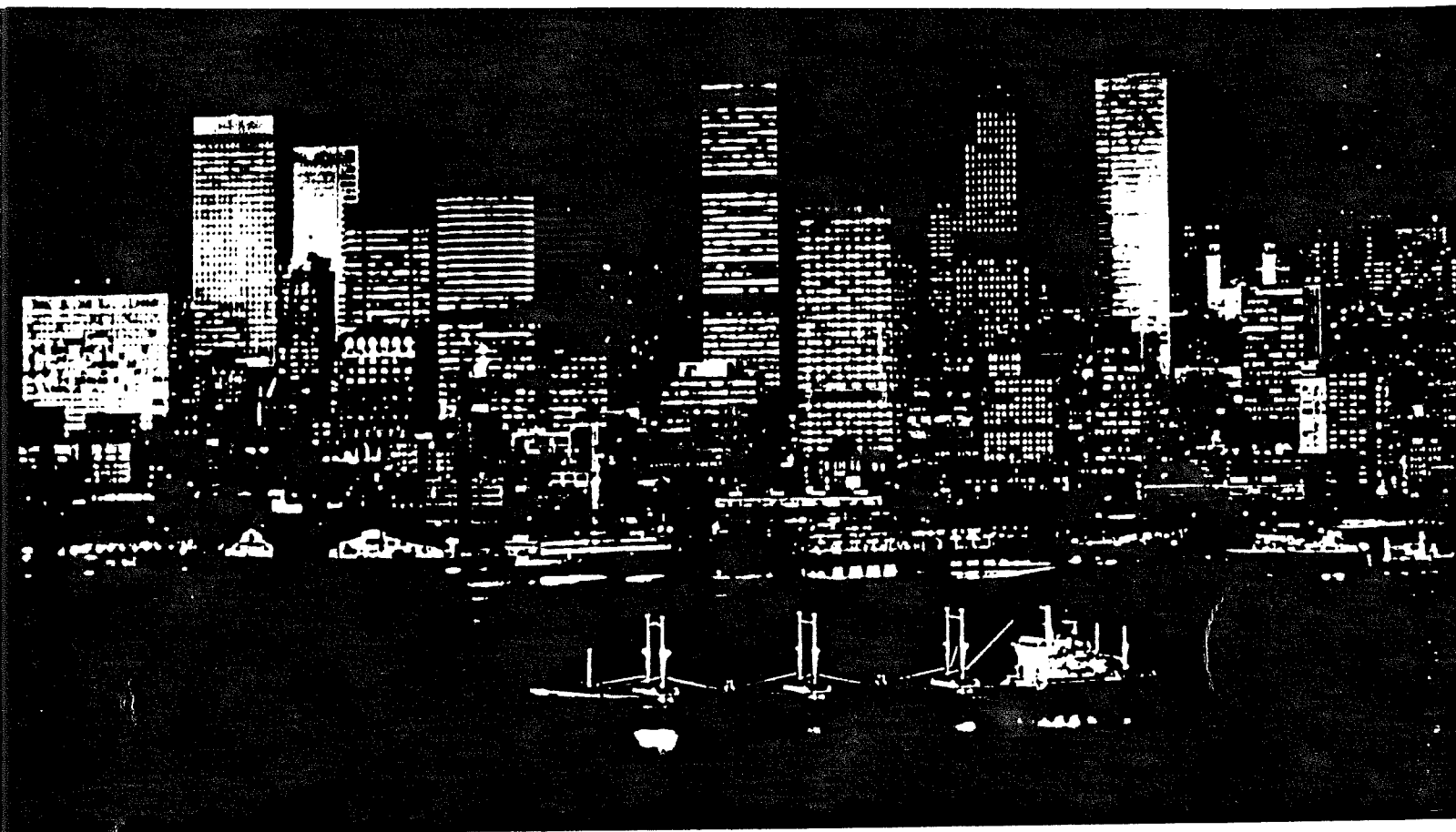


CITY COMPTROLLER
01-01-01



CITY of SEATTLE
LAW DEPARTMENT
ANNUAL REPORT
1984

DOUGLAS N. JEWETT
SEATTLE CITY ATTORNEY



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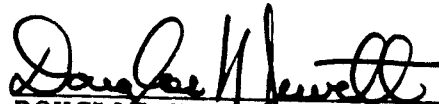
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Seattle, Washington
April 1, 1985

The City Charter requires the City Attorney to produce an Annual Report. What you hold in your hands is the result. It is lengthy, intended to be substantive, and is devoid of attractive glossy photographs. We have recognized as we prepared it that it will probably be read by a very limited audience. Nonetheless, the preparation of the report itself reminds us here in the Law Department of all the hard work and accomplishments that characterized 1984. It captures the opportunities we enjoy for public service through the practice of law.

There is also a story that is not fully told in the pages that follow: the cases that were not filed; the problems that were anticipated and resolved; the extra effort to really listen to a citizen complaint or explain the criminal justice system to a crime victim.

The report that follows is a tribute to a professional staff that also happens to consist of wonderful and caring people. As City Attorney, I am honored to be associated with them.


DOUGLAS N. JEWETT
SEATTLE CITY ATTORNEY

DOUGLAS N. JEWETT, CITY ATTORNEY
DICKSY WINTERS, ADMINISTRATOR
MARGARET SYMONS, SECRETARY

ADMINISTRATION

MASAE OHARA	OFFICE MANAGER
MARILYN SENOUR	RECEPTIONIST
LAURIE THOMS	RECEPTIONIST/FILE CLERK
FRANCESCA M. LEHAN	WORD PROCESSING SUPERVISOR
JOYCE R. SIMS	ASST. WORD PROCESSING SUPERVISOR
PATRICIA LOCKWOOD	WORD PROCESSING OPERATOR
PATRICIA McGUIRE	WORD PROCESSING OPERATOR
HAZEL HARALSON	WORD PROCESSING OPERATOR
NORMA DAYAO	WORD PROCESSING OPERATOR
NONA COLLINS	WORD PROCESSING OPERATOR

LEGAL INTERNS

THERESA FERNANDES	UTILITIES DIVISION
MARY KAY DOHERTY	LAND USE DIVISION
PATRICK MULVIHILL	ADVISORY DIVISION
MARIANNE ODLE	LAND USE DIVISION

LAW DEPARTMENT
THE CITY OF SEATTLE
1984 ANNUAL REPORT

Under Article XIII of The City Charter, the mission of the Law Department is to facilitate the effective operation of all City departments, offices, and agencies by providing quality legal advice and assistance; to supervise and control all litigation of the City, or in which the City or any of its departments are interested; and to prosecute violations of City ordinances. This is the 1984 Annual Report of the City Attorney.

The legal services of the Law Department are performed by attorneys in five divisions: Advisory, Criminal, Land Use, Litigation, and Utilities. The Claims Section evaluates and, if possible, settles tort claims against the City. The Administrative Division provides budget, personnel, and clerical support services. The Battered Women's Project provides victim assistance and case preparation in domestic violence and child abuse prosecutions.

UTILITIES DIVISION

The Utilities Division renders legal services primarily to the City's four public utilities: City Light, Water,

Sewer, and Solid Waste. Its director is Arthur T. Lane, and its members in 1984 included Ricardo Cruz, Ellen Donovan, Marcia M. Nelson, William H. Patton, Jeannete Pfotenhauer, and Walter L. Williams. Rounding out the division were Evelyn De Freitas and Shirley M. Ruble, secretaries, and Khalila I. Man Rashad, paralegal.

