

Countering Prejudice in an Administrative Decision

Assume that you are an attorney who has been retained to represent a consumer cooperative organized by the Black Panthers. The consumer cooperative has applied for an off-sale beer and wine license from the Alcoholic Beverage Control Board. You know that a majority of the ABC Board members have either privately or publicly spoken out vigorously against the Panthers. How can you counter their prejudice and obtain a fair hearing on your application?

It is a basic facet of human nature that whenever a decision goes against us we feel at least a tinge of hurt and a feeling that in some way the decision-maker was prejudiced or biased against us. This is as true in the area of an administrative agency decision as in any other field. Even so it is undoubtedly true that in the vast majority of cases the parties to the controversy receive a fair hearing and no serious claim of prejudice can be pressed. Our system of administrative decision making is predicated upon such a premise and would grind to a halt if a serious claim of prejudice could be validly pressed in a majority of the cases. The public would lose faith in the legitimacy of such a system, and shy away from using it. However, the right of a litigant to an impartial trier-of-fact is sufficiently basic to our system of adjudicatory justice that when a claimant presents a timely motion for disqualification, on these grounds, such a motion must receive conscientious consideration, even indulgence, and the disposition of the motion should be open to broad review.¹ It is therefore important for counsel to know the grounds and procedures for timely raising and countering prejudice in an administrative agency decision whenever he feels that he has a serious claim.

I. KINDS OF PREJUDICE

Prejudice comes in many shapes and forms. Some have legal significance while others do not. It is therefore important to be able to identify and sort out those kinds of prejudice which

¹Comment, *Prejudice and the Administrative Process*, 59 NW. U. L. REV. 216, 245-48 (1964-65).

are deemed incompatible with the exercise of judicial or adjudicatory power.

First there is the general category of personal, social, and cultural prejudices. Inevitable though they may be in most human beings, they are a mark of weakness which cannot be eliminated. They generally relate to a tendency of thought in one direction on a question. For instance, most people in this country have a prejudice or bias towards free enterprise and democratic institutions. This type of prejudice is not a grounds for disqualification, as prejudices towards one side or the other on such an issue are a mark of all human beings and if the law recognized them everybody would be subject to disqualification.

Secondly there is a category of prejudice concerning tendencies of thought on issues of law or policy. The fact that a member of the tribunal has been an active proponent of the rule alleged to have been violated and has indicated that the rule should be strictly enforced, does not establish bias or prejudice on his part.² The fact that a commissioner may have expressed definite views as to the policy considerations to be applied in a particular matter does not disqualify him from subsequent participation in the matter.³ Also the fact that a hearing officer or judge believes or does not believe in the law which must be applied to the evidence before him in an administrative hearing does not disqualify him or make him biased or prejudiced.⁴ It can thus be seen that this category of prejudice is generally not a grounds for disqualification, but in many instances is considered a positive prejudice for it bolsters the common law framework of precedent, and it also serves as a brake on quick and radical change in legal theory and relationships.

The following categories of prejudice can be considered grounds for disqualification at one time or another. There is a type of partiality which signifies an attitude for or against a party to the controversy as distinguished from tendencies of thought concerning issues of law or policy. Many courts have held that the fact "the alleged judge was prejudiced and biased

²Christal v. The Police Commission of the City and County of San Francisco, 33 Cal. App. 2d 564, 571, 92 P.2d 416, 421 (1939).

³Assignment of an Additional VHF Channel to Johnstown, Pa., before The Federal Communication Commission on Dec. 18, 1963, reported in 14 PIKE & FISCHER ADMIN. LAW(2d) 720 (1964).

⁴Western Airlines, Inc. v. Shutzbank, 258 Cal. App. 2d 218, 231, 66 Cal. Rptr. 293, 302 (1968).

against said defendants because of their nativity” is a grounds for disqualification.⁵ In other words it connotes a personal bias or animosity towards a certain group, parties to the controversy, or races, etc., not views as to law and policy.

Generally, when a judge or other party has stated that a party has given false testimony, he is disqualified from retrying the case. On the other hand, the rejection of a party’s testimony may be the result of a consideration of the party’s ability to observe or remember, and therefore failure to accept the party’s version of the facts does not show that the adjudicator is biased or prejudiced against him,⁶ and therefore does not entitle the party to a new hearing.

