872 convictions in the Municipal Courts (479 Traffic, 393 Police) were disposed of in King County Superior Court in 1970, as follows: 207 appeals (108 Traffic, 99 Police) were abandoned by the defendants and remanded to the Municipal Courts for enforcement of the original fines and sentences. In 305 cases (195 Traffic, 110 Police) convictions on pleas of guilty were entered. In 208 cases (111 Traffic, 97 Police) the court or jury found the defendants guilty after trial. In 91 cases (49 Traffic, 42 Police) the defendants were acquitted. In 61 cases (16 Traffic, 45 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes. A total of

\$26,952.50 in fines and forfeitures and Superior Court costs in the amount of \$940.50 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—1970

Seattle v. Ross, 77 W.D.2d 809.

The defendant in this case appealed from a conviction of agreeing to commit an act of prostitution, contending that words alone cannot constitute a crime, and that there must be an overt act by the person charged to complete the crime charged.

The Supreme Court affirmed the conviction, holding that not only was there testimony as to "numerous overt acts culminating in the acceptance of \$20 in addition to the language used, [but] there is authority that words alone are sufficient to establish the offense of offering or agreeing to commit an act of prostitution."

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

Canteen Service, Inc. v. City of Seattle, 77 W.D.2d 884.

Canteen Service, Inc., which leases mechanical music machines (juke boxes), brought this action to challenge the validity and application of certain provisions of the City's License Code (Ordinance 48022) which it claimed were being applied by the City in a manner so as to require the written consent of the former operator at a location before a mechanical music machine could be replaced by a competing operator's machine. The trial court had sustained the City's challenge to the sufficiency of plaintiff's evidence and had dismissed the action. The Supreme Court affirmed, holding that because *Canteen* failed to show that it or anyone else had attempted to obtain approval of a replacement sublicense without the written consent of the previous operator, it had failed to prove that the City was imposing such a requirement.

Anderson, et al v. City of Seattle, et al; Brizendine, et al. v. City of Seattle, et al. (consolidated appeals) 78 W.D.2d 193.

The *Brizendine* case was brought by twelve widows of police officers killed in the line of duty and the *Anderson* case was brought by 44 police officers who were retired for disability. All of said persons were granted fixed pension benefits prior to the time that the police pension statutes were amended in 1961 to provide for fluctuating pension benefits based upon a percentage of the current salary attached to the rank upon which such benefits were based. Plaintiffs in both cases contend-

ed that as of the effective date of the 1961 amendments their pensions should be paid in accordance with the 1961 amendments, whereas the City contended that the 1961 amendments applied only to persons becoming eligible for pension benefits after the effective date of such legislation. The trial court ruled in favor of the City and entered summary judgment accordingly, and the Washington Supreme Court affirmed. The Supreme Court found it significant that the 1961 amendments "speak in forward-looking terms" and that the legislature in more recent legislation had made provision for increasing the pensions of persons retired prior to the 1961 amendments.

The above cases were tried and argued by Assistant E. Neal King.
State ex rel. Wallen v. Traffic Violations Bureau, et al., 78 W.D.2d 485.

This case involved a challenge to the City Traffic Violation Bureau's long standing policy of requiring the recipient of a traffic citation to post bail as a condition of obtaining a trial date on the charge against him. Relator contended that said policy violated the State Constitution which guarantees an accused the right to trial without the advancement of any moneys prior to final judgment. The Supreme Court agreed with the relator's contention and declared the procedure improper. Since a traffic offender is ordinarily released from custody at the scene of his offense after being given a citation, the Court found that the refusal to assign a trial date until a cash deposit was made did not relate to the requirement of bail and was in conflict with the constitutional provision referred to.

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

STATE COURT OF APPEALS—1970

Dean v. Varney, 2 Wn. App. 258.

About 4:00 A.M. on June 29, 1966, Detective Raymond E. Varney, a Seattle Police Officer, gave Mrs. Lenora Dean a ride home from her place of employment. He extended this courtesy as a consequence of Mrs. Dean's previous assistance with his detective activities. When they arrived at her home Mrs. Dean invited Varney in to have a drink. They sat down about 2 feet apart on a davenport. Varney laid his police revolver on the coffee table in front of him. When Mrs. Dean started to reach for the pistol Varney unloaded it and handed it to her and she examined it and handed it back to Varney. Varney reloaded the pistol and placed it on the coffee table. A short time later while Varney's attention was diverted he saw a movement out of the corner of his eye and when he turned Mrs. Dean had the pistol in her right hand. Before Varney could do anything to prevent it, the gun discharged and struck Mrs. Dean in the temple. As a result of the shooting Mrs. Dean was rendered incompetent.