In addition to the general legal services of the division, the following significant cases were concluded during 1984:

High Ross Dam

1984 saw the successful conclusion of one of the longest running resource development/legal controversies on record. From the start of the City's Skagit River Power Development Project in the early 1920's, J. D. Ross had envisaged the ultimate raising of Ross Dam to a height which would have extended the reservoir several miles into British Columbia. Accordingly, in 1929, the only privately-owned land in the Canadian reservoir area was purchased by the City. Construction on the Skagit Project had commenced in the early 1920's and on Ross Dam itself in the mid-1930's. In 1942, the International Joint Commission (established by the Boundary Waters Treaty of 1909 in order to rule on such matters), authorized the raising of the reservoir to 1725 feet above sea level upon the execution of an indemnification agreement

between Seattle and British Columbia. Despite efforts which almost culminated in agreements during the 1950's, such an agreement was not concluded until 1967, and shortly thereafter the City filed its application in 1969 to the Federal Power Commission for authority to raise the elevation of Ross Dam. Environmental and international opposition resulted in lengthy administrative proceedings which were not concluded until 1978, with the issuance to Seattle by the Federal Energy Regulatory Commission of a license for the high dam. This action was upheld by the Circuit Court of Appeals for the District of Columbia in 1980. Conclusion of American litigation then prompted British Columbia to refile an earlier application with the International Joint Commission which sought to set aside the 1942 IJC Order and the 1967 agreement. This application was denied by the IJC in 1982, but at the same time the Commission strongly urged both parties to reach a settlement of the matter and placed a one-year moratorium on any dam construction.

Intensive negotiations with British Columbia by members of the Executive, Law, and City Light Departments resulted in a settlement agreement which was executed between Seattle and the Province on March 30, 1984, followed by an implementing treaty between the United States and Canada.

The arrangement basically provides what has been characterized as the creation of a "paper dam". British Columbia is to supply Seattle the same amount of power and energy that would have been produced by High Ross for a period of 80 years (1986-2067). For this Seattle will pay British Columbia annually an amount which would have been necessary to service a bond issue to finance construction of the High Ross project. For the remaining 45 years of the agreement, the City must pay only adjusted operation and maintenance costs. The Province is also authorized to raise the level of its Seven Mile Project on the Pend Oreille River across the international boundary from the City's Boundary Project, which will provide benefits to British Columbia over the entire term of the 80 year agreement.

If at any time during the treaty period, British Columbia does not provide the required power to Seattle, it must pay Seattle the amount which at that time would be required to construct High Ross, and Seattle is at the same time given full authority under United States law to proceed with construction, notwithstanding any constraints of the Federal Power Act. (ATL)

Washington Public Power Supply System Litigation

The Washington Public Power Supply System, a joint operating agency of the State of Washington, began construction of five nuclear projects during the early 1970's. The first three of these projects were "net-billed" through the Bonneville Power Administration; that is to say, certain direct power purchasers like The City of Seattle assigned their full purchase to BPA in return for a reduction in their annual power bills from BPA. One of these projects (No. 2) is now operating, but the construction of Project Nos. 1 and 3 has been deferred.

The Supply System began construction of Project Nos. 4 and 5 in 1976 under agreements by which 88 Northwest public agency participants agreed to acquire the output of the plants and to pay all the costs even if the plants were not completed (the so-called "hell-or-high-water" clause). The City of Seattle decided not to participate in Project Nos. 4 and 5, although it was a member of the Supply System. Construction of these two projects was terminated by the Supply System in January 1982, and in August 1983, following a decision by the Washington Supreme Court (the Chemical Bank case, 99 Wn.2d 772, 666 P.2d 329 (1983)) that Washington municipalities did not have the authority to execute the

participants' agreements, there was a default by the Supply System of \$2.25 billion of the bonds.

Numerous suits involving the City have been filed in various courts on behalf of individual bondholders, as well as by Chemical Bank as trustee, alleging among other things violation of federal and state securities laws relating to the issuance of bonds for the projects. Many of these suits have been consolidated and assigned to the United States District Court for the Western District of Washington. Discovery proceedings are underway and trial is currently scheduled to commence in mid-1986. The Seattle firm of Foster, Pepper and Riviera has been retained as Special Counsel to provide Seattle's defense in these and associated cases. In the meantime, Seattle has filed a brief in the United States Supreme Court supporting Chemical Bank's petition for certiorari to set aside the Chemical Bank decision of the Washington State Supreme Court. (EDP)

Irrigation District Litigation

Seattle recently entered into several long term power purchase contracts with irrigation districts in central Washington and others near Boise, Idaho, to utilize existing irrigation water flows for electric power purposes. These projects are quite attractive to the City since the cost of a hydroelectric project remains relatively stable over its

operational life. Also, such projects are quite benign since they involve no significant environmental impacts and harness energy which would otherwise be wasted. Since all arrangements involved a long term commitment by the irrigation districts to sell the entire output of the projects, the contracts provided that Seattle (and in some joint contracts, the City of Tacoma) would pay all financing and other associated costs whether or not the projects were even completed or operable. The so-called Chemical Bank cases (Chemical Bank v. Washington Public Power Supply System, 99 Wn.2d 772, 666 P.2d 329 (1983); and Chemical Bank v. Washington Public Power Supply System, 102 Wn.2d 874, 691 P.2d 524 (1984)) called into question this type of "hell-or-high-water" contract provision, so several declaratory judgment actions were commenced to test such contracts in order to establish Seattle's authority to pay under the agreements.

In all cases the contracts were upheld after application of the Chemical Bank test, which involves an analysis of the "control" a power purchaser is able to exert over the project's construction and operation. If sufficient control is present, the "hell-or-high-water" clause will pass muster. Evidence was provided on the "control" issue with respect to contract language and administration and several project agreements

were validated in South Columbia Irrigation District, et al. v. The City of Seattle and City of Tacoma, Grant County Superior Court No. 83-2-00418-3; October 25, 1983. The contract for the proposed O'Sullivan Project was validated in South Columbia Basin Irrigation District, et al. v. The City of Seattle, Grant County Superior Court No. 84-2-00040-2; April 5, 1984. Seattle's proposed purchase of power from three Idaho irrigation districts and one Oregon irrigation district holding a license for the Lucky Peak Power Plant Project located outside of Boise, Idaho was validated in Boise-Kuna Irrigation District v. City of Seattle, King County Superior Court No. 84-2-04868-0; April 24, 1984. Id. at 787-88, 666 P.2d at 337-38. (WAP)

Aluminum Company of America v. Central Lincoln People's Utility District; Supreme Court of the United States, No. 82-10071

In August 1982, pursuant to the Regional Power Act, the Bonneville Power Administration (BPA) offered new contracts to the Direct Service Industry (DSI) customers allegedly for the same amount of power specified by the DSIs 1975 contract. Based on an interpretation of the Regional Power Act, however, BPA concluded that the terms of the new power sales contract need not be interruptible "at any time" as was required by the 1975 contracts. This, in effect, gave the DSIs priority over the preference customers as to the non-firm

energy used to serve the DSIs top quartile of its load. The Northwest preference customers (including Seattle) challenged the new contracts by petition for review in the 9th Circuit Court of Appeals. The Court agreed with the Northwest preference customers and found the BPA's interpretation unreasonable.

The United States Supreme Court reversed the judgment and remanded the case to the Court of Appeals for further proceedings consistent with the Supreme Court's opinion. The Court, following established administrative law principles, determined that the BPA Administrator's interpretation of the act should be given great weight. The Court held that BPA's interpretation was a "fully reasonable one". (WLW) City of Seattle, City Light Department v. Peter Johnson, Cause No. 83-7947, 9th Circuit Court of Appeals

This case was brought by Seattle and eight other publicly-owned utility customers in Oregon and Washington against the Bonneville Power Administration (BPA). It is an original action in the 9th Circuit Court of Appeals pursuant to the special jurisdictional provisions of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Power Act).