A corollary to the above is partiality as shown by the conduct of the trial. Generally the bias or prejudice which can be urged against a judge must be of a personal nature and adverse rulings or possibly sarcastic remarks to witnesses does not show prejudice.⁷ However, partiality when it goes far enough may obviously vitiate the fairness of a hearing, even in the absence of specific reversible error.⁸ This area of prejudice will probably be of use only in infrequent cases when the judge clearly and continually passes through the permissible range of his discretion and prejudices the complaining party’s case with his uncalled for rulings. It should not be relied upon with any confidence except in extreme cases, because of the broad interpretation Appeal Courts give to a judge’s permissible discretion.

Next there is the area which encompasses conflicts of interest. A judge who stands to lose or gain by a decision either way – because he owns stock in a corporation or is related to a party or is substantially effected as a taxpayer – has an interest of the kind that is generally considered a ground for disqualification. This is probably the area that is the easiest to prove and thus entitle counsel to demand disqualification if the adjudicator does not voluntarily remove himself from such a case.

Finally there is a newly proposed amendment to the American Bar Association’s Canon’s of Judicial Ethics which proposes a strict disqualification standard under which the judge should be disqualified whenever the judge “has a fixed belief con-

⁵Berger v. U.S., 255 U.S. 22, 32 (1920).

⁶Alusi v. County of Fresno, 178 Cal. App. 2d 443, 2 Cal. Rptr. 799 (1960).

⁷Berger v. U.S., 255 U.S. 22, 31 (1920); Burns v. Gillespie, 113 N.L.R.B., No. 45, reported in 5 PIKE & FISCHER ADMIN. LAW (2d) 420 (1964).

⁸Inland Steel Co. v. N.L.R.B., 109 F.2d 9, 20 (7th Cir. 1940).

cerning the merits of the matter before him.” This appears to be an extremely difficult state of mind to prove and basically must be self-enforced by self-disqualification of the judge. However if one has the need he might argue that such a fixed belief is extremely prejudicial to his client and should be grounds for disqualification. That premise has great appeal to me, but again proof seems like an extremely difficult matter unless the adjudicator disqualifies himself.

In summary the prejudice that disqualifies is generally of a personal nature and relates to a substantial preconception of how the factual dispute before the adjudicator should be resolved—this result being brought about because the adjudicator has a bias against a particular party, race, or group, or has a personal interest in the outcome of the controversy. It does not involve a crystallized point of view regarding law or policy.

If counsel believes one or more of the adjudicators who are to hear his case are prejudiced in a legally significant manner his major weapon is a motion for disqualification of said adjudicator. However, before raising the issue of disqualification it may also be wise to consider that many a conscientious adjudicator who has knowledge of some sort of personal prejudice may bend over backwards to be fair and thus give your client an even more advantageous hearing. Even so, in most instances an attorney will want to take the necessary steps to raise a motion for disqualification in a timely manner so as to guarantee a client the fairest hearing, and also to guarantee that the issue of prejudice can be raised on appeal before the courts.

II. COUNTERING PREJUDICE

A. THE STATUTORY FRAMEWORK

A hearing officer or agency member shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration. [Cal. Gov't. Code § 11512(c).]

Any party may request that an adjudicator be disqualified from hearing the case by filing an affidavit, prior to the taking of the evidence. The affidavit must state with particularity the grounds upon which the claimant is moving for disqualification. It is important to remember that a request for the disqualification of an agency member need not be based only upon an affi-

davit of a party to the proceeding.⁹ An affidavit from anyone is generally acceptable.

In most instances the motion for disqualification must be presented at the inception of the hearing,¹⁰ however if a grounds for disqualification cannot be discovered by reasonable diligence until after the hearing begins fair play usually allows one to take advantage of the new discovery by acting promptly.¹¹ Making the motion at the inception of the hearing or acting promptly upon subsequent discovery is imperative as failure to act within the statutory framework or failing to discover until after the conclusion of the proceedings usually bars one from raising it by certiorari.¹²

