

ably unconstitutional, and, yet, at the same time here is the attorney general of New York State with this discriminatory law against the citizens of New York State and doing nothing about it. If a citizen goes in and says, I have a problem with a lawyer, he sends him to the district attorney or someplace else. He will not prosecute, but against a doctor or another professional, glad to.

Senator THURMOND. You understand the Senate only acts upon the nominations that are sent to us by the President, so the solution to your problem seems to me would be to contact the President before he makes an appointment.

Mr. FERRAN. We have contacted the President before this appointment and, of course, it didn't do much good, obviously.

Senator THURMOND. Thank you very much.

Mr. FERRAN. Thank you very much, sir.

Senator THURMOND. Our next and last witness is Mr. Robert J. Smith, of Michigan City, Ind.

Mr. Smith, there is a rollcall vote on the Senate floor. If I leave, you will understand that we will take a brief recess. I am a pretty fast walker.

#### **TESTIMONY OF ROBERT J. SMITH, MICHIGAN CITY, IND.**

Mr. SMITH. For the record, my name is Robert J. Smith.

Senator THURMOND. I am informed that you have a lot of material here that you would like to have considered. It will be received for the committee's files.

Mr. SMITH. Thank you, sir. My name is Robert J. Smith. I reside at 1106 Lakeshore Drive, Michigan City, Ind.

I wish to state that I am relatively poorly prepared for this hearing today for several reasons. One, Judge Stevens was a surprise nominee. His name did not appear in any of our periodicals. I was not apprised that Judge Stevens was to be considered the nominee until he appeared on TV on December 1.

I have an additional problem in that all of my case files, to which I would normally refer, are packed up because we are facing a momentary move from our home, and I do not have access to them.

I have suggested to the committee by telegram that they bring in all Smith case files from the appellate court and, perhaps, from the district court, so that they could be incorporated into the record by reference.

Let me also preface my remarks by saying I am a proud American. I am solidly conservative, one who deeply reveres the Constitution of the United States. I am not a member of any group, although I have been labeled by my political enemies as a political pariah, one who is to be totally denied due process of law and all constitutional rights. Judge Stevens is one of these enemies, and one who has used his high office as judge of the seventh circuit to aid his fellow conspirators by placing a political mark of Cain upon me. And Mr. Stevens, even more so, must bear the greater responsibility by reason of his highest office. Because of his eminent position, he could have and he should have, as a just judge, stopped the 15-year reign of terror that I and my blind wife have suffered under.

I accused Judge Stevens of criminal conspiracy to aid and abet my political enemies to: One, steal my lucrative business that was paying me \$25,000 a year; two, the loss of all my valued realty holdings which at today's estimated value would be \$120,000; three, my business earnings from that business would have been about \$250,000 in the 10 years while this has gone on; four, the value of lost business at least another \$250,000 and some reinvestments that would have made me a millionaire by this time.

Today I am nearly totally pauperized. I have had no employment in the past year. I drew my last \$35 unemployment compensation check last week. We face a bleak winter. My blind wife is at home living on scraps of food and in great danger guarded only by our two dogs needed for protection. The money Stevens and his political cohorts have stolen from us could have restored my wife's vision 3 years ago.

On December 23, 1975, in the next 2 weeks, we stand to lose our fully paid home for \$1,000 in unpaid taxes. The home is valued at \$35,000. I will show my case reference that Judge Stevens is directly responsible for the loss of this home, if we do lose it. We have some hope of saving it.

This has been the frightening cost of a privilege, a great privilege.

Senator THURMOND. I will have to go over now and vote, and at 4:15 Senator Tunney, of California, will be here to carry on if you will just suspend until that time.

[A brief recess was taken.]

Chairman EASTLAND. You may proceed, Mr. Smith.

Mr. SMITH. Thank you.

I had only just begun to encapsulate. I have to have my reading material within a certain range because of reading defects. I will encapsulate because I had read only a page and a half of my testimony to begin with. I have stated that I am a private citizen; I am a proud American; one who believes implicitly in the Constitution as a revered document of our democracy.

I indicated that in about 1960 I was worth approximately \$250,000, minimum; that had I been allowed peaceably to pursue my business in these past 10 to 15 years, I would have accrued roughly \$1 million, and I stated that today I am nearly totally pauperized. I have had no employment in the past year. I drew my last \$35 unemployment compensation check last week, and it cost me almost a month's unemployment compensation to come to this meeting.

My wife, who is blind, is home and living alone on such scraps of food as I can gather together for her. I point this out so that the committee may take cognizance that this appearance is at great sacrifice. I trust, therefore, that the committee will attach a great deal of significance and validity to this great sacrifice of personnel loss in appearing before the committee.

I had just accused Judge Stevens of being a part of the political conspiracy that stole my money, my property, and also my good name, and I state that the money Stevens and his political cohorts have stolen from us could have restored my wife's vision 3 years ago, but we lacked any money for her operation. On December 23, this month, we will lose our fully paid home worth \$30,000 for \$1,000 in unpaid taxes.

I will indicate subsequently that Mr. Stevens' direct ruling and sole ruling in my case of Smith versus the Internal Revenue is totally

responsible for the loss, if it occurs, of this valued piece of property because the money taken from me illegally by the Internal Revenue Service, which he refused to restore, was my tax money.

This has been the frightening cost of privilege, a great privilege, a privilege that has sounded through these Chambers in the past 2 or 3 days. Senators Kennedy and Tunney have expressed their great concern for this privilege. I have utilized this great privilege as a title of a forthcoming book, "The High Price of Free Speech," because I believe wholeheartedly in this revered right guaranteed by the first amendment. It has cost me, as I have said, at least \$1 million in the last 15 years.