Mrs. Dean's husband, as guardian of her estate, sued Varney and the City for \$870,000, alleging that Varney's negligence was the proximate cause of Mrs. Dean's injuries. The case was tried before a jury in the court of the Honorable Richard F. Broz, and the jury returned

its verdict in favor of the defendants Varney and the City.

The plaintiff appealed the case to the Court of Appeals which sustained the judgment in favor of defendants and held that the issue of Mrs. Dean's alleged contributory negligence and the question of whether her actions were an independent intervening cause were properly submitted to the jury. Plaintiff's petition to the State Supreme Court for review of the decision of the Court of Appeals was denied.

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

Banchemo v. City Council, 2 Wn. App. 519.

In this case the plaintiffs sued for a Writ of Prohibition to prevent the City Council from vacating a block long segment of 36th Avenue South lying south of South Andover Street as requested by the Consolidated Dairy Products Co. (C.F. 260522). The vacation of this street segment would allow the dairy products company to consolidate its ownership into one tract and build a new dairy. The Streets and Sewers Committee of the City Council had recommended that a street vacation ordinance be enacted if a 30-foot strip around the tract were conveyed and improved as a substitute street. The plaintiffs' property lay north of South Andover Street and did not abut on the segment to be vacated, but it was argued that the street vacation would cause an inconvenience to north-south travel and a loss of customers to businesses on said property and would not benefit the public. The Superior Court granted summary judgment for the City Council and its judgment was affirmed. The Court of Appeals affirmed, holding that the street vacation served a public purpose and that appellants could not challenge the street vacation proceedings because their property did not abut on the segment to be vacated.

This case was tried and argued by Assistant Jorgen G. Bader.

City of Seattle v. Johnaphra Jones, 3 Wn.App. 431.

This is the first appeal from a Superior Court conviction under the "prostitute loitering" ordinance enacted in January 1969 to combat increasing incidences of "streetwalking." Defendant contended the ordinance was unconstitutional, claiming 1) it was vague, 2) did not require proof of unlawful intent, 3) created an invalid presumption of guilt, 4) shifted the burden of proof, 5) violated the protection against self-incrimination and, 6) denied equal protection of the law to a specific class of persons. The Court of Appeals rejected every argument, sustained the constitutionality of the ordinance and affirmed the conviction.

A petition for review has been granted by the Supreme Court.

This case was argued by Assistants J. Roger Nowell and Philip M. King.

Edwards, et al. v. City Council, 3 Wn.App. 665.

The Washington State Court of Appeals affirmed the decision of Judge Robert F. Utter in the above case upholding the City Council's approval of an urban renewal plan for the Yesler-Atlantic Neighborhood

Improvement Project (No. Wash. R-5). The City Council approved the plan after a 5-day public hearing in September, 1967, by Ordinance 96123.

The Court of Appeals, in its opinion, made the following rulings:

1. An urban renewal hearing under RCW 35.81.060 is quasi-legislative in nature, and therefore is not subject to the stringent procedural and substantive guarantees required for quasi-judicial hearings. As stated by the court:

"If everyone interested in such a proceeding were given the full right to cross-examination and the other rights required in a judicial hearing, the process would fall of its own weight. Some concession to the shortness of life and the volume of public problems must be made if effective legislation for the entire community's needs is to be forthcoming."

2. The notice required by RCW 35.81.060 (3) for urban renewal hearings is sufficient as a matter of due process.

3. The Washington Administrative Procedure Act (RCW 34.04) is not applicable to urban renewal hearings.

4. The hearing on the urban renewal plan for the Yesler-Atlantic Neighborhood Improvement Project was conducted in a legal manner, and the finding of blight was supported by adequate evidence.

5. Publication of the notice of hearing in the Daily Journal of Commerce did not comply with RCW 35.81.060 (3) which requires that notices appear in a newspaper of general circulation in the urban renewal area, as the evidence indicated that the Daily Journal of Commerce had little, if any, circulation in said area. The court held, however, that by giving other types of notice, there was substantial compliance with the statutory requirements.

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

NOTEWORTHY SUPERIOR COURT PROCEEDINGS—1970

Echols, et al. v. City of Seattle, et al.