Who has the responsibility of deciding whether the motion for disqualification has merit and will be accepted varies according to the circumstances. In the first instance the motion is presented to the agency or hearing officer and the allegedly disqualified individual may voluntarily withdraw. Many cases will find clearly prejudiced or litigation interested adjudicators voluntarily withdrawing without a motion. The real problem lies in the gray areas of prejudice or interest. If the allegedly disqualified party does not voluntarily withdraw himself, and he is an agency member(s) the remaining members decide the issue. If the motion concerns a hearing officer the administrative body decides the question if the agency or board and the hearing officer are to hear the case together. However, if the case is to be heard before the hearing officer only, then the hearing officer decides the issue himself.¹³

Simply stated, the method for disqualification of an agency member or hearing officer is by an affidavit which may be by someone not a party to the proceeding or not available for cross-examination. Upon such an affidavit or affidavits, the board is to determine whether a member not voluntarily disqualifying

⁹Feist v. Rowe, 3 Cal. App. 3d 404, 413, 83 Cal. Rptr. 465, 470 (1970).

¹⁰Grosjean v. Board of Education of the City and County of San Francisco, 40 Cal. App. 434, 442, 181 P. 113, 116 (1919).

¹¹Geibel v. The State Bar of California., 14 Cal. 2d 144, 147, 93 P.2d 97, 98 (1939); J. G. Boswell Co. v. Industrial Acc. Com., 67 Cal. App. 2d 347, 356, 154 P.2d 13, 17 (1944).

¹²Donovan v. Board of Police Commissioners of the City and County of San Francisco, 32 Cal. App. 392, 404, 163 P. 69, 72 (1916).

¹³CAL. GOV'T. CODE § 11512(e) (West 1966).

himself is in fact disqualified. The board members are to decide concerning the question, and are not required to testify on the subject. There is no right to examine board members on voir dire as to their possible bias or prejudice.¹⁴

This leads to another problem. If a sufficient number of the decision making body are disqualified for cause that the quorum legally required for administrative action cannot be met then the rule of necessity "rears its ugly head" and the administrative body may act anyway.

No agency member shall withdraw voluntarily or be subject to disqualification if his disqualification would prevent the existence of a quorum qualified to act in the particular case.¹⁵

A further qualification of the rule of necessity is that in order for it to be applicable the agency must be the only administrative agency authorized to act in the matter.¹⁶ If the law provides for a substitution of personnel on the board, or if another tribunal exists to which resort may be had then the rule of necessity is inapplicable.

The use of the rule of necessity gives rise to due process problems. It interferes with an individual's right to an impartial trier-of-fact and ordinary principles of fairness. However, the courts have consistently held that due process is not concerned with mere formalism, but with substance.¹⁷ Does the litigant receive his due? Is there a substantial need to make such an inroad on the litigant's rights? The legislature has said yes, and the reasoning is based upon certain facts, namely, "...that administrative action is required before judicial review may occur; one and only one agency or administrator can act; bias and prejudice exist; disqualification, however, will result in a continuation of existing conditions which may prove a source of evil; judicial review is not prevented; and on such review the court will, in effect though not in law or fact, check the entire record to ascertain whether the agency's decision is a legally correct one."¹⁸ Generally the courts have accepted this reason-

¹⁴Feist v. Rowe, 3 Cal. App. 3d 404, 414, 83 Cal. Rptr. 434, 475 (1970).

¹⁵CAL. GOV'T. CODE § 11512(c) (West 1966).

¹⁶Aluisi v. Fresno County, 178 Cal. App. 2d 443, 452, 2 Cal. Rptr. 779, 784 (1960).

¹⁷Cooper v. State Board of Medical Examiners, 35 Cal. 2d 242, 245, 217 P.2d 630, 632 (1950); Campbell v. Board of Dental Examiners, 17 Cal. App. 3d 872, 877, 95 Cal. Rptr. 351, 354 (1971).

¹⁸FORKOSH, ADMINISTRATIVE LAW § 215, 327 (1956).

ing regarding need, and because the administrative decision is reviewable by a court the courts feel they can protect the individual rights. In substance he gets his "fair shake". That is all due process requires. However it is in essence only a partial remedy as the review is limited to the administrative record and I believe that due process should require more if it is not overly burdensome.