We live behind closed doors, in constant terror, because we have been subjected to unusual and unique police harassment. I am going to quote an illustration, which is not directly connected with Judge Stevens, at this point to give an illustration of the kind of harassment that citizens are being subjected to without any protection.

Just 1 year ago, one night we had a pounding at our door. It was 9 o'clock in the evening. I finally had to go to answer it. Ordinarily we do not answer. The pounding was insistent and I feared the door would be broken down. As I opened the door two big, burly State policemen burst into my home and arrested me on the charge that I failed to be in a justice of the peace court at 8 o'clock that same evening. I had no notice to so appear. This was a minor traffic matter.

I was put on trial at 9:30 at night. I moved properly because I know criminal law and quasi-criminal law. I moved properly for all constitutional safeguards, the right to call witnesses, to have counsel, to have time to prepare. I was found guilty in this strange court. I was fined, and with no money I was ordered to jail, despite the Supreme Court ruling that no person could be jailed for his inability to pay a fine.

I will add in mitigation for that JP, that when I pleaded that my wife was blind and alone, he did allow me to go home. However, I was subsequently jailed on another charge under the very same circumstances almost exactly.

We have been subjected to this and even worse trauma for 15 years because, in the final analysis, Stevens has used his vast powers as a seventh circuit appellate judge to rule against me, and because of my avowed political enemies who are his personal friends. That, Senators, is only a small part of the price my wife and I have paid for the privilege of free speech, which right Stevens actually reviles despite the pious incantations he has uttered for the past 3 days.

He hates free speech. He despises and refuses the right of due process and equal protection. I would point out that Mr. Stevens is 100 percent against the fourth amendment, the right of people to be secure against unreasonable searches and seizures. I will prove this by Stevens' own ruling or lack of ruling.

Another explanation is necessary. I am fully prepared to oppose the surprise appointment. Mr. Stevens' name was not on any prospect list in our papers, on radio or TV. My first knowledge was on December 1 when Mr. Stevens was interviewed. I hurriedly dispatched a telegram, asking that I appear. I asked in that telegram for instructions on what to prepare but I received none. I received a confirming wire on Thursday. This was because it was not promptly delivered. We are packed up as we may have to move very quickly from our home and my case files are not available to me.

I prepared a lengthy presentation, working day and night for the balance of the week to 2 a.m. on Monday morning, when I had to leave to catch a plane. I did not have funds for supplies. I had to use scrap paper. My typewriter does not always function. I am not a typist. My wife is an expert legal secretary, but blind and unable to do the work for me. I had to do this the best I would, using a few odd pleadings that I was able to find. I can submit only one copy. I ask, therefore, for the committee to recognize my impoverished state and to order that my one copy by Xeroxed so that each member of the committee may read this shocking record for himself.

Chairman EASTLAND. Mr. Smith, I want you to read that into the record, the rest of your statement, and I am going to have it sent to each member of the Judiciary Committee.

I have to go for a vote, and I hope you will read it into the record here.

Mr. SMITH. You want me to read this to the court reporter?

Chairman EASTLAND. Take as long as you want.

Mr. SMITH. It will take several hours.

Chairman EASTLAND. Well, we cannot wait that long because I want to send a copy of what you said to each member of the committee, and if it takes several hours no one is going to read it. Why do you not run over the most important part of it and take about 15 or 20 more minutes to get through. That is the way you can get your statement considered.

Mr. SMITH. Are you referring to the packet that I have submitted to the committee or my present testimony?

Chairman EASTLAND. Well, your testimony, of course.

Mr. SMITH. This that I am reading?

Chairman EASTLAND. Your testimony.

Mr. SMITH. Well, everything is my testimony.

Chairman EASTLAND. I know that. Your package is part of the files and will be submitted to any member of the committee.

Mr. SMITH. I do not hear you too well, sir.

Chairman EASTLAND. Explain it to him.

Mr. WESTPHAL. The chairman has said that the packet of papers, the single copy of all of your documentation to supplement your statement here, your testimony, has been received by the committee. It is in the committee files and will be available to every one of the Senators on the committee. The chairman has suggested to you that you take another 15 or 20 minutes here to complete your statement, which you have prepared, by dictating it to the reporter here so that your oral presentation here may be completed, and once you do that, as the chairman has said, copies will be made available to every one of the Senators on the committee. Do you understand that now?

Mr. SMITH. I still am not clear as to whether I will be able to give this testimony, which is only about 20 minutes, before the committee.

Chairman EASTLAND. If you will dictate it in the record now, it will be before the committee.

Mr. SMITH. In other words, instead of giving it before the committee—

Chairman EASTLAND. You will be giving it before the committee. We are in an open committee session.

Mr. WESTPHAL. In other words, continue on now for another 15 minutes, and you are giving it now to the committee.

Chairman EASTLAND. What you want is for your statement to be available to the committee, rather than just to me, is it not?

Mr. SMITH. Yes, sir, and I will continue.

I am especially well qualified to appear as a witness opposing Mr. Stevens' confirmation. I have had possibly eight or more cases before him and his associated judges, mostly all dealing with constitutional issues.

I would like to indicate my educational background I have had the equivalent of 2 years of law school. I was not able to complete law school due to the fact that I dropped out for eye surgery, which became complicated and ended up with 7 years of intermittent hospitalization with 13 major eye operations. During periods of recuperation, with a large law library on Federal law, I crammed on Federal law procedure and practice.

Because of my poverty I have had to pursue many of my cases pro se. However, the cases that I have asked that the committee include in the record will prove my ability and comprehension of legal and constitutional issues.

If time permitted, I could show that I won every case by ability, but the Chicago Federal court is staffed by the most corrupt judges in the Federal system. These men have constantly ruled against me and in favor of my political enemies.