In August 1981, City Light entered into power sales contracts for the purchase of electrical power from BPA. These contracts were offered pursuant to mandatory provisions

of the Regional Power Act, and contain various protections for City Light regarding their planning and operating flexibility.

The dispute now is over what City Light does with its own non-firm power, and who should bear the risk of being able to market that power in a time of surplus. Seattle alleges that BPA is attempting to force City Light to buy a certain set amount of power from BPA, which it is not required to do under its contract, and seeks injunctive relief.

The case has been briefed by all of the parties and is awaiting oral arguments before the Court of Appeals for the Ninth Circuit. (WLW)

Before the Federal Energy Regulatory Commission (FERC) in the case of U.S. Dept. of Energy, Bonneville Power Administration, Docket Nos. EF81-2011-003 and EF82-2011-003

In this matter, Bonneville Power Administration's (BPA) 1981 and 1982 non-firm energy rates (NF rates) for sale outside the Pacific Northwest region (PNW) were reviewed by FERC. These rates are used for the purchase of BPA non-firm energy both inside and outside the Pacific Northwest. By order issued April 29, 1983, the Commission set for hearing BPA's NF-1 and NF-2 rates. Seattle intervened in the proceeding, and evidentiary hearings were conducted in Washington, D.C. in 1984.

Administrative Law Judge David W. Miller first found that BPA is not mandated to set Section 7(k) rates on a cost of service basis, but, absent a showing that their approach should not be taken, it is a fair method and consistent with the statutory standards. Second, it was fair for BPA to include capacity costs in the cost of service associated with both hydroelectric and thermal generating facilities on an unweighted basis. Costs associated with nuclear plants which are not operating should also be included, but there was no basis for assigning thermal capacity costs to non-firm energy for more than about 3,300 megawatts of thermal capacity.

Judge Miller also found that it is appropriate to include a portion of the certain other costs in the non-firm energy cost of service.

He found, however, that in the NF-1 and in NF-2 periods, BPA made a significant mistake in not setting the 7(k) rate so that it could recover the costs of providing non-firm energy from users of that energy. This error, plus others, precluded FERC approval of the NF-1 and NF-2 rates. As a result of Seattle's intervention, Bonneville can expect an increase in revenue in the range of \$300 to \$350 million per year. (WLW)

Seattle v. Hearst Corporation, King County No. 83-2-26417-6

A Complaint was filed in which the City sought a judgment declaring that certain documents were exempt from disclosure. The Seattle Post-Intelligencer requested that City Light produce documents regarding an internal investigation of an employe's sexual harassment complaint.

Superior Court Judge Frank Roberts conducted an in camera inspection of 799 documents claimed to be exempt under RCW 42.17.310(1)(b) and (f). Subsection (b) exempts documents containing personal information about employees and subsection (f) exempts preliminary drafts, notes, recommendations, and intra-agency memoranda.

Many of the documents contained personal information about employees, including the complainant, who had no objection to production of the documents. Of the 799 documents that Judge Roberts examined, only 144 or 18.5% were ordered to be disclosed.

RCW 42.17.340(3) provides for an award of attorneys' fees to "any person who prevails against an agency" in an action seeking the right to inspect public records. The Hearst Corporation sought attorneys' fees and costs in the amount of \$11,582.82. Judge Roberts awarded \$1,530 as attorneys' fees, plus \$100 for costs. (MMN)

LITIGATION DIVISION

The principal function of the Litigation Division is to defend the City in tort litigation. In addition, it handles workmen's compensation and discrimination claims, collects monies owing to the City, advises on construction contract matters, and investigates and adjusts claims. The Director is Thomas J. Wetzel, and its members in 1984 included Terrence J. Cullen, Philip M. King, Richard A. Mann, Philip Mortenson, J. Roger Nowell, and Thomas S. Sheehan. Support staff included Kathy Youngers, secretary, and Judith H. Pfau, paralegal.

The Litigation Division is responsible for handling discrimination cases referred to it by the Human Rights Department. In 1983, 28 such cases were referred. In 1984, the number of cases referred was 27. These cases involve alleged violations of the fair employment practices and open housing ordinances.

Claims Section

The Claims Section of the Litigation Division investigates, evaluates, and resolves tort claims filed against The City of Seattle. Additionally, the Section handles special investigative assignments from the trial attorneys and others, and all Small Claims Court actions filed against

the City. It is staffed with a supervisor, four adjusters, and a secretary (the latter shared with the Litigation attorneys).

In 1984, 1,623 new claims exposures were opened, an 11% increase over the previous year. 1,559 claims exposures were closed, 132 more than in the previous year, also an 11% increase. Only 4% of all of the claims filed against the City went into litigation. There were 332 special assignments and 11 Small Claims Court trials.

The most significant individual claim was filed against the City by Foss Tug. An Engineering Department bridge tender inadvertantly lowered the Fremont Bridge onto a passing tug boat. The City paid \$82,168.00 to repair the tug boat and \$2,500.00 to resolve a claim for bodily injury by a deck hand. An additional claim is expected to be filed by the captain of that ship.

Other claim activity includes the greenbelt claims in which private property owners within the City alleged that they were wrongfully deprived of the right to develop their properties by the Greenbelt Ordinance. There were 58 separate claims filed against the City demanding a total of \$10,048,958,209.36. All were denied, and the claims have gone into litigation.

1983-1984 Comparisons

	<u>1983</u>	<u>1984</u>	<u>Change</u>	<u>%Change</u>
Official Open	1,320	1,372	+52	+3.9%
Exposure Open	1,464	1,623	+159	+10.8%
Exposure Close	1,427	1,559	+132	+9.2%
Pending Increase	36	64	+28	
Special Assignments	300	332	+32	+10.6%
Paid Number	563	552	-11	-2.0%
Paid Amount including Ord.	\$389,098.84	\$528,023.00	+\$138,924.16	+35.7%
Paid Average	\$691.12	\$957.00	\$265.16	+38.4%
Ordinance Number	16	17	+1	+6.3%
Ordinance Amount	\$143,085.16	\$284,162.83	+\$141,077.67	+98.5%
Ordinance Average	\$8,942.81	\$16,715.00	\$7,772.19	+86.9%

ORDINANCE CLAIMS PAID - 1979-1984

<u>YEAR</u>	<u>NUMBER</u>	<u>AMOUNT PAID</u>	<u>AVERAGE</u>
84	17	\$284,162.83	\$16,715
83	16	143,085.16	8,943
82	16	111,645.49	6,988
81	18	102,866.95	5,715
80	11	71,517.71	6,502
79	28	138,381.02	4,942

Judgments and Claims Fund

During 1984, the City paid 71 judgments and settlements of lawsuits totalling \$1,151,343.21. The City paid 22 claims in excess of \$2,500, totalling \$267,107.07. Claims paid under \$2,500 totalled \$246,079.94.

Litigation Statistics

The number of civil cases opened in 1984 was 289. 297 civil cases were closed in 1984.

Collections

The Law Department provides collection services to City departments which have money owing to them. Items collected include unpaid fees, assessments and fines, property damage, contract disputes and defaults, drug enforcement forfeiture actions, and a variety of other items.

During July 1984, the Litigation Division instituted a special collections program to provide more effective follow-up on amounts owing to the City. The program handled the following matters during the 1984 year.

On January 1, 1984, there were 476 general active collection matters with a total dollar volume outstanding of \$516,645. An additional 671 matters were referred during 1984, totalling \$343,029, for total active general collections

of \$859,674 (1,147 cases). During the year, 137 matters were completed, representing \$90,011 being collected through the Law Department or directly by the various City departments. At December 31, 1984, there were 1,010 general active collection matters outstanding representing a dollar figure of \$769,662.