Therefore under the problem posited above counsel would file an affidavit setting out the instances and circumstances that certain members of the ABC have spoken out vigorously against the Panthers and that these individuals be disqualified from hearing the case. The grounds for disqualification are valid as the statements show a partiality against a party, race, or group that is not concerned with law or policy. Speaking out vigorously against a group is a personal animosity which should disqualify any individuals whose prejudice is sufficiently shown by the affidavit or affidavits. The major problem here is that the individuals who judge whether an adjudicator should be disqualified are his fellow agency members. They may not feel that such a prejudice should disqualify or having the same views they may not view such an assertion of prejudice as viable. Since you cannot examine the board member *voir dire* you cannot determine their views *vis-a-vi* your client and whether these views would influence their decision upon disqualifying the attacked member. Counsel must discover the bias or prejudice which disqualifies upon his own initiative and then hope that the agency decides in favor of his motion for disqualification. The agency members are not required to testify on the subject, nor can counsel examine the board members on *voir dire* as to their possible bias or prejudice. Even if counsel can get this far he may run into the rule of necessity and find all his efforts at discovering and requesting disqualifications of biased adjudicators go for naught. The rule of necessity will make it possible for biased or prejudiced adjudicators to sit and to decide the issue anyway. Counsel's one recourse is that he can raise the issue of bias or prejudice in the Appeal Court by means of a writ of mandamus provided he has tried to disqualify under Cal. Gov't. Code § 11512(c).

B. JUDICIAL REVIEW

California provides for the judicial review of administrative

decisions under Cal. Gov't. Code § 11523 and Cal. Code of Civil Procedure § 1094.5 One may not appeal to the courts for relief from an administrative decision until he has exhausted his administrative remedies. However one is not barred from judicial review by his failure to seek reconsideration before the agency,¹⁹ or in a situation where the administrative remedy is unavailable or inadequate.²⁰

The scope of review which a court may exercise over an administrative decision is governed by either the substantial evidence rule or an independent judgement review. The Courts must decide on a case-by-case basis whether an administrative decision or class of decisions should be governed by which type of review.²¹ In most instances the trial on a petition invoking judicial power in administrative mandamus, though often referred to as a "trial de novo", is such a trial only in a limited and qualified sense, and partakes more of the nature of an appellate review than of an unlimited new trial and is governed by the substantial evidence rule.²² Under the substantial evidence rule the trial court must review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law. In short, does the evidence as shown by the administrative record support the conclusion of the decision making body? This process is further restricted by the fact that the findings and the determination of an administrative agency come before the reviewing court with a strong presumption of correctness and regularity, and absent evidence establishing the contrary, it is presumed that "...the necessary facts to support the determination were ascertained and found, that the agency duly considered the evidence adduced at the administrative hearing, that the official duty was regularly performed, and that the agency applied

¹⁹CAL. GOV'T. CODE § 11523 (West 1966).

²⁰Martino v. Concord Community Hospital District, 233 Cal. App. 2d 51, 56, 43 Cal. Rptr. 255, 258 (1956).

²¹Bixby v. Pierno, 4 Cal. 3d 130, 144, 481 P.2d 242, 252, 93 Cal. Rptr. 234, 244 (1971).

²²Campbell v. Board of Dental Examiners, 17 Cal. App. 3d 872, 875, 95 Cal. Rptr. 351, 353 (1971); Dare v. Board of Medical Examiners of the State of California, 21 Cal. 2d 790, 795, 136 P.2d 304, 307 (1943).

the proper standard or test in reaching its decision."²³ This is a very sterile process and the bias or prejudice of an adjudicator could be easily covered up or lost in this morass.

In the judicial review of an administrative decision that substantially affects vested, fundamental rights, the courts of California have undertaken to protect such rights, and particularly the right to practice one's trade or profession from untoward intrusions by the massive apparatus of government. In such an instance the trial court not only examines the administrative record for errors of law, but also exercises its independent judgement upon the evidence disclosed in a limited trial de novo.²⁴ This type of review is the most viable for countering prejudice through judicial review, for the court makes its own independent judgement of the matter rather than limiting itself to whether the conclusion of the agency is supported by the evidence in the administrative record. However this avenue of judicial review is only open in certain limited instances when the administrative decision substantially affects a vested, fundamental right, and when "...the administrative agency must engage in the delicate task of determining whether the individual qualifies for the sought right, the courts have deferred to the administrative expertise of the agency"²⁵

The main question remaining therefore is whether the judicial review of an administrative decision is broad enough when the rule of necessity is employed. The problem arises from the fact that an administrative decision comes before the courts with a strong presumption of administrative correctness,²⁶ the courts have given a broad discretion to the adjudicators,²⁷ and finally they will generally defer to the administrative expertise of the agency the question of whether the individual qualifies for the sought right.²⁸ In short, if the case does not call for an

²³Faulkner v. California Toll Bridge Authority, 40 Cal. 2d 317, 330, 253 P.2d 659, 667 (1953).