I recommend to the committee a book; Mr. Joseph Golding, a native of Maryland, has written a critique on the Federal judicial system entitled "The Bench Warmers." I urge that the committee read chapter III, entitled "The Shame of Chicago," which is based upon the Chicago judiciary, as further understanding of the problem that I have encountered in my quest for due process of law and justice, per se.

I also am writing an entire book based on this hell hole of judicial infamy, tentatively entitled "The Judicial Mafia." The seventh circuit is as bad, if not worse.

There is some hope of decency with the appointment of Judge Tone, whose constitutional writings are familiar to me.

I have prepared an extensive brief of some 60 pages, and I will skip that because we have already covered it, but I wanted to indicate that I have many cases on file in the seventh circuit in which Judge Stevens has ruled and proven beyond a shadow of a doubt that he is a rabid anticonstitutionalist. He has ruled against such fundamental issues as the first amendment and the right of free speech, amendment 4, the search and seizure provision, and also denials of due process and equal protection of the laws provided by amendment 14.

On Monday, Senator Kennedy asked Judge Stevens how do you label yourself, as an activist or a strict constructionist, in referring to the Constitution. Mr. Stevens replied—and I will quote as best I can—I would not label myself. This is in contrast to his many interviews in the press and over radio and TV in which he has proclaimed, I am a constitutional centrist. Mr. Stevens is not only evasive and noncommunicative to this committee, but he is deliberately falsifying his true position.

I have four cases in which he has ruled in total disdain of amendments 1, 4, and 14, and also the statutes of the United States. I have requested the committee to bring the Smith files to substantiate the charges that I make so that the prima facie conviction of Mr. Stevens may be proven.

I have read and on Monday heard glowing testimony by the bar association officials and even commendation by Senators. I ask a pungent question. What is the most valid criterion by which Mr. Stevens can be judged? A review of favored cases that he has no doubt carefully selected and submitted to this committee and to the bar association? Who is the more qualified to judge Mr. Stevens? Someone who has never had a crucial case mishandled by Mr. Stevens, or one who, like myself, has had some half a million dollars, at least, in property stolen by Mr. Stevens in conspiracy with political cronies?

I have had at least four cases, and probably many more, some of interlocutory review nature, some writs of mandamus, and so forth, but based upon the illegal conduct of district court judges, all before Mr. Stevens and his various associates, but largely Mr. Stevens. I submit my pragmatic experience and the prima facie evidence of Mr. Stevens' illegal, anticonstitutional orders, makes me a most valid voice and, perhaps, the only valid voice, by reason of experience.

I have included in my massive brief only four cases, but four significant cases, all dealing with our most cherished constitutional fundamentals, especially amendments 1, 4, and 14. I refer now to a case entitled *Smith v. Ernst and Bauer*, or in the reverse, *Bauer and Ernst*. The number of this case in the appellate court is No. 18768. I do not have the file as I have said. A background is somewhat necessary.

Mr. Bauer was a district attorney in Du Page County, which is in eastern Illinois, west of Chicago, the county in which I owned a chain of travel agencies from 1955 to 1965. My employees stole \$35,000 in airline tickets and sold the stolen tickets throughout other States. I laid the prima facie evidence of the crime before Mr. Bauer as district attorney, and I was refused all prosecution. On Christmas Day of that year a man from Wisconsin called me, offered to appear before the grand jury to tell that my employees paid William Bauer, the district attorney, \$5,000 of my stolen money to avoid prosecution.

I have incorporated in my pleadings to the committee a series of leaflets, which I hold in my hand. One is entitled "The Crime of William Bauer," and on the reverse side is a reproduction of my letter to the circuit court of DuPage County, requesting grand jury hearing regarding the Bauer bribes.

I was refused a grand jury hearing. Then Mr. Bauer retaliated, viciously so, and this lays the background for Mr. Stevens' involvement.

I was attacked by thugs three times in my office. I was badly injured. My office was made a shambles. I called the police. I wanted to have them examine the office and take fingerprints, which they refused to do. The police arrested me immediately on false charges of assault and battery, and in some cases of aggravated battery.

Bauer's controlled press blared forth, and this is not an exact quote, "Smith beat up complaining customers." I urge the committee to read a leaflet on yellow paper, entitled "Patterns in Persecution," a leaflet provided with hundreds of crimes committed against me that were designed to run me out of business and run me out of Du Page County.

I would also urge the committee to read another leaflet, entitled "The Du Page Mafia," which is also included.

For Senator Fong's interest, I was arrested one day, or attempted to be arrested, by a man who claimed to be a Hawaii or a Honolulu

policeman. The man showed an actual Honolulu police badge. I asked him what his jurisdiction was and what his complaint was, and he said, "I don't need any jurisdiction. You stole \$200 from one of my friends, and I want it or I am going to arrest you and run you in." With that I grabbed the nearest thing I could, ran around the other side of my counter, and ran the man out of my office. I followed him; got the number of his license plate, an Illinois license; I traced the man. He proved to be one of Mr. Bauer's gestapo army, of which there are numbers in Du Page County.

This is only typical of some of the harassment I was subject to.

I ask the committee at this point, with the little bit they have heard or read in my leaflet, have my constitutional rights been violated? Am I entitled to due process of law?

The worst is yet to come. In November of 1964, William Bauer, the district attorney, was running for the circuit judgeship. I published some of these leaflets, reprinted them, and I was handing them out to people on the street throughout Du Page County. I had also included another by that time, which I quote: "Murder Pays District Attorney Bauer \$10,000 Bribe." This is a true story. I have the story directly from the man who paid the bribe. In the handing out of these leaflets, mind you—I repeat, on election day—I was arrested and jailed and held for about 4 hours to keep me off the street.

Now, is this a constitutional violation? How are my rights under the first amendment in this case been violated?