In addition to the above general collection matters, the various Law Department divisions also had special collections outside the above program. The following comparison chart shows the level of collection activity for 1983 and 1984, and includes both the general matters shown above and special collections:

	<u>1983</u>		<u>1984</u>		<u>Increase</u>
	<u># Items</u>	<u>Amount</u>	<u># Items</u>	<u>Amount</u>	
Special	3	\$384,650	1	\$476,583	
General	<u>90</u>	<u>78,851</u>	<u>325</u>	<u>95,991</u>	
Total	93	\$463,501	326	\$572,574	22%

The 22 percent increase in collections in 1984 is primarily due to the development of the program referred to above, which will continue in 1985 with the addition of a new position pursuant to the 1985 budget.

Significant cases concluded by the Litigation Division include:

P. S. Aluminum Products, Inc., et al. v. City of Seattle, Washington Natural Gas, Wienker Carpet Service, Inc., and Millican of Washington, Inc., Cause No. 82-2-10411-6

This action, known as the Ballard Explosion case, involved eleven separate suits by various parties who claimed injuries arising from a gas explosion on August 13, 1981. Claims were in excess of \$1 million, with the City being sued for negligent fire inspections and slow 911 response to a call reporting gas odors. All the cases have now been either tried or settled with favorable results for the City. The City paid out the sum of \$26,275.97 in settlements and judgments and recovered \$15,375.41 from the other defendants for damage to light poles and equipment, for a net payout of \$10,900. (PM)

Heider v. Seattle, 100 Wn.2d. 874, 675 P.2d 597 (1984).

This case involved an ordinance changing the name of Empire Way to Martin Luther King, Jr. Way. The court upheld the City's contention that street name changes are administrative in character and therefore not subject to referendum. The court also agreed that businesses abutting the street have no property interest in the name, and cannot claim damages for the cost of accommodating the name change. (TSS)

Stipulation with Ackerly Communications

The Law Department continues to monitor and enforce the 1982 agreement which resolved litigation between the City and Ackerly Communications, the major billboard company in the Seattle market. Steady progress has been made in confining billboards to appropriate and legal locations. Completion of the relocation plan is expected in 1985. (TSS)

CRIMINAL DIVISION

The Criminal Division is responsible for the prosecution of violations of the City's ordinances in six municipal courts and for handling any appeals to higher courts. Its director is Douglas B. Whalley, and in 1984 the City prosecutors were Richelle J. Bassetti, David Scott Blair, Charlotte E. Clark-Mahoney, Myron L. Cornelius, Russell Dawson, John G. Fritts, Leonor R. Fuller, Thornton B. Hatter, Augustin R. Jimenez, Robert B. Johnson, Barbara Madsen, Betty H. G. Ngan, Monica Marcia Patrick, Carolyn Gayle Pohlman, Elizabeth M. Rene, and Vicki J. Toyohara. Support staff included Jane Byers, secretary, and Adalyn L. Gardner, Jeannine M. Gill, Barbara Joyce Henderson, and Bradley Marshall, research aides.

The Criminal Division has continued the pre-jury trial hearing (PJTH) program, by which a potential jury trial

defendant is required to appear before a judge at an early stage to determine the merits of the case and the need for a jury trial. Since 1982, the program has contributed to a 65% decline in the number of jury cases actually going to trial. While the program requires more initial case preparation by City prosecutors, the savings in police overtime, juror costs, witness fees, and court time clearly make the effort worthwhile.

D.W.I. Impact Grant

In 1984, the State Legislature authorized a \$3 million grant to cities and counties impacted by the increased costs of Driving While Intoxicated (DWI) prosecutions. Seattle received \$240,000, and part of that amount was used to fund a two-attorney DWI Unit in the Law Department. The Unit reviewed every DWI case as soon as possible, contacted witnesses, prepared sentence recommendations, negotiated with attorneys, and tried many of the more difficult cases. The Municipal Court used the rest of the grant to staff a DWI Pretrial Settlement Calendar, and all DWI defendants were required to attend mandatory pretrial hearings.

The early results of the program are impressive. In December of 1983, 45.5% of DWI defendants scheduled for pre-jury hearing pled guilty, 25% to a reduced charge.

In December of 1984, under the new program, 75% pled guilty at the Pretrial Settlement Conference and only 2% pled to a lesser charge. The elapsed time from arrest to disposition has been reduced from 77.1 days (December of 1983) to 62.8 days (December of 1984).

When the results of DWI jury trials are examined, the effectiveness of the project is apparent. In the fourth quarter of 1984, 40 DWI cases were tried to a jury. The City won 28, lost 7, and 5 ended in a mistrial. In the same period of 1983, 50 DWI cases were tried to a jury. The City won 31, lost 14, and 5 ended in a mistrial.

The following are significant cases concluded during 1984:

Seattle v. Williams, 101 Wn.2d 445, 680 P.2d 1051 (April, 1984)

In this case, two indigent defendants waived their right to jury trials at arraignment, and then changed their minds and requested jury trials shortly before their scheduled bench trial dates. By local court rule (SMCR 2.08), criminal defendants who did not exercise their right to a jury trial at arraignment were required to demand a jury trial no later than 10 days from the date of arraignment or lose that right. The defendants' requests for jury trials were denied. On a

a writ of review to the King County Superior Court, the decisions of the Seattle Municipal Court were affirmed.

The Supreme Court reversed the Superior Court and granted the defendants' requests for jury trials based on the factual record. The Court upheld the arraignment procedures which the City sought to preserve, however, even as it invalidated the wording of the underlying court rule. As a result, the Municipal Court avoided the need to establish a master calendar system for all of its 45,000 cases in 1984.

The Court also held that an indigent defendant has a right to discretionary review of a Superior Court Criminal decision at public expense. (ARJ/EMR/DBW)

Seattle v. Brown, Court of Appeals Cause No. 13339-0-1

In this case and the companion case of State v. VJW, 37 Wn.App. 428, the defendants challenged the City's Prostitution Loitering Ordinance, SMC 12A.10.010. In both cases, the constitutionality of the ordinance was affirmed.

Relying upon the Supreme Court's opinion in Seattle v. Jones, 79 Wn.2d 626, 488 P.2d 750 (1971), the Court of Appeals held that SMC 12A.10.010 (B) and (C) provide adequate notice to persons of average intelligence regarding the type of conduct which they prohibit, that they do not proscribe

constitutionally protected activities, and that they do nothing to shift the burden of proving guilt from the prosecution to the accused. (EMR)

City v. Camby, 38 Wn.App. 462.

Defendant was arrested and charged with harassment for using "fighting words" as he was being led out of a restaurant by the doorman-host and a police officer. The officer warned defendant to cease his threats and defendant replied: "I'll either get him [the doorman-host] tonight or later." He was arrested and charged.

Defendant contended that his words did not cause the doorman-host to lose his temper nor was he provoked to fight, and that therefore there was no danger of a breach of the peace. The Municipal Court found defendant guilty, and the Superior Court affirmed the conviction on appeal.

The Court of Appeals affirmed, holding that the test of "fighting words" was not whether the addressee was, in fact, provoked to fight, but whether the words, "when addressed to the ordinary citizen were, as a matter of common knowledge, inherently likely to provide violent reaction". The Supreme Court accepted review and heard argument in January, 1985. City v. Spenard, Superior Court No. 84-1-00981-7. (BHBN)

Spenard was detained by police at the scene of an accident, who administered physical tests to determine his sobriety. Upon failing the tests, Spenard was arrested for DWI and given the Miranda warnings. At trial, Spenard sought to suppress the evidence of the physical tests on grounds that it violated his Miranda rights; and also on grounds that under JCrR 2.11(c) he was entitled to advice of counsel before being required to take the sobriety tests.

