

NOTES FOR LOCAL ACTION

The deliberations of the Constitutional Convention of 1787 were held in strict secrecy. Consequently, anxious citizens gathered outside Independence Hall when the proceedings ended in order to learn what had been produced behind closed doors. The answer was provided immediately. A Mrs. Powel of Philadelphia asked Benjamin Franklin, "Well, Doctor, what have we got, a republic or a monarchy?" With no hesitation whatsoever, Franklin responded, "A republic, if you can keep it."

"Let the National Government be entrusted with the defence of the nation and its foreign and federal relations; the State governments with the civil rights, laws, police and administration of what concerns the State generally; the counties with the local concerns of the counties, and each ward direct the interests within itself." Thomas Jefferson, 1816

"The people are the rightful masters of both congresses and courts — not to overthrow the Constitution, but to overthrow the men who pervert it." Abraham Lincoln, 1859

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Let our goal be that of "making government better" in serving the best interests of all concerned. Agencies of government, from county boards to federal executive subdivisions, are ADMINISTRATIVE by nature. Their proceedings are controlled and specified by "administrative rules" that cannot, other than unlawfully, violate fundamental guarantees protecting inalienable rights. Administrative bodies bear a FIDUCIARY OBLIGATION to the public to correct and remedy injuries suffered by any individual or group within their jurisdiction when such injuries violate basic rights such as "life, liberty and the pursuit of happiness," or basic principles such as those enumerated in the "Bill of Rights" and constitutions of the States.

Interactions with administrative bodies are regulated by "ADMINISTRATIVE PROCEDURE." Details of such procedures vary and are specific to each particular jurisdiction. No administrative agency can act in a manner as to deny due process or act contrary to the constitution or its prohibitions. Only after exhaustion of the full course of Administrative Procedure can a claim or cause be pursued in the proper court of law (court of record). Administrative actions may establish an official record of claims, actions and facts. Official outcomes of administrative actions are known as "decisions" or "determinations" which are either "adverse" or "affirming" to the claim. Time limits for asserting administrative rights to hearings or appeals are local and specific to each jurisdiction.

The intention would be to begin an administrative action at the local level (with the county board of supervisors, for example) in a manner that requires an official response ("administrative determination"). This would require: 1) a demonstrable injury, either personal or public; 2) a citation of the administrative body's obligation to protect against such injury, and; 3) a description of the relief sought. Such an action is known as a "NOTICE AND DEMAND." Alternatively, a "PETITION FOR RELIEF" in the form of a sworn affidavit (not a petition seeking signatures of supporters) might be presented for action by

the board. The constituent elements of the PETITION FOR RELIEF would be the same as the NOTICE AND DEMAND.

If the official decision responsive to the NOTICE AND DEMAND or PETITION FOR RELIEF is adverse to the claim, appeal can be taken according to the details of the local ADMINISTRATIVE PROCEDURE and the full course of that process then exhausted. Should the “final determination” confirm the adverse nature of the original decision, relief may be sought in an appropriate court. The watchword in this entire process is that, from the beginning, one must construct every element of the claim and action as if it were addressed to the Supreme Court of the United States. If you anticipate getting there, the best approach is talking to them from the beginning.

Regarding adverse decisions from local administrative bodies, the approach that is most constructive of “better government” is to encourage that body’s education on the topic. Even if they insist on being dragged, kicking and screaming, to the reality of the situation, when and if they arrive, greet them as friends or at least allies. If they refuse to “arrive,” maintain the expectation that they will do so eventually. It’s possible they may be able to offer a perspective on which the claimant may be blind.

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“[O]nly a belligerent claimant can protect his rights. A claimant must know his rights, and know how and when to claim those rights in person. They are neither accorded to the passive resistant, nor to the person who is ignorant of his rights, nor to one indifferent thereto.” *Miller v. US*, 230 F. Supp. 486,489, *United States v. Johnson*, 76 F. Supp. 538, 540 (1947)

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” *Miranda v Arizona*, 384 US 436, 475 (1966)

“There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights.” *Sherar v. Cullen*, 481 F 2d 946 (1973)

“The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It can not be retained by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person. The one who is persuaded by honeyed words or moral suasion to testify or produce documents rather than make a last ditch stand, simply loses the protection. Once he testifies to part, he has waived his right and must on cross examination or otherwise, testify as to the whole transaction. He must refuse to answer or produce, and test the matter in contempt proceedings, or by habeas corpus.” District Judge James Alger Fee *United States v. Johnson*, 76 F. Supp. 538 (at page 540), District Court, M.D. Pennsylvania, Feb. 26, 1947