I also point out to the committee that at this time the landmark decision of the Supreme Court in *New York Times v. Sullivan* had been published several months before. Even the lay public was well-informed of their rights to oppose a political candidate under the decision of that landmark case.

Mr. Bauer and his associates are lawyers. They are required to know more of the law and to apply more of the law than the average layman. Mr. Bauer had me arrested on election day because I opposed him and opposed his election campaign. In the light of that legal definition, I was arrested and tried for criminal defamation of William Bauer, a public office holder. I wish I had time to give the full details of the trial, but I forebear because they are not pertinent at this time. Suffice it to say that William Bauer refused to take the stand, and I won a jury verdict of acquittal. Actually, it was a directed verdict because I so moved.

Later on I filed this case as a civil rights case in the district court of Chicago. It was heard by Judge Parsons. Judge Parsons is reported in the book I have quoted as the infamous, drunken judge of the Federal circuit. The case was before Judge Parsons around 1970 and, as I say, I do not have the exact dates or exact case numbers with me because of the matters I mentioned.

Judge Parsons looked at Mr. Bauer's lawyers and made this statement, which is fraught with great meaning: "Gentlemen, is this the case that is withholding Mr. Bauer's appointment as U.S. attorney"—because at that very time Mr. Bower had been promised a political appointment by Senator Percy. He was, therefore, before this committee as a nominee for the U.S. attorney's position.

Now, at that time I printed and prepared and brought to Washington an entire box full of manuscripts, legal briefs, which I hold in

my hand, of some 40 pages, along with the documents, the exhibits I have mentioned, the leaflets I distributed on election day. I presented this to each member of the committee, but I was not called to oppose the nomination of Mr. Bauer, I, therefore, filed this suit against Mr. Bauer as proof positive that the man was corrupt and had every intention of violating the first amendment of the Constitution, if not the whole Constitution.

I hold no rancor at not being called, but had I been called, Mr. Bauer would not have been appointed to that high office.

Now, I call the committee's attention especially to that Judge Parsons dismissed this case purely because Mr. Bauer was an appointee as a U.S. attorney. That is not just grounds for a dismissal of a case. In fact, it is illegal grounds.

Now, this case ultimately came to the appellate court, and I daresay that Mr. Stevens has not submitted this case to you for your consideration. I ask, therefore, that this case, No. 18768, be made a part of the record, incorporated in it, and that the briefs therein studied. They are very thorough, and they delineate this constitutional issue exactly.

Mr. Stevens summarily dismissed this case to favor Bauer and his crony, Mr. Peter Ernst. I would like to ask Mr. Stevens to submit, as I have in my brief, by the way, I am positive; I would, again, like to ask Mr. Stevens to submit one, a verified affidavit on how long Mr. Bauer has been known to him on a personal friendship basis; two, that Mr. Stevens submit a memorandum of law, testifying his rabid desecration of my first and 14th amendment rights in the dismissal of the case *Smith v. Bauer*.

I remind you, again, that this case deals with a prime constitutional issue, the first amendment right of free speech and the right of a citizen to oppose a corrupt individual on election day, for which I was jailed and prevented from doing.

I point out that this case was dismissed in both the district court and also by Mr. Stevens in the appellate court definitely on a basis of political favor and to desecrate the Constitution. Relative to Mr. Stevens' ruling, one, Bauer was confirmed as U.S. attorney. Now, in the meanwhile, my case came before the Seventh Court of Appeals with Mr. Bauer as U.S. attorney, despite the massive brief that I have already quoted, that I have submitted to the committee. But by the time this case came before Mr. Stevens and the Seventh Circuit, Bauer was not only U.S. attorney and protected by these judges knowingly, but Mr. Bauer was now a nominee for a judgeship in the Federal court.

Therefore, Mr. Stevens dismissed this case in the very same manner that Mr. Parsons had dismissed it in the lower court to protect Mr. Bauer's confirmation by this committee to the high post of a Federal judgeship. So Mr. Stevens dismissed this case because Mr. Bauer had a deal with Senator Percy to get a Federal judgeship during Mr. Nixon's Presidency, and Stevens, to prevent Bauer's constitutional crimes from being discovered, dismissed the case completely.

Here is incontrovertible proof of Mr. Stevens' true character, a rabid anticonstitutionalist and one who purveys judicial favors for political cronies. Mr. Stevens never recused himself, despite his pronouncement on Monday and Tuesday about the *Keane* case on which he was examined at length. Stevens says one thing, but his acts betray him.

Further, in the case *Smith v. Dushong*, 71-1064, and I do have the pleadings before me in this case, this is a brief along with the notice of motion under rules 40 and 41, designed to stay the mandate of the court.

It is difficult for me to refer to a note and then come back to my writing because of my visual loss and the difficulty.

In *Smith v. Dushong*, which also came before Mr. Stevens simultaneously with the *Bauer* case, Dushong was one of my employees who was a thief and stole some \$35,000 worth of airline tickets and whom I have reported in the words of a witness willing to appear before the grand jury as having paid Mr. Bauer a \$5,000 bribe to avoid prosecution, and to obtain a favorable decision from Judge Napoli in the district court. This was another case in which Judge Napoli ruled.

The case was based upon my written contract with Dushong. The contract was fully recited within the complaint under full compliance of the Illinois law, which I believe is IRS 11036. Mr. Napoli made the strange ruling, and this is important to understand because we must consider Mr. Stevens' ruling in the light of this. Mr. Napoli, and I quote Judge Napoli as closely as possible: "If the case sounds in contract, it is filed timely. If it is filed in tort, it is barred by the 3-year statute of limitations. I find that the case sounds in tort." And the case was dismissed.

I repeat again, the case was based on contract which was fully recited within the complaint. I ask you to try to find any legal justification for this strange and illegal decision. One can only arrive at the conclusion that I have that Mr. Napoli was paid for a favorable decision for Dushong, just as he paid for protection from Mr. William Bauer.