Municipal Court Judge Ron A. Mamiya refused to suppress the evidence, and Superior Court Judge Liem Tuai affirmed the ruling on appeal. The case is pending in the Court of Appeals. (MCB)

Seattle v. Gordon, 39 Wn.App. 437.

On the day of trial, defendant moved for the appointment of mental health experts under RCW 10.77.060 to examine and report on the question whether he was competent to stand trial. The trial court denied the motion. The Superior Court on appeal affirmed. The Court of Appeals accepted discretionary review.

The Court of Appeals affirmed, holding that the defendant must make a factual showing that there is "reason to doubt" his/her competency to stand trial in order to trigger the

mandatory provisions of RCW 10.77.060. The court further held that the question whether there is reason to doubt a defendant's competency is within the discretion of the trial court. (ARJ)

Seattle v. Peterson, 39 Wn.App. 524.

Defendant sought to suppress evidence of the speed of his vehicle obtained by the use of a radar device. Municipal and Superior Courts denied his request.

The Court of Appeals reversed and remanded for a new trial, holding that the City was required to and failed to present evidence of the accuracy and reliability of the "process or system" used by the radar device in determining the speed of vehicles. (ARJ)

Seattle v. Chesterfield, (Court of Appeals No. 15365-0-I.)

Defendant sought to suppress evidence of her refusal to submit to a Breathalyzer test in a DWI prosecution, and sought discretionary review from adverse rulings. The Court of Appeals granted review to consider two issues: 1) whether the statutory amendments permitting the use of refusal evidence in DWI prosecutions require the trial court to admit refusal evidence, and 2) whether the State Legislature and City Council may enact laws governing the admissibility of evidence.

This is the first case to test the validity of the recent amendments permitting the prosecution to show that a DWI suspect was given the opportunity to take a Breathalyzer test and refused. It is expected that the Court of Appeals will uphold the validity of the amendments and set forth guidelines for judicial discretion in determining the admissibility of refusal evidence. (ARJ)

Sobriety Checkpoint Cases

In two separate Court of Appeals actions, Seattle's 1984 Sobriety Checkpoint Program is under review. In Fury, et al. v. Seattle, the Court is reviewing a King County Superior Court decision that DWI roadblocks are constitutional with prior judicial authorization. In 22 consolidated criminal cases, Seattle has appealed Municipal Court decisions dismissing the prosecutions. (DBW/TJC)

Battered Women's Project

1984 was a year of enormous change for the Battered Women's Project. Forces both internally and externally brought their weight to bear on the Project and it was evident that change was essential. How that change was to take place was a year long undertaking.

The year began when the Attorney General's TASK Force held hearings in Seattle for two days to take written and

oral testimony on the problem of family violence. Seattle was one of six cities throughout the country chosen because of its approach to family violence. The Project was viewed as a model program and the Director, Joanne Tulonen, was invited to speak and submit written testimony. The final report from the TASK Force was issued in September 1984, with many recommendations for all components of the criminal justice system. The majority of those recommendations had already been implemented in The City of Seattle, largely due to the existence of this Project.

For most of 1984, the focus was on the implementation of the Domestic Violence Prevention Act. (Ch. 263, Laws of 1984.) The law took effect September 1, 1984 and had far reaching ramifications for everyone working in the criminal justice system. For the Project it meant a doubling of our case load, and our trial calendar went from 70 cases per month to 240 cases. The last four months of 1984 put a strain on this Project that the City Council could not ignore. They gave this Project four additional full time staff members with one earmarked for child abuse cases.

The end of 1984 saw the Battered Women's Project become the Family Violence Project with seven full time Advocates, an Administrative Assistant, and a Director. A commitment has been made by The City and the Law Department to respond effectively to a serious social problem that is also a crime.

STATISTICAL TABLES - BATTERED WOMEN'S PROJECT - 1978-1984

TABLE I

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Total Police Reports Screened	581	1569	1512	1814	2257	2614	3485
A. Cases Closed	379	1461	1599	1530	2002	2426	2519
1. Charges filed after Project Contacts Victim	53	289	312	383	311	334	299
2. Charges filed, arrest at time of incident	119	357	298	335	337	387	630
3. Unable to Contact Victim - No charges filed	86	387	459	525	965	929	1034
4. Report and filable offense - Facts insufficient to constitute a crime	22	78	76	60	68	139	96
5. Victim contacted; did not wish to prosecute	79	320	404	359	258	581	414
6. Referred to other legal agencies after victim contacted project	20	32	50	55	63	55	46

STATISTICAL TABLES - BATTERED WOMEN'S PROJECT - 1978-1984

TABLE II

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
A. Charges Filed After Project Contacts Victim	53	289	312	383	311	334	299
Case Outcome:							
1. Victim cooperates/prosecution successful	29	136	164	178	159	212	216
2. Victim cooperates/not guilty	5	36	35	19	27	28	10
3. Victim does not follow through/case dismissed prior to trial	13	92	94	84	118	92	72
4. Victim does not follow through/prosecution successful	6	25	19	2	7	2	1

STATISTICAL TABLES - BATTERED WOMEN'S PROJECT - 1978-1984

TABLE III

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
A. Charges filed, arrest at time of incident/ victim contacted later by Project	119	359	298	335	337	387	630
Case Outcome:							
1. Victim cooperates/ prosecution successful	46	150	152	205	192	235	453
2. Victim cooperates/ not guilty finding	10	23	13	21	6	5	10
3. Victim does not follow through/ case dismissed prior to trial	49	131	92	102	125	135	164
4. Victim does not cooperate/ successful prosecution	14	53	41	7	14	7	3

SENTENCING OUTCOMES IN CASES SUCCESSFULLY PROSECUTED

TABLE IV

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
A. Total Successful Prosecution	95	363	376	401	372	456	673
1. Committed Jail Time	15	65	80	56	77	20	26
2. Committed Jail Time With Suspended Time	-	-	-	-	11	73	92
3. Suspended Jail Time	46	204	199	180	176	114	154
4. Deferred Sentence	32	119	128	87	123	159	248
5. Case Continued	-	-	-	-	10	71	128
6. Case Submitted	-	-	-	-	-	228	387
1. Alcohol Counselling	22	77	72	90	108	89	116
2. Batterer's Counselling	16	75	56	45	92	132	178
3. Alcohol and Batterer's Counselling	-	-	-	-	-	21	125
4. Other Counselling Recommended	7	31	32	46	-	21	36
5. Mental Evaluation	12	26	15	1	-	1	0
6. Mental Commitment	0	4	0	2	-	0	0
7. Restitution/Court Costs/Fines	27	141	153	66	146	124	88