The 1969 legislature amended the firemen's pension statute so as to provide 2% annual increases as to those persons receiving fixed pension benefits. The 1969 legislation was in turn amended in 1970 by the deletion of certain language, and the addition of the following sentence: "Said increases shall become effective July 1, 1969 or one year after the date when the said benefits are payable, whichever is later." The plaintiffs contended that this new language should be construed to provide that the annual 2% increases were to be computed and paid back to the date of retirement. The Superior Court held that the new language meant that as of July 1, 1970 the increases were to be computed back to the date of retirement, but that no retroactive payments of increases so computed for periods prior to July 1, 1970 was contemplated by the 1970 amendment.

Romano, et al. v. City (North Coast Construction Co. and Sand Point Country Club, Inc., Intervenors).

This action was commenced to review the action of the City Council in granting the joint application of North Coast Construction Co. and Sand Point Country Club, Inc. for a planned unit development at 8001 Sand Point Way Northeast. Plaintiffs, property owners who live either in the Inverness residential area to the north of the subject property or in the Aviation Heights residential area to the south, contended that:

- (a) either the planned unit development proposed by intervenors and approved by the City Council of defendant does not comply with the requirements of Section 24.4 et seq. of the Zoning Ordinance (86300) of The City of Seattle (Seattle Code 26.48.040, et seq.), or said ordinance sections are invalid as lacking adequate standards to guide its administration and the purported City Council approval is void;
- (b) the purported City Council approval and the procedures followed in the matter violate due process of law, the provisions of RCW Ch. 35.63, the Comprehensive Plan of Seattle, the Zoning Ordinance (86300) (Seattle Code Title 26), and the Charter of The City of Seattle;
- (c) the purported action and approval of the City Council will result in a multiple density use of property in a single-family residence zone of the city contrary to law, and is therefore arbitrary and capricious; . . .

The Superior Court entered judgment upholding the pertinent provisions of the Zoning Ordinance and ruled that the application for the planned unit development at 8001 Sand Point Way Northeast complied in all respects with those sections of the ordinances and that—

“It is within the authority and administrative discretion of the City Council of Seattle to authorize such proposed development, provided property owners in the vicinity are given an adequate opportunity to be heard on the revised preliminary plans.”

The court held, however, that plaintiffs, particularly those who live in Aviation Heights, did not have an adequate opportunity to be heard as to the effect of certain plan changes upon their property and were therefore denied due process of law in such connection. The permit was set aside and the matter remanded for further hearing before the City Council. Subsequently, the City Council approved the planned unit development again, and an appeal to the Court of Appeals was later abandoned.

State ex rel. Josephine Morrison, et al. v. The City of Seattle (Safeway Stores, Inc., Intervenor).

Plaintiffs here sought judicial review on various grounds of the action of the City Council granting conditional use permits and related variances for the use by Safeway Stores, Inc. of certain property com-

monly known as 520-532 Tenth Avenue East as an accessory parking lot to a supermarket to be constructed on Broadway between East Mercer Street and East Republican Street. The permits and variances were granted by the City Council on appeals from the Board of Adjustment.

The Superior Court concluded that the action of the City Council was lawful and made the following conclusions of law as the basis of its decision:

1. Sections 26.21 and 26.35 of the Zoning Ordinance (86300), which provide for an appeal to the City Council from decisions of the Board of Adjustment, are valid.

2. The City Council acts in a quasi-judicial capacity in hearing and deciding appeals from decisions of the Board of Adjustment, and is bound by the same administrative standards which apply to the Board.

3. Decisions of the City Council on appeals from the Board of Adjustment need not be made by ordinance.

4. Appeals to the City Council from decisions of the Board of Adjustment are heard *de novo* on the merits, and the City Council is not bound by the findings of the Board of Adjustment when it makes its decisions on such appeals.

5. The action of the City Council in granting the conditional use permits and variance applications in question was not arbitrary and capricious, nor did such action constitute illegal "spot zoning."

6. The City Council is not required by the Zoning Ordinance (86300) to make specific written findings of the facts and conditions which must be found to support the granting of a conditional use permit or variance application.

7. The Planning Enabling Act (RCW Ch. 35.63) does not apply to The City of Seattle.

Judgment dismissing the case was entered and an appeal to the Court of Appeals is pending.