Mr. Stevens upheld Napoli's illegal ruling by a devious trick common to the Seventh Circuit. Rule 2 is a local rule by which the judges can, and I quote, "suspend the rules," so they can dispose of "my own troublesome cases." This is akin to thieves who suspend the theft statute so that they can commit a crime. The *Dushong* case is loaded with Mr. Stevens' illegal rulings, all favoring Dushong, the thief. See Dushong's letter in the file written personally to chief judge, which was answered by Judge Stevens without a copy to me. Here is a graphic example of illegal and very undesirable ex parte working arrangements between a client and a judge.

The *Dushong* case implicates Bauer, the district attorney. Dushong and others paid off. If this case came to trial, Bower would be called upon to answer, one, why did you refuse to prosecute Dushong at all? Two, did you accept a bribe from Dushong? Now, if Mr. Bauer answered in the negative that he had not accepted a bribe, I had a willing witness who could come and testify that Mr. Bauer was paid a \$5,000 bribe of my stolen money, but Mr. Bauer was now the U.S. attorney and before this committee as a judicial nominee, who could be revealed as the corrupt person I have claimed him to be, and Bauer would, of necessity, have been rejected by this committee and probably impeached in his other position as well.

Mr. Bauer's ambition, by the way, like Mr. Stevens', is that of becoming a Supreme Court Justice.

Read my pleadings filed in the Seventh Circuit in *Smith v. Dushong*. I believe you will find its counterpart in *Smith v. Bauer*. I had some of the *Dushong* motions, and I am supplying them to the committee. In

it I charged Judge Stevens et al, as follows. In the notice, I will read only a few scattered lines throughout this aptly taken motion. "Please take notice I have this date filed by mail the attached motion for ruling under rules 40 and 41 for seven reasons, all of which incorporate fraud on the part of the defendant-appellee's counsel"——

Mr. WESTPHAL. Excuse me, Mr. Smith. I think the pleading that you are reading from is in the packet of papers that you turned over to the committee. I remember seeing it there myself. Material that has already been turned over to the committee you do not need to read again.

Mr. SMITH. Well, I would like to emphasize some of the salient points, if I could.

Mr. WESTPHAL. All right.

Mr. SMITH. So, the net result of Mr. Stevens' ruling in the *Dushong* case was that the case was absolutely dismissed without any opinion ruling. I think that I must rely on my memory that my brief incorporates the fact that I asked Judge Stevens for a memorandum of law, justifying his totally illegal position, which he refused to do.

My motion under rule 40 and 41 was, of course, denied. I was unable to pursue the case much further, although I did file preliminary motions in the Supreme Court, but the record would show that I was shortly thereafter hospitalized for additional eye surgery of a very grave nature.

I now come to another case of great significance, *Smith v. Internal Revenue Service*. I do not have the number of this case. However, it is immediately available to the committee from the reference cards. An hour could be used to delineate the illegality in this case.

I was unemployed for 7 years, almost totally, and I was a target for Internal Revenue harassment. Obviously I had been placed on the enemy list by Mr. Bauer and possibly with the concurrence of Mr. Stevens, although I do not make that a direct charge, but I do charge that to Mr. Bauer.

To stop the harassment I filed a suit against the IRS in the Tax Court in Washington, D.C. The IRS failed to reply timely and I moved for a defaulted judgment, which was denied. A hearing was set for May 21, 1973. I ask that the date be noted with careful specificity. The hearing, the only one so far, was to be held on May 21, 1973. On or about May 15, again, I say, note that date, 1 week before the hearing, the Internal Revenue seized my funds, \$700. This money was designated as realty tax money. Those taxes now have still been unpaid. I have referred to the fact that if we do not pay \$1,000 in taxes in penalty by December 23, this month, we will lose this fully paid home.

On May 21, the Tax Court judge dismissed me and gave IRS a new legal judgment of \$2,000, plus. I filed timely motions to set aside the judgment. There are many motions on file in this case which are readily accessible to the committee in the local Tax Court.

Finally, in November, while these motions, postjudgment motions, were still under consideration and in various stages of process, an IRS agent attempted to seize my automobile. When I demanded from him a court order, the agent could not produce it. I then showed him my up-to-date file, and he backed down and left my car in my possession.

To terminate such illegal harassment, I filed for a restraining order in the Seventh Circuit, the only court open quickly to me because it is only 70 miles away. I also filed a motion for the return of my \$700. Mr. Stevens ordered the Internal Revenue attorney to reply by November 26, I believe that was 1972. The attorney failed to reply. Instead, in a letter dated November 26, the very day he was to have his pleadings on file, he wrote a letter with the statement, I have been too busy with the holidays, and he asked for more time. I opposed his being given more time by stating that I, too, had holidays and I, too, had pressing work to take care of, and I, too, had very difficult problems, especially with my eyes and so on. The motion is on file. See my scathing pleadings.

The IRS attorney never filed a reply to my knowledge; at least I never got a copy of any such reply, despite the order of Judge Stevens. But Mr. Stevens, on November 30—now, I put a question mark after that date because I am going by memory. However, it was very quickly after I filed my reply motion, asking that additional time to the IRS not be granted.

Mr. Stevens, on November 30, denied my motion for a restraining order and denied me the return of my \$700. Here is one of the most glaring constitutional deprivations that could be brought before this Court unless it is in the case of my illegal arrest on election day.

Mr. Tunney questioned at length as to Mr. Stevens' regard for the fourth amendment. Here is proof positive that Mr. Stevens, by his rulings, has no regard for the fourth amendment. I have also shown he has no regard for the first amendment. I have shown proof positive that he has no regard for the 14th amendment. So, Stevens again proves his determination to destroy those sacred rights in our hallowed Constitution.