IMPACT OF DOMESTIC VIOLENCE ACT ON PROJECT

Statistical Comparison of 4th Quarter
(October-December) 1983 and 1984

	4th Quarter <u>1983</u>	4th Quarter <u>1984</u>
Total Police Reports Screened	686	1055
A. CASES CLOSED	625	776
1. Charges filed after project contacts victim	82	67
2. Charges filed, arrest at time of incident	86	365
3. Unable to contact victim no charges	268	281
4. Report not filable offense	34	14
5. Victim contacted - did not wish to prosecute	154	45
B. CHARGES FILED AFTER PROJECT CONTACTS VICTIM	82	67
1. Victim cooperates/prosecution successful	59	45
2. Victim cooperates/not guilty	5	3
3. Victim does not follow through/Case dismissed	17	18
4. Victim does not cooperate/prosecution successful	1	1
C. CHARGES FILED, ARREST AT TIME OF INCIDENT	86	365
1. Victim cooperates/prosecution successful	57	270
2. Victim cooperates/not guilty	1	6
3. Victim does not follow through/case dismissed	27	87
4. Victim does not cooperate/prosecution successful	1	2
D. TOTAL SUCCESSFUL PROSECUTIONS	118	318
Committed jail time	1	8
Committed jail time with suspended time	15	49
Suspended jail time	31	62
Deferred sentence	42	134
Cases continued	19	60
Cases submitted	59	204
Alcohol counseling	23	63
Batterer's counseling	35	76
Alcohol and batterer's counseling	18	64
Other counseling	7	27
Restitution/court costs	28	25

ADVISORY DIVISION

The Advisory Division renders legal services, including advisory and litigation services, to all departments and offices, principally in matters relating to finance, personnel, labor relations, public contracts, women and minority business enterprise set-asides, and Seattle Center operations. During 1984, special projects included implementation of a new residential garbage collection system and contract-awarding methodology, a nation-wide review of inquest systems, a deferred compensation program, a City Treasurer's handbook, the transfer of Commuter Pool to METRO, establishment of KCTS at Seattle Center, taxicab regulation legislation, the Seattle 1, 2, 3 Bond issue, ten industrial development bond projects, contract documents for a new computer acquisition, and a master repurchase agreement for City investment bond transactions.

The Director of the Advisory Division is Donald H. Stout, and in 1984 its members included Jorgen G. Bader, M. Colleen Barrett, Gordon J. Campbell, Gordon B. Davidson, Rodney S. Eng, Rod P. Kaseguma, R. James Pidduck, Susan Rae Sampson, and Marilyn F. Sherron. Support staff were Lana Johnnie, secretary; Mary Ann Kelson, paralegal; and Patrick Mulvihill, legal intern.

Municipal Code Project

In December of 1984, the Purchasing Agent on behalf of the Law Department awarded a contract for the republication of the Seattle Municipal Code. Four bids were received from codification companies throughout the United States. The range of bids for the basic republication was between \$47,130 and \$80,000. Book Publishing Company of Seattle bid \$50,000 and was awarded a contract as lowest and best bidder.

The republished Code, which will be available in late summer 1985, will be a compilation of all general ordinances passed by Seattle through December 31, 1984. The Code will be in looseleaf format, supplemented by monthly lists of new ordinances and by quarterly text updates. Under the contract the supplements will continue through December 31, 1988.

Two hundred and ten copies of the Code will be delivered to the City for distribution to the various City departments. Book Publishing Company will also publish additional copies of the Code for sale to the public. (MAK)

Labor Arbitration

The Advisory Division handled several dozen labor arbitration cases during 1984 which included the following:

IAF Local 27 v. City

The firefighters union challenged mandatory fitness standards and testing required by the Fire Chief. The matter was settled by the adoption of a written fitness policy.

International Assn. of Firefighters v. City

The union charged violations of civil rights by the Fire Department in conducting drug use investigation. The matter was settled by adoption of a written drug policy and payment of the union's attorney fees.

Police Officer's Guild Contract Arbitration

The Guild sought a pay increase of 12% for 1984. The City offered an increase of 1.5%. The arbitrator awarded the Guild a 3.5% pay increase. (MFS)

Opinions and General Business

During 1984, the Law Department received 124 requests for written City Attorney Opinions, and 1,132 requests for general business assistance, which includes the preparation or review of legislation, contracts, reports, and similar matters. (MAK)

Significant cases handled by the Advisory Division include the following:

Gary Merlino Construction Co. v. City, King County Superior
Court Cause No. 84-2-09105-3

Gary Merlino Construction Company was a general contractor for a concrete street rehabilitation project. As part of its ordinance and contractual obligations, Merlino was required to utilize Women's Business Enterprises and Minority Business Enterprises (WMBE) in specified percentages of the total contract dollar amount. After completion of the project, the Board of Public Works found after hearing that Merlino had failed to meet its WMBE utilization requirements on the project. As a sanction, the Board resolved to refuse to accept bids from or award contracts to Merlino for a period of one year.

In the first court challenge to a City finding of noncompliance with WMBE requirements, Merlino filed a writ of certiorari to reverse the Board's decision and sanction. After review of the transcript and record of the Board hearing, the Superior Court upheld the Board of Public Works. (RPK)

Danielson v. City, Superior Court No. 82-2-10604-6

Petitioner was discharged from the police force for stealing money while on duty. He later pleaded guilty to

a felony arising out of the incident. His dismissal was upheld by the Public Safety Civil Service Commission. On writ of certiorari, the trial court determined that his procedural due process rights had been violated by the failure to afford him a pre-termination hearing. The trial court ordered back pay but denied reinstatement on the grounds that petitioner had no reasonable expectation of re-employment given his felony conviction. Both sides have appealed the case to the Court of Appeals. (RSE)

Darbous v. Chan, Court of Appeals No. 12590-7-I

In this case, the City had discharged Darbous for failing to report to work as ordered. Darbous claimed he was, in fact, disabled at the time. The Court of Appeals held that Darbous could not be discharged if he was unable to work. In a collateral proceeding, Darbous was found to be temporarily totally disabled at the time of the discharge. The City is faced with the dilemma of having to attempt to employ a person who may be unable to work. The City currently is attempting to retire Darbous on a disability retirement over his objection. (RSE)

LAND USE DIVISION

The Land Use Division provides legal services in City departments and offices which relate to real estate, zoning, environmental laws, historic preservation, building and construction codes, street use and street vacations, and related matters. Gordon F. Crandall is Director of the Land Use Division and in 1984 its members included Judith B. Barbour; Elizabeth A. Edmonds; James E. Fearn, Jr.; and Michael P. Monroe. Carol A. Morris served as the Division's paralegal.

Westlake Project

The Westlake Project absorbed considerable attention of the Land Use Division in 1984. On August 31, 1984, the Superior Court upheld the adjudication of public use and necessity for condemnation of a triangular park site at Fourth Avenue south of Pine Street. The owner has appealed and is seeking direct review to the Supreme Court. A decision on this appeal is anticipated in late 1985 or early 1986. Assuming a favorable result, the superior court will be asked to determine the amount of just compensation to be paid to the owner. (MPM)

Contract with Rouse-Seattle, Inc.

After completing the supplemental environmental review as required by the Seattle Hearing Examiner in his decision in December 1983, the City enacted ordinances authorizing the sale and development of its Westlake Properties to Rouse-Seattle, Inc. ("Rouse") in June 1984; the contract was signed August 17, 1984.

On October 5, 1984, Committee for Alternatives of Westlake ("C.A.W.") settled and dismissed its lawsuit challenging the environmental review and sale of the Westlake Properties. As a result of the settlement, an amended contract was executed by the City and Rouse to reflect a design change increasing the "publicness" of certain space in the Project abutting Pine Street.

On October 16, 1984, Rouse sought to delay the contract to await a decision on the METRO transit tunnel project. The City and Rouse have reached an "agreement in principle" for reasonably accomodating a METRO decision for some aspects of the Westlake Project which may be impacted by the decision of METRO. A second amendment to the contract, essentially reflecting some changes in the timing of the parties'

obligations, is anticipated to be concluded shortly. The time for closing the sale, however, has not been delayed.

(MPM)

Utility Relocation at Westlake

The contract with Rouse requires relocation of certain underground utilities out of Westlake Avenue. METRO and the City reached an agreement in late 1984 to relocate the Westlake Avenue underground utilities in Fourth Avenue, rather than Pine Street. The City enacted an ordinance on January 7, 1985, authorizing the agreement, in which METRO will reimburse the City for the additional relocation costs if the transit tunnel project is approved.