Benvenuti v. City

This was an action for personal injuries sustained at Columbia Playfield when plaintiff tripped over a "drag" used by the groundskeeper in the maintenance of the field. Plaintiff was playing catch at the time with his back to the drag which he had not seen. Plaintiff contended the drag was left in such proximity to the play area that it constituted a hazard to ordinary activities and that the City was negligent in creating said hazard or suffering the same to exist. The City argued that plaintiff himself was responsible for his accident in that he failed to take heed of his surroundings or see an object in his path which was plainly visible had he been looking.

A jury returned a unanimous verdict in favor of the City.

Chapman v. City.

A jury verdict in favor of the City was returned in this case which involved a claim that a bridgetender failed to give sufficient warning that he was lowering barricades to stop traffic in connection with the

raising of the Spokane Street draw bridge. One of the barricades smashed plaintiff's windshield causing plaintiff to be cut and bruised. The City's evidence tended to show motorists had ample warning that they be prepared to stop and that plaintiff struck the barricade due to her own negligence.

Lennox v. City

This was an action for personal injuries sustained when plaintiff fell on a downtown sidewalk which was chipped and cracked and caused plaintiff to trip. Plaintiff contended the sidewalk was defective and that the City was negligent in allowing it to remain in such condition. The City conceded the walk was not perfect, but argued it was reasonably safe for ordinary pedestrian travel. The jury agreed and held for the defense.

Baar v. City and State.

This case also involved a sidewalk fall, but the cause was snow and ice in front of the State Patrol Building. Plaintiff contended that either the City or the State or both were negligent in failing to clear the sidewalk within a reasonable time after the snowfall. The City argued that a reasonable time in respect to the City was not the same as a reasonable time in respect to the owner of the property actually abutting the sidewalk.

Plaintiff had dislocated his shoulder and was awarded \$1750 by the jury, but the verdict was against the State only; the City was not held liable.

Cooper v. City of Seattle.

This case involved an intending Transit passenger who was refused admittance because the bus driver thought he was intoxicated. As the bus drove away the plaintiff was still attempting to get on the bus and was run over. Six months after the accident he was not able to walk without assistance and at the time of the trial was confined to a wheel chair. Plaintiff alleged he was not intoxicated at the time he attempted to board the bus, but may have been tired because he had walked from downtown Seattle to West Seattle.

In addition to the defense that the Transit operator was not negligent, the City presented testimony from four doctors, including one brain surgeon and two neurologists on whether plaintiff's brain damage and his resulting paralysis were caused by alcohol or the bus accident. The jury brought in a defense verdict based primarily on the medical testimony rather than the liability issue.

McDaniel & Jarvis v. Harnden & City.

This was an action involving a two car collision at 8th Avenue Northwest and Northwest 80th Street at night while the traffic signal was out and a City crew was attempting to repair the signal controller, which had been damaged earlier that evening by an unknown third car. The case involved issues of (a) whether the City gave adequate warning after actual notice that the signal was dark; (b) whether the signal actually flashed green to the approaching eastbound Harnden car or

was dark; and (c) the legal obligations of the drivers under the circumstances then existing. The trial court accepted the City's position on the drivers' duties and instructed the jury that a dark traffic signal at an intersection imposes a duty of extreme caution on approaching motorists, and that a flashing red rotating beacon displayed on an authorized emergency vehicle imposes a duty of extreme caution on all motorists.

The jury returned a verdict for the City. It rejected the claims of both drivers and allowed a passenger in the northbound car to recover \$1500 from the driver of the eastbound car.

Gunderson v. City and Jessen, and Jessen v. City.

This case involved a two-car collision at the intersections of Boren, Fairview and Virginia Streets wherein both drivers contended that the traffic signal was malfunctioning and that such malfunction caused their accident. However there was no proof that the City had notice of the malfunction and their claims against the City were dismissed by the Court at the close of their cases.

In the Matter of the Petition of The City of Seattle to acquire by condemnation land and other property. . .for park and recreation purposes as contemplated in Ordinance 96146 (Magnolia Tidelands and Buffer No. 1)

In late April and early May of 1970 a two and one-half week trial in King County Superior Court, held to determine just compensation for the City's proposed taking for park and recreation purposes of approximately 90 acres of tidelands abutting the southerly edge of Magnolia Bluff, resulted in a jury verdict of \$3,000,000. On November 10, 1970 by Ordinance 99418, the City rejected that award as excessive pursuant to powers granted to the City under RCW 8.12.530. By motion to admit testimony regarding value of the tidelands in an unfilled condition, the City maintained that valuation of the property had to be based upon inability to fill such tidelands under the principles regarding obstruction of navigation articulated in *Wilbour v. Gallagher*, 77 W.D.2d 307 (1969). The court denied the motion.