I ask this committee not to be misled by what he says; judge him on his acts. Not acts in favored cases that he has submitted to the committee and to the bar association, but cases he has not presented, and these cases, if he could, he would destroy the total files so that they could not be used against him. And I state tonight before this committee that these cases are haunting him at this moment, just as surely as Morley's ghost of Dickens' Christmas Carol.

In conclusion, I come to one more case. It is a tragic and a bitter case, too long to properly relate here. It involves my home and an illegal possession. I have not been able to bring before the committee—I will only brief this very shortly. At one stage of my political persecution I was subjected to a criminal warrant for theft. I was tried for that theft. The theft consisted of my stopping payment on a check on which I had just legal ground to stop payment, but Mr. Bauer, as the district attorney, called this theft which is absolutely opposed to Illinois statutes.

Now, we went through the trial and I was found guilty under very strange circumstances. By this time I had myself pro se filed and proceeded in six criminal charges that had been placed against me by Mr. Bauer. All of them were false, but I defended myself pro se and I won every case.

There was no attorney, district attorney, and assistant, in the Du Page Courthouse who would oppose me in any case I brought.

Now, we come to another bitter experience. The judges of the Du Page court—there was one judge, I believe it was Judge Attin—ruled that I would not be allowed to represent myself in the proceedings of this criminal theft charge, the reason being, as I have stated, that no district attorney would appear before me. They knew I would win.

MR. WESTPHAL. Mr. Smith, excuse me. You are mentioning a proceeding in the Du Page County Court. Judge Stevens had no connection with the Du Page County Court.

MR. SMITH. He has a connection with the outgrowth of this case. I will tie it all in.

MR. WESTPHAL. How much more do you have?

MR. SMITH. Possibly 5 minutes.

MR. WESTPHAL. All right.

MR. SMITH. Therefore I will indicate that I was found guilty falsely because I had to hire a lawyer who was drunk during the trial and fell in a heap right in front of the jury. Under such conditions I was found guilty. I hired an appeal lawyer. This, again, is a tragic story. To make a long story short, this appeal lawyer failed to file my appellate brief, all the meanwhile telling me that everything was fine, he had a continuance. On October 5, 1965, I called my lawyer at 5 o'clock in the evening. I said, Mr. Brentikis, let's get this case over with so I can restore my business. I am eager to get back where I can earn a living. He said, everything's fine, I have another continuance. This was at 5 o'clock on October 5, 1965.

The next day, October 6, 1965, I was picked up and brought before a judge of that circuit. The district attorney stated that my appeal had been denied and demanded immediate incarceration. I was immediately transferred to the Stateville Penitentiary. I was not allowed to telephone my wife, who searched the hospitals all night long looking for me, only to learn the bitter truth through some circuitous route that I was in the penitentiary. This has never been done, as I understand it, in the history of criminal law. You are also allowed a telephone call when you are imprisoned. You are also allowed a telephone call when you are transferred to another institution.

I was denied phone calls both times, and I was held in seclusion for almost 30 days, incommunicative so my wife could not reach me.

Under such conditions as this, we had to get along as best we could. We had to get a loan on our house because neither one of us was employed and I was in prison. A trusted lawyer said that I appoint a trustee for this loan who would get a loan.

Therefore, I appointed my mother as a trustee. I wrote a letter from the penitentiary and it is prima facie evidence, because it goes through a censor.

I instructed the lawyer, Mr. Robert Ransome of Oak Park, Ill., make my mother, Mrs. Alice R. Smith, the trustee of the property with R. J. Smith and Winifred Smith as sole beneficiaries of the trust.

To make a long story short, a lawyer came to our aid and 10 months after the beginning of my imprisonment the case was resolved and reversed by a Supreme Court ruling that stated that a stop payment check was a civil case and not a criminal case.

But, the damage was done.

Shortly thereafter, within a month I was immediately hospitalized as I have already said, and a year later we attempted to sell our home. The house was sold in July. I, myself, made the sale.

I filled out the documents. I turned them over to my same trusted lawyer and this was right away. And for 5 or 6 months he kept delaying the transaction, telling me that the people who were buying it had asked for an extension of time, which we gave him. He was to get money for such extensions and he never did.

When we finally came, I believe it was December 23, to close the case, this lawyer was Robert Ransome of Oak Park, it is a matter of record that the Federal court had made my mother the full owner of that property. And my mother, under the influence of my larcenous brother, refused to return the title to us.

This was our only remaining property, the only thing we had any hopes of covering my eye operations and getting my business restored, which we have not to this day fully cleared.

Now, ultimately, we used every possible source of mediation because of the family nature of this peculiar situation.

My minister made overtures. I want to her minister. All mediation was refused. My mother stated, see my lawyer.

Because of the diversity of citizenship, I filed this case in the Federal district court of Chicago. I do not have the number, but it could be readily determined. It is *Smith v. Smith*. And I believe Mr. Ransome was in on that too, I am not sure. There are two cases, by the way.

This case came before Judge Lynch. Now, I would prefer reading to confine my remarks. Incidentally, I have included transcripts of the hearings before Judge Lynch of two dates. I have these to show the shocking treatment I received from Judge Lynch. I was charged with contempt, for no reason whatsoever. I was charged with contempt so that I would be totally intimidated and drop the case.

I had threats made against me that I would not only be put in jail, you will find the exact quotation, Judge Lynch stating, I will change your residence.

You will also find in the transcript that Judge Lynch further intimidated me by ordering that I appear before a psychiatrist of his choosing to prove my mental competency.

Incidentally, he referred to the psychiatrist that he appointed as Dr. Arcama. The files of the American Medical Association show there is no Dr. Arcama, and there was none in the Chicago telephone book. This was one of the illegal tricks used by the judges of the district court to intimidate anyone whose cases they want to dismiss.