Solid and Hazardous Waste

During 1984, the Land Use Division, together with the Utilities Division, were involved with issues pertaining to the management and/or the regulation of solid waste, hazardous waste, dredge spoils, and sewage. Some of these issues involved litigation, and included the following: the operation of the Midway and Kent-Highland landfills, the preparation of environmental impact statements (EISs) for the final closure of both landfills, the procedure for the development of an abandoned landfill report, the preparation of a Seattle Solid Waste Comprehensive Plan and its EIS,

consideration of a resource recovery facility, and communications with other affected agencies over contaminated soils deposited on City controlled property. Law Department attorneys represented the City in a lawsuit filed by the property owners of the Midway landfill against the City, the City of Kent, and Seattle-King County Health Department and in another lawsuit filed by a nearby property owner against the City, the State, and the City of Kent.

Hazardous waste matters included contaminated soil at Gasworks Park and in Lake Union, polychlorinated biphenyls (PCB) contaminated Bunter C oil at Lake Union Steam plant, PCB contaminated soils from utility transformers and light ballasts at sites operated by private surplus dealers, and PCB contamination in storm sewers, the flume, and the soil near the Georgetown Steam Plant. Operating procedures for electrical equipment containing PCBs have been developed. The Personnel Department and other City departments received assistance in the preparation of a proposed Worker's Right to Know policy and procedure, which expands upon the state statute. Also a claim has been filed against Johns-Manville Corp. for property damage arising from the use of asbestos in City facilities.

Regulation of solid and hazardous waste matters have included review and revision of proposed amendments to the Grading and Drainage Ordinance to develop a process for City review of sites which may contain hazardous materials, and of a proposed solid waste ordinance. Additionally, the Land Use Division has consulted with other City departments on zoning issues pertaining to hazardous materials and has been preparing a hazardous waste paper to assist the Puget Sound Council of Governments in determining the appropriate role of local jurisdictions in handling and regulating hazardous waste.

In 1984, the Land Use Division represented the City in a hearing on the issuance of a shorelines permit for a dredge spoils site located in Elliott Bay, (the decision is pending) and provided advice to the City's Secondary Treatment and Duwamish pipeline interdepartmental committees.

Will Patton is responsible for resource recovery and some solid waste comprehensive plan issues. Richard Cruz is responsible for PCB issues. Philip Mortenson and Elizabeth Edmonds are co-counsel on the Midway Landfill owners' lawsuit. Elizabeth Edmonds is responsible for all waste-related issues except resource recovery and most PCBs.

The City Council added an additional attorney position for the Division late in 1984, recognizing the burden cast upon the department by several cases involving hazardous waste and landfills.

Significant cases in 1984 included the following:

William W. Kates, et al. v. The City of Seattle, et al.,
Court of Appeals No. 8165-2, Thurston County Cause No.
82-2-01142-5

This suit arose after the City issued a permit to allow certain property owners to build a single family residence on property which had been erroneously mapped as a Conservancy Management Shoreline environment, and after the error was corrected, issued a permit for a second residence. Plaintiffs contended that the applicant needed a variance from access requirements and a short plat to build a second house; the Conservancy Management designation could not be corrected without utilizing the formal rezone process; and that the projects were not exempt from the substantial development permit requirements. Neighbors sued the City and the property owners, claiming that the City negligently made these administrative decisions, and they sought damages for alleged loss of property value.

In March 1984, the Superior Court in Thurston County found in favor of the City and dismissed the case. Plaintiffs have appealed to the Court of Appeals. (EAE)

Buttnick v. City of Seattle, Superior Court No. 87-2-03166-4

The long-standing dispute between the City and the owner of a building in the Pioneer Square Preservation District at 211 First Avenue South was finally decided by the City Council and appealed by the owner to Superior Court. In 1977, the City ordered the owner to correct an unstable parapet and ornamental pediment on the building. The owner removed the parapet prior to securing a certificate of approval from the Pioneer Square Historical Board, which thereafter approved the removal subject to restoration.

The owner appealed the condition to the City Council, and the appeal was denied. The King County Superior Court reversed the City's decision on procedural grounds, and remanded the matter to the City Council, which again considered and approved the restoration condition after extensive hearings.

The owner again sought judicial review, and in early 1984, Superior Court Judge Stephen Reilly affirmed the decision of the City Council that "the estimated cost of

replacement of the parapet and pediment on the subject building does not appear to impose an unnecessary or undue hardship on the property owner considering its market value and income producing potential." The property owner has filed an appeal with the Court of Appeals. (GFC)

City of Seattle v. State of Washington, et al., 103 Wn.2d 663, 694 P.2d 641

In 1978, the City commenced a study of the effect of annexation of the South Park/Duwamish area and in 1979 appropriated funds and adopted a timetable for submission of the annexation to the Boundary Review Board. That same year, the state legislature amended RCW 36.94.180 to make it more difficult for Seattle to annex property by the resolution method.

Thereafter 15 residents of the area proposed for annexation petitioned the City Council for annexation under the voters' petition method, the City Council approved the petition. Notice of the Council action was filed with the Boundary Review Board.

In 1981, the legislature adopted RCW 35.13.165, which provided for termination of an annexation providing upon petition of 75% of the property owners, and further amended

RCW 36.94.180 to require a showing that revenues and the value of services in an annexation area would be reasonably equal for ten years. These laws applied only to cities over 400,000 in population, and Seattle is the only city in that class.

The City brought an action against the State to declare these laws unconstitutional on State and Federal constitutional grounds. The State was joined by the Boeing Company, the Earle M. Jorgensen Company, and seven residents of the area. Superior Court Judge James McCutcheon ruled against the City's motion for summary judgment, but on appeal, the Supreme Court held both laws to be invalid. RCW 36.94.180 was held to be special law prohibited by the state constitution, and RCW 31.13.165 was found to be an infringement on the right to vote. Motions for reconsideration were filed and are pending. (GFC)

Martin, et al. v. City, King County No. 83-2-17375-2

Plaintiffs sought declaratory relief and damages for breach of conditions in a 1908 deed to the City of land for Lake Washington Boulevard. Plaintiffs alleged that the City's refusal to allow them to construct a private boat house on the shores of the lake entitled them to damages, attorney fees, and costs. The City contended that the

condition was an invalid reservation and that if valid it had been extinguished by the lowering of the lake and establishment of a park along the lake.

Superior Court Judge Michael Donahue, visiting from Spokane County, held in favor of plaintiffs and awarded damages in the amount of \$50,000. The City has filed an appeal. (GFC)

1984 BUDGET SUMMARY

The Law Department's adopted 1984 Budget of \$3,143,890 was increased to \$3,317,586 to accommodate the September 1, 1983 City-wide salary settlement and an emergency victim-advocate position to assist with the implementation of the new domestic violence law. In 1984, the Department spent or encumbered \$3,222,012. In addition, approximately \$65,000 of 1984 funds were reserved to fund data/word processing equipment, purchase new furniture for the 10th floor lobby, and assist with remodeling. The Department received a grant of \$144,302 from the State of Washington to fund a special unit for prosecution of cases involving driving while intoxicated (DWI). This grant, initiated in September 1984, runs through June 1985, and is discussed elsewhere in this report. (DSW)

STAFF CHANGES

During 1984, several personnel changes were made in the Law Department. Charlotte Clark-Mahoney joined our staff from the Eastside Public Defender's Office; and Thornton Hatter and Carolyn Pohlman joined us from the King County Prosecutor's Office. All are working in our Criminal Division.