²⁴Bixby v. Pierno, 4 Cal. 3d 130, 143, 481 P.2d 242, 251, 93 Cal. Rptr. 234, 243 (1971).

²⁵*Id* at 146, 481 P.2d at 253, 93 Cal. Rptr. at 244.

²⁶Feist v. Rowe, 3 Cal. App. 3d 404, 422, 83 Cal. Rptr. 465, 477 (1970); Mattison v. Signal Hill, 241 Cal. App. 2d 576, 583, 50 Cal. Rptr. 682, 686 (1966).

²⁷Northern Cal. Ass'n. to Preserve Bodega Head and Harbor, Inc. v. Public Utilities Commission, 61 Cal. 2d 126, 135, 390 P.2d 200, 205, 37 Cal. Rptr. 432, 438 (1964); Brown v. Gordon, 240 Cal. App. 2d 659, 666-667, 49 Cal. Rptr. 901, 906 (1966).

²⁸Bixby v. Pierno, 4 Cal. 3d 130, 146, 481 P.2d 242, 253, 93 Cal. Rptr. 234, 244 (1971).

independent judgment review by the court the court will not substitute its judgement for that of the administrative body if there appears to be some reasonable basis for the decision made by the board.

The manner in which most courts have tried to solve the problem of the rule of necessity is to make the burden to overturn far less onerous under the substantial evidence rule when the rule of necessity is invoked. "Under such circumstances the evidence necessary to clearly and satisfactorily establish the fact that the findings of the commission were wrong is much less than it would otherwise be and the force of the contention made on behalf of the commission that the trial court did not give sufficient weight to the findings of the Commission is greatly diminished if not wholly dissipated."²⁹ This, however, is only a partial remedy as the court is limited to checking the administrative record to see if the administrative decision is a legally correct one and while the burden to overturn is less, the court is still not exercising its independent judgement.

The right to an impartial trier-of-fact is so basic to our system of justice that a more adequate means of protecting a litigant's right to a fair and impartial hearing or trial should be required if it is not unduly burdensome. While it is true that there is a substantial need for something such as a rule of necessity in order that some administrative agency can act, the strictures of due process should require a better method of protecting the litigant's rights to a fair and impartial hearing.

III. SOME POSSIBLE ANSWERS TO THE PROBLEMS

First of all counsel should be given the right to examine board members on voir dire as to their possible bias or prejudice. The burden of finding out if an adjudicator is disqualified by reason of prejudice should not rest wholly upon the investigating skills of the attorney. The board is to decide if other members are disqualified and also the issue in the case. Counsel should therefore be given a means of examining these people as to their impartiality. Such a right could reduce many problems farther down the line and reduce the instances when a question of disqualification will be raised upon appeal. In essence it will better

²⁹*Wisconsin Telegraph Co. v. Public Service Commission*, 232 Wis. 274, 287 N.W. 122 (1939).

protect the prospective litigant's right to an impartial trier-of-fact.

A possible answer to the problem associated with the rule of necessity is to label these as a class of decisions which require an independent judgement review under the rationale of *Bixby v. Pierno*, 4 Cal. 3d 130, 481 P.2d 242, 93 Cal. Rptr. 234 (1971):

The courts in this case-by-case analysis consider the nature of the right of the individual: whether it is a fundamental and basic one, which will suffer substantial interference by the action of the administrative agency, and if it is such a fundamental right, whether it is possessed by, and vested in, the individual. If the right has been acquired by the individual and if the right is fundamental, the courts have held the loss of it sufficiently vital to the individual to compel a full and independent review. The abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction.