The opposing lawyer I now find is a friend of Mayor Daley. Lynch was Daley's former law partner and hand-picked Federal judge.

Mr. WESTPHAL. Did you appeal that case to the Seventh Circuit?

Mr. SMITH. Yes; I am coming to that.

The next day our luncheon buddies of the opposing lawyer, whose name, by the way, is Mr. Arcama, and all are close friends of Thomas Keane and possibly Judge Stevens—I stress possibly. Now we come to Judge Stevens' part in this very sad and tragic case.

My property is at stake. I am ordered by Judge Lynch not to come back to his court. The case is continued generally until I prove my mental competency to proceed pro se with a psychiatric examination by a psychiatrist who does not exist.

Or, in the alternative, I have to be represented by counsel.

I submit to the committee that I have the constitutional right of appearing pro se, I also suggest that an examination of my pleadings in that specific case especially will prove that I am highly competent and highly skilled in Federal practice.

All of these issues were brought before Judge Stevens in the seventh circuit. Judge Stevens dismissed this case. Now, this was an interlocutory appeal in which I appealed asking that the actions of Judge Lynch be reversed and that he be ordered to conduct a trial or in the alternative to give me another judge.

Judge Stevens threw this case out of court. In essence he has allowed my home to be stolen by my own brother and my mother. I state to this committee positively and emphatically that Judge Stevens is in consort with my political enemies to steal every penny that I can possibly get together, they have stolen my property, they will continue to steal my property.

They have subjected me to police harassment, the like of which has never been told in the United States. And when I relate some of these things and you have only a sketchy understanding of the whole situation, people tell me this can not happen in the United States and then they get the little thought in their mind that this man truly must be unbalanced, these things could not happen.

Mr. WESTPHAL. Mr. Smith, you have had about an hour now to complete your statement that you thought might take 20 minutes or so.

Mr. SMITH. I have only two more pages.

I could cite more cases. I have submitted all of these pleadings by memory. I do not claim to have the phenomenal memory of John Dean, but I urge you to compare the actual files and also the actual rules signed by Judge Stevens, rulings and the like of my well-pleaded motions and see how Mr. Stevens has ravaged the law, the Constitution, and our sacred rights as citizens of the United States.

I repeat that I am the most valid witness to be heard pro and con because I have brought before this committee the actual cases and the actual rulings of Judge Stevens.

They came to praise without knowing all of the machinations of this totally corrupt judge, who must only be denied the high office he seeks but must be denied his present position as well.

Read my three page conclusion, especially, included in my packet of materials. He has violated not only the Constitution but most of the cannons of judicial ethics of which he has eloquently spoken in this hearing.

Yesterday, he himself, related the importance of the appearance of impropriety. He condemns himself in *Bauer*, *Dushong*, *IRS*, *Smith v. Smith*.

He has shown his true Janusfaced self.

One face, Janus was the Roman god with two faces, one face of Judge Stevens blesses the Constitution, the other face reviles it.

We do not want a two-faced judge on the Supreme Court of the United States or in any other court of our land.

I submit, gentlemen of the committee, that you must consider my pleadings in my cases and the rulings of Judge Stevens to prove beyond the shadow of a doubt that Mr. Stevens is absolutely opposed to the constitutional rights of every citizen.

And I thank you.

Mr. WESTPHAL. Thank you, Mr. Smith.

I understand the committee will recess subject to the call of the Chair.

[Whereupon, at 5:30 p.m., the committee recessed subject to the call of the Chair.]

[The chairman subsequently made the following statements a part of the record.]

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., December 9, 1975.

STATEMENT BY BELLA S. ABZUG, TO THE SENATE JUDICIARY COMMITTEE HEARINGS ON THE CONFIRMATION OF JUDGE JOHN PAUL STEVENS TO THE SUPREME COURT

Senator Eastland and Members of the Senate Judiciary Committee:

As you realize from reading the letter which I circulated to you yesterday, when this hearing began, I had questions about Judge Stevens' sensitivity to women's rights based on his decisions in a number of sex discrimination cases which came before him in the Court of Appeals.

After learning of his statement yesterday that he would decide these cases exactly the same way today, I am increasingly concerned over this hasty confirmation process. In light of this statement, I am especially disturbed about Judge Stevens' dissent in the *United Air Lines* case, where he failed to find that the no-marriage rule for stewardesses was sex discrimination prohibited by Title VII of the Civil Rights Act of 1964.

This opinion was anachronistic when written, but when it is examined again in 1975, with the hindsight of the progressive development of Title VII law in the intervening four years, I find it unbelievable that Judge Stevens would rule the same way.

After reading the Judge's comments at yesterday's hearings, I found myself compelled to come before you to urge that these hearings not be adjourned without your hearing from additional women's groups, female jurists and others who have a very serious interest in Judge Stevens' views—particularly with reference to the Equal Rights Amendment which was overwhelmingly passed by the Congress and ratified by 34 states.

I must say that I found the Judge' slack of knowledge about the background of the amendment shocking. It is out of step with the times that a man being recommended for the highest court in our land would not be familiar with the outcome of litigation which attempted to apply the 14th amendment to women as it had been applied to minorities.

Judge Stevens' view of the ERA reflects the thinking of the 1950's when legal scholars still believed that the courts would interpret the 14th amendment expansively. As the history of litigation showed that not to be inevitably the case, women's organizations, trade unions and civil rights groups became increasingly convinced of the necessity for adding the Equal Rights Amendment to the Constitution. For that reason, the broadest coalition of groups including the Democratic and Republican parties supports its ratification as the best means of guaranteeing equal justice under the law.