After graduating from law school and successful completion of the bar examination, Scott Blair and Leonor Fuller were appointed as Assistant City Attorneys (Prosecutors) in the Criminal Division. Prior to these appointments, Leonor and Scott had served as legal interns in various divisions of our office while attending law school.

The Battered Women's Project hired three victim advocates in 1984: Sarah Buel, formerly a senior litigation paralegal for Holland and Hart in Denver, Colorado; Anne Roise, previously a caseworker with The Shelter prior to joining our staff; and Wadiyah Nelson, the former manager of direct services of Seattle Rape Relief.

The Claims Division welcomed Dee Quiggle as a claims adjuster. Dee was formerly with Safeco Insurance.

In 1984, three new paralegal positions were created in the Law Department: Judy Pfau joined the Litigation

Division. Judy has worked as a legal assistant department manager for a private law firm, as a freelance legal assistant, and also as an instructor for paralegals. Carol Morris joined the Land Use Division. Carol worked as a legal secretary for a private law firm and also held several office manager positions prior to accepting the position with the Law Department. Ann Kelson joined the Advisory Division. Ann Kelson was promoted to paralegal from legal secretary, where she had served since June 1982.

Several changes were also made to our support staff:

Advisory Division secretary, Lana Johnnie, came from Evergreen Legal Services; Hazel Haralson, word processing operator, had worked for the Fire Department and City Light through the Temporary Employment Services; Marilyn Senour, former secretary to the Budget Director and Assistant Budget Director until 1982, accepted the position of receptionist with the Law Department; Jeannine Gill, research aide, transferred from the Seattle Police Department Court Unit; Lynn Gardner, research aide, was a consultant and teacher for the Seattle Public Schools; and Shirley Ruble, secretary for the Utilities Division, worked in the Office Services Division of City Light prior to accepting a position in our department.

We also said goodbye to others:

Ellen Donovan, who joined the Law Department in 1978, resigned during the year to open a private law practice; Susan Sampson joined a private law firm - she had worked for the Law Department since 1977; after almost three years with us, Tony Platter accepted a position with the King County Prosecutor's Office; Barbara Daniels, a Battered Women's counselor since joining our office in 1979, left to pursue other interests; Evelyn White, also a counselor for the Battered Women's Project, was accepted at the Graduate School of Journalism at Columbia University in New York City. Marilyn Closterman is now with the U.S. Post Office, and Nona Collins accepted a position with the King County Prosecutor's Office. Both worked as Word Processing Operators.

(MO)

1984 OPINIONS

One hundred and five written opinions were issued in 1984 on various questions of law. The following is a digest of the 1984 opinions. (LT)

1984 OPINIONS

- 1/5/84: Auto allowance paid to City employees as business expense; as subject to federal withholding taxes; and as part of compensation for retirement purposes
#7573
- 1/10/84: Authority of Design Commission to require submission to it of vending cart permit applications
#7574
- 1/10/84: Application of Zoning Ordinance to Foreign Consulate
#7575
- 1/11/84: Occupancy of Seattle Senior Housing Program housing units by non-City residents
#7576
- 1/12/84: Acquisition of precinct station by developer design and construction of lease - leaseback arrangement
#7577
- 1/16/84: Applicability of Women's and Minority Business Enterprise and Consultant Contracting requirements to City investment activities
#7578
- 1/16/84: Authority of Police Pension Board to grant service credit for military service other than in time of war
#7579
- 1/16/84: Potential tort liability for fire prevention/code enforcement inspections
#7580
- 1/17/84: Withholding federal income tax pursuant to IRS direction and contrary to employee direction (IRS Letter 02443802)
#7581
- 1/18/84: Authority of City and Fire Chief to accept gifts and donations under seven ordinances
#7582
- 1/19/84: Authority of Human Rights Department to proceed against an arbitrator for alleged discrimination
#7583
- 1/26/84: Competitive procurement of telecommunication services
#7584
- 2/1/84: Role of Public Safety Civil Service Commission in setting job qualifications; evaluating testimony in hearings, and setting scope of proceedings
#7585
- 2/3/84: Constitutionality of parking code amendment permitting citation for stopping, etc., without current license plates or tags
#7586
- 2/7/84: Equivalent lands and facilities for severance of portion of Martha Washington site
#7587
- 2/14/84: SEPA compliance for Mercer Corridor Land Use and Transportation Plan Project
#7588
- 2/14/84: City Council review of the proposed state convention center project and application of the Appearance of Fairness Doctrine
#7589

1984 OPINIONS

page two

- 2/15/84: Erratum: Our opinion, dated January 16, 1984
Potential Tort liability for fire prevention code
enforcement inspection #7590
- 2/21/84: University's request to use development rights
in Fourth Avenue in University Tract #7591
- 2/22/84: Language for parking meter instruction plates
designating holidays #7592
- 3/2/84: Police responsibilities in disputes between
neighbors, over right to use pedestrian trail to
beach #7593
- 3/5/84: Necessity of showing changed circumstances to
justify a rezone #7594
- 3/13/84: City policy on reimbursing volunteers
#7595
- 3/13/84: Authority of Mayor or department head to termi-
nate or demote exempt employee for affirmative
action purposes even if affected employee is member
of protected class #7596
- 3/14/84: Library authority and potential liability with
respect to concession on and near library property
#7597
- 3/16/84: Applicability of Uniform Unclaimed Property Act
to utility deposits and property held by the City,
courts and other public agencies #7598
- 3/24/83: Authority of City to prohibit or regulate
posting of temporary signs (1983 OPINION)
#7599
- 3/26/84: Application of U.S. Treasury arbitrage regu-
lation to the Senior Housing Bond Fund #7600
- 3/28/84: Proposed PSCSC Rules regarding Selective Certi-
fication by ethnic category; medical standards for
hiring and delegability of test functions
#7601
- 3/28/84: Applicability of City Fair Employment Practices
Ordinance to consultants under City consulting con-
tracts (retaliation) #7602
- 4/16/84: Authority of City to enter into reverse - re-
purchase agreements as investments #7603
- 4/17/84: Eligibility of retired Seattle police officer to
receive pension under old system (RCW Ch. 41.20) when
re-employed and a member of new pension system (LEOFF)
#7604
- 4/17/84: Authority of City to require prime contractor to
subcontract with WMBE in second of two contracts to
overcome failure to original set aside requirement
#7605

1984 OPINIONS
page three

- 4/19/84: The effect of the deletion of "uniform" and "cities and counties" in RCW 41.56.460(c) of the types and comparisons that an arbitration panel is allowed to make #7606
- 4/24/84: Authority of City to require security guard licenses of firm providing contract security service to Federal Government #7607
- 4/27/84: Housing Authority's residences for 8 recovered mental illness patients are single family residences #7608
- 4/27/84: Procedure where Council member should not have voted #7609
- 5/2/84: Deviation in expenditure of Senior Housing Program bond proceeds for purposes other than originally authorized by voters #7610
- 5/2/84: Applicability of Open Meetings Act to meetings of ad hoc medical panel to study said contamination at Gas Works Park #7611
- 5/8/84: Authority of persons other than owners to sign promissory notes for release of impounded vehicles #7612
- *5/24/84: Need for City to take affirmative action to hire and promote Viet Nam - era veterans #7613
- 5/14/84: Application of interest ("profits") earned on 1973 Refunding Bonds (Forward Thrust) #7614
- 5/18/84: Authority of Budget Director to transfer funds within Human Resources Budget to cover deficit in electricity bill relief program for the needy (Project Share) #7615
- 5/25/84: Appointment of Executive Director of Pike Place Market Public Development Authority to Market Historical Commission #7616
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