This case generated appellate litigation regarding the award of \$443,973.38 in attorney and expert witness fees and costs made by the court pursuant to RCW 8.25.030 and RCW 8.25.070. That litigation is pending in the State Supreme Court.

Rainier Avenue Corporation v. The City of Seattle.

This was an action to quiet title in real property, being portions of vacated streets (Edmunds Place—Ordinance 86469; Rainier Avenue—Ordinance 33601) abutting Seattle's Columbia Park which was dedicated in the same plat by which the streets were dedicated. The case raised the question whether the vacated area attached to the park, as the City maintained, or reverted to the successors (plaintiff-respondent) of the dedicators. Plaintiff asserted title based upon a deed vesting in it all right, title and interest in real property in the State of Washington remaining in the estate of the dedicator (Frank D. Black).

The City argued that, without specific reservation of the fee underlying the street not only in the plat but also in each deed out of the dedicator, plaintiff failed to show a valid interest remaining in the dedicator or viable chain of title to itself; and, therefore, that the City stood, under the law, as any other owner of property abutting a vacated street. The trial court held, in quieting title in plaintiff, that where a street adjoining a park dedicated in the same plat as the street is vacated, the former street area reverts to the successors of the dedicator and the City, as trustee of the public's interest, did not have a sufficient interest in the park to allow it to contend that the abutting vacated street area should attach to Columbia Park.

This was the second trial of this matter. The first trial resulted in dismissal of plaintiff's case upon the City's challenge to the sufficiency of plaintiff's evidence. Plaintiff appealed the dismissal to the Supreme Court and that court reversed and remanded for a new trial, holding that plaintiff's evidence, viewed in its most favorable light, established a prima facie case. 76 Wn.2d 800 (1969)

The City has appealed the result of the second trial and that appeal is now awaiting argument in the State Supreme Court.

John H. Yates d/b/a Yates Stable Co. v. The City of Seattle.

Plaintiff, Mr. Yates, had been granted a concession to operate a stable and horse-riding facility in Seattle's Puget Park. Following many months of unprofitable operations, plaintiff applied for and obtained a revocable permit to place fill materials in portions of the park enabling him to expand operations. On November 30, 1969 after the Park Board had held hearings to air many protests concerning pollution of ground waters, noise and destruction of trees relating to Mr. Yates' fill operations, the Superintendent of Parks and Recreation revoked the permit according to its terms upon thirty days' written notice. Plaintiff sued for injunctive relief and, in lieu thereof, damages due to the City's revocation of the fill permit.

Plaintiff alleged that the fill permit was ambiguous and contained terms contrary to his intentions. The Court granted the City's motion for summary judgment, holding that the City was without power to alienate or encumber park property beyond a revocable permit without specific legislation, that the permit was unambiguous by its terms and clearly allowed the City's action and that, therefore, plaintiff had failed to show legal or equitable grounds for damages or equitable relief.

Herriott, et al. v. Seattle, et al.

This case, like the case of *Chia Chu George Hsieh et al. v. Civil Service Commission of The City of Seattle et al.* discussed in this department's 1969 Annual Report, involved a challenge to the validity of Article XVI, Sec. 6 of the City Charter which requires that applicants for civil service examination be citizens of the United States. Plaintiffs, two aliens provisionally employed by the City as Transit System operators, alleged that such requirement denied them the equal protection of the laws in contravention of the 14th Amendment of the

United States Constitution, and also conflicted with RCW Chapter 49.60, the State law against discrimination which prohibits discrimination in employment on the basis of "national origin."

The Superior Court held that Article XVI, Sec. 6 of the City Charter requires that applicants for examination for civil service employment by the City be citizens of the United States and that such requirement does not deny to plaintiffs the equal protection of the laws or conflict with the State law against discrimination.

The judgment dismissing plaintiffs' complaint has been appealed to the State Court of Appeals. It is anticipated that the decision of the Supreme Court in the *Hsieh* case will be announced prior to hearing of the appeal in this case and will be decisive thereof.

Rodgers v. Ramon; Pistol Association v. Seattle, et al.

In the first of these cases plaintiff sought a declaratory judgment that certain alleged "practices and policies" of the Chief of Police in issuing licenses to carry concealed weapons under RCW Ch. 9.41 were "illegal" and constituted "a refusal to exercise a reasonable discretion imposed by law." Pending trial, plaintiff sought a temporary injunction to restrain the Chief of Police from issuing such licenses in accordance with such "illegal practices and policies."

Pursuant to a hearing on July 15, 1969 the Superior Court concluded that the right of the Chief of Police to deny an application for a license was "limited," that there had been no showing of illegal practices or abuse of administrative discretion by the Chief of Police in the exercise of his authority under RCW 9.41.070, and denied plaintiff's motion for temporary injunction.

Thereafter Ordinance 98180 was adopted by the City, requiring certain information on applications for licenses to carry a concealed pistol, and establishing restrictions on the issuance of such licenses.

Plaintiffs Washington State Sportsmen's Council and Washington State Rifle and Pistol Association, intervenors in the first case, then commenced the second action challenging the validity of Ordinance 98180 contending that such ordinance was in conflict with RCW 9.41.070 and infringed on "the right of the individual citizen to bear arms."

Upon motions for summary judgment made by both the plaintiffs and the City, the Superior Court held invalid provisions of the ordinance which prohibit the Chief of Police from issuing a license to any person who the Chief reasonably believes—

"(2) has made any false statement of a material fact in such application; or

"(3) has failed to state in such application sufficient facts evidencing that such license is in fact sought for the purposes of protection or while engaged in business, sport, or while traveling."

but upheld the validity of the remainder of the ordinance including the requirement that the application for a license contain—

"A statement of the applicant's reasons for desiring such license including such factual information as the Chief of Police shall find

reasonably necessary to effectuate the purpose of, and determine compliance with, this ordinance and RCW Chapter 9.41." In view of the lack of practical detriment occasioned by the invalidity of the above provisions, and the positive benefit provided by the Court's order in declaring the remainder of the ordinance valid, no appeal was taken from such order.

Subsequently, by stipulation of all the parties, the first action was dismissed.

State ex rel. Richard J. Spady v. City, et al.

This case established that the Alaskan Way Viaduct condemnation in taking "the fee, including the surface rights, for the extension of Aurora Avenue through Block W, Bell's Sixth Addition to the City of Seattle" acquired a fee simple absolute for limited access purposes. Mr. Spady had argued that the City had only acquired a depressed tubular easement and that the surface belonged to Scott Building, Inc., an adjacent owner. Upon reconsideration after trial, the court granted judgment for the City and the appeal by Mr. Spady, et al, is now in the process of dismissal.

STAFF CHANGES

Retirements:

Mr. Leonard V. Eaton, Senior Claim Adjuster, retired on September 30, 1970. Mr. Eaton began employment with the City as a Transit System employee on January 3, 1939 and joined the Claim Division of the Law Department in 1946. Throughout his career Mr. Eaton's efficient performance of his duties and congenial attitude earned him the respect and high personal regard of his associates and of all those with whom he came in contact during his more than thirty years of City service.

Resignations:

Assistants Richard H. Wetmore and Christopher M. Egan resigned during the year to enter private practice. Mr. Wetmore, who joined the staff in 1967 and Mr. Egan, who joined in 1969, were primarily assigned to the trial of Municipal Court Appeals in King County Superior Court and in the performance of this assignment they each achieved high standards of professional competence and personal demeanor.

Mr. Forest A. Roe, Process Server since 1966, resigned on September 30, 1970. During his relatively brief period of service Mr. Roe proved himself to be an extremely conscientious and capable employee.

Appointments and Promotions:

There were six additions to the staff in 1970: Assistant Lawrence K. McDonell, formerly engaged in private practice and former Chief Deputy Prosecuting Attorney of King County; Assistant Richard E. Mann, formerly engaged in private practice; Assistants Philip M. King and Philip L. Bleyhl upon their recent graduation from law school and admission to the bar; Mr. Morris A. Quale, formerly with the Seattle Transit System, was appointed provisional Claim Adjuster I and Mr. Alfred H. Masar, former police officer, was appointed provisional Process Server. Mr. William G. Heurion, Claim Adjuster I, was promoted to the position of Claim Adjuster II.

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on JUDICIARY AND PERSONNEL

to which was referred C. F. 269400

Date Reported
and Adopted

APR 12 1971

City of Seattle Law Department, 1970 Annual Report,

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

THE SAME BE PLACED ON FILE.



J & P
Chairman

Chairman

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