There is ample legal literature on what the ERA would accomplish and I would be happy to provide the relevant articles to the nominee and the Committee. Rather than take up the Committee's time with citations to Law Review journals, I urge this Committee not to confirm this nominee hastily—but rather to recess and allow interested groups the time to come forward and testify on Judge Stevens' nomination and his positions as stated before this Committee.

I and other Members of Congress as well as major women's groups urged President Ford to nominate a woman to the Supreme Court and were disappointed with his failure to attempt to redress the historical imbalance in our Courts. None of us advocating the appointment of a woman to the High Court has even suggested that the appointment be made on the basis of sex alone. There are a number of highly qualified women jurists and lawyers in our country from whom a suitable choice could be made, if there were a desire to do so. Clearly, the President had no such desire.

It is ironic that the nominee chosen by our non-elected President in this International Women's Year should turn out to be unsympathetic to the needs of over half our population. I see no reason why the Senate should hasten to approve the President's choice, particularly when a lifetime appointment is involved.

WOMEN'S LEGAL DEFENSE FUND,  
Washington, D.C.

Hon. JAMES O. EASTLAND,  
Chairman, Senate Judiciary Committee,  
Washington, D.C.

STATEMENT OF OPPOSITION TO THE NOMINATION OF JUDGE JOHN PAUL STEVENS TO  
THE SUPREME COURT OF THE UNITED STATES

The Women's Legal Defense Fund, a non-profit, tax exempt corporation organized in 1971 to secure equal rights for women by providing volunteer legal representation in sex discrimination cases, whose membership includes both attorneys and lay persons, wishes to state that we oppose the nomination of Judge John Paul Stevens to the vacant Supreme Court seat for the following reasons:

1. Judge Stevens' comment that race discrimination is a "more important" issue than sex discrimination shows a blatant insensitivity to discrimination against women.

2. His statement that he would never rule sex as a suspect classification, such sex-based discrimination to be subjected to the strictest scrutiny by the Supreme Court, reveals a predisposition to rule adversely in cases which women bring under the Equal Protection Clause of the 14th Amendment to the Constitution.

3. His self-admitted lack of knowledge of the legal implications of the Equal Rights Amendment to the Constitution is appalling in light of the Supreme Court's function of understanding and interpreting the Constitution of the United States; and surprising in light of the opinion which he wrote in *Dyer v. Blair*<sup>1</sup> upholding a state of Illinois procedural rule change which effectively defeated the Equal Rights Amendment in Illinois.<sup>2</sup>

4. His decision in *Sprogis v. United Airlines*<sup>3</sup> shows that Judge Stevens based his opinion in that case on preconceived notions of women rather than the regulations arising under Title VII of the Civil Rights Act of 1964 (as amended in 1972) dealing with sexual equality, and in fact, misinterpreted Title VII. His opinions in both *Doc v. Bellin Memorial Hospital*<sup>4</sup> and *Cohen v. Illinois Institute of Technology*<sup>5</sup> which denied that there was any state action present, prevented the female plaintiffs in those cases from ever reaching the central issue involved—sex based discrimination.

For the above reasons, the Women's Legal Defense Fund urges you to re-examine the credentials of Judge Stevens as to his fitness to serve on the Supreme Court and further urges you to vote "no" on his nomination.

NAN ARON,  
President.

BERGER, NEWMARK & FENCHEL,  
Chicago, Ill., December 2, 1975.

Re Hon. John Paul Stevens.

Hon. JAMES EASTLAND,  
Chairman, Committee on the Judiciary,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR EASTLAND: It is my understanding that several years ago, when Judge Stevens' nomination for his present judicial office was being considered by the United States Senate, Mr. Leslie G. Behrend, of Barrington, Illinois, wrote to the Senate Committee on the Judiciary with relation to an arbitration award which had been made by John Paul Stevens, as arbitrator, when he was an attorney practicing in Chicago. I only learned of that letter subsequent to its receipt by the committee.

I represented Mr. Behrend in relation to that award (but only subsequent to its entry). The arbitration proceeding was administered by the American Arbitration Association (Chicago office) and was designated No. 51 10 0010 67-C, Leslie G. Behrend and Robert G. Woods. The proceeding involved an accounting, between ex-partners, as to the management consultant business they had operated.

<sup>1</sup> 390 F. Supp. 1291 (7th Cir. 1975).

<sup>2</sup> The ERA had been approved by a simple majority vote in the Senate; the rule change required a 3/4 vote of the legislature.

<sup>3</sup> 444 F. 2d 1194 (7th Cir. 1971).

<sup>4</sup> 479 F. 2d 756 (7th Cir. 1973).

<sup>5</sup> 74-1930 (7th Cir. October 28, 1975).

Subsequent to entry of an award in favor of Mr. Woods, Mr. Behrend's then attorney made a motion, in the companion court action between Woods and Behrend, to vacate the arbitration award. That motion was denied and the award was affirmed. That action was in the Circuit Court of Lake County, Illinois, and was designated John Robert Woods vs. Leslie C. Behrend, No. 67 C 1337.

After the court's denial of his motion to vacate the award Mr. Behrend engaged this firm and I undertook to represent him regarding the above arbitration award and court action. I filed a motion under Section 68.3 of the Illinois Civil Practice Act for reconsideration of the court's prior orders and for vacation of the award and for other relief. The main thrust of the motion was that the partnership agreement specifically put the partnership on a cash basis while the award was predicated at least in part, on an accrual accounting basis. Neither in my motion, nor otherwise, did I raise any question as to the arbitrator's integrity or competence. The award was vacated by Judge Minard E. Hulse on January 30, 1969 and the cause was remanded to the arbitrator, or his successor, with directions relating to various accounting points (including a cash basis accounting as to three contracts in issue). The court order in no way raised any question as to the arbitrator's integrity or competency. Nor was any