If the courts feel that the right to practice one's trade is such a right, and requires an independent judgement review, it would appear that by analogy an argument under the *Bixby* rationale can be made that the right to an impartial trier-of-fact is a fundamental, vested right of our constitutional system. Therefore whenever the rule of necessity is invoked one should be entitled to an independent judgement review by the court. Restricted to the narrow ground of a review of the evidence and denied the power of an independent analysis, the court might well be unable to save the litigant. The abrogation of this right is too important to the individual and our system of justice to relegate it to almost exclusive administrative extinction without providing for an independent judgement review by the courts of the decision. If his rights to an impartial trier-of-fact are abrogated in the first instance we must provide an adequate check against its abuse in the latter.

Another possibility is to go back to the inception of the administrative decision and require the use of Cal. Gov't. Code § 11517 under circumstances when the rule of necessity would be invoked. This section of the code provides that a contested case can be heard before a hearing officer alone and that the hearing officer shall prepare a proposed decision in such a form that it

may be adopted as the decision in the case. A copy of the proposed decision shall be filed and the agency can then adopt the decision as their own, or reduce the penalty and adopt the rest of the decision. The problem lies in the fact that if the agency does not decide to accept the decision they may decide the case upon the record with or without taking additional evidence, or they may refer the case back to the same or a different hearing officer for another proposed decision.

By eliminating subsection (c) which allows this, a viable answer might be found by delegating the decision making to an impartial trier-of-fact—a hearing officer. The courts have held that the language of § 11512 permits a delegation of all its functions of fact-finder and decision maker, and that no deprivation of a fair hearing and due process necessarily results therefrom.³⁰ Further the courts have held that § 11517 which authorizes an administrative agency to adopt the proposed decision of the hearing officer without reading the record where the hearing officer alone heard the case, does not violate the constitutional requirement of due process.³¹

One further problem exists in that many California agencies still employ their own hearing officers and are subject to the subtle influences which impinge upon hearing officers who live their official lives within the bosom of the same agency whose cases they hear. A possible answer is to have all hearing officers removed from those agencies and attached to a separate department of the Office of Administrative Procedure, which, upon request of the agencies supplies hearing officers for cases as they occur. This is already done in various licensing agencies of the Department of Professional and Vocational Standards and some other agencies. Cal. Gov't. Code § 11502(a) provides for these hearing officers and their appointment.³²

Therefore it would appear that requiring the use of Cal. Gov't. Code § 11517 whenever the rule of necessity is involved will better protect the litigant's rights to a fair and impartial hearing provided subsection (c) is dropped for such cases. This would be so even if one does not desire to take the extra step of segre-

³⁰Feist v. Rowe, 3 Cal. App. 3d 404, 421, 83 Cal. Rptr. 465, 476 (1970).

³¹Hobreiter v. Garrison, 81 Cal. App. 2d 384, 399, 184 P.2d 323, 332 (1947).

³²Lorch, *Administrative Court via the Independent Hearing Officer*, 51 JUDICATURE 114 (1967). [This paragraph substantially drawn therefrom.]

gating the hearing officers from the agencies to better insure their impartiality.

IV. CONCLUSION

In most instances the statutory framework for disqualification for bias and prejudice is probably adequate. The problem lies in the fact that counsel has the burden of finding the grounds for disqualification placed squarely in his lap. Then the ultimate decision regarding disqualification is at the unbridled discretion of the agency, for he has no right to question them on their decision, nor to question them on voir dire as to their possible bias or prejudice. Since the agency has such broad discretion to act and the litigant has a substantial interest in an impartial trier-of-fact the board should be open to voir dire examination. A further problem arises whenever disqualifications would leave the agency without the power to act and the rule of necessity then comes into play and lets the agency act notwithstanding their bias or prejudice. Current practice calls for a court on review to survey the record of the administrative proceeding to see if the decision is legally correct. While the burden for overturning is less than normally required under the substantial evidence rule, the court does not exercise its independent judgement. The inroads on the litigant's right to a fair and impartial hearing caused by the rule of necessity are large enough to require something more if it is not unduly burdensome. There are at least two possibilities which exist within the present legal framework for combatting the inequities brought about by an invocation of the rule of necessity. One can provide either that the appeal court exercise an independent judgement review of the case, or require that the agency employ Cal. Gov't. Code § 11517 under which an independent hearing officer would determine the merits of the case and propose a decision to the agency. The strictures of due process should require this in order to more adequately protect the rights of the individual when he confronts the monolithic bureaucracy of modern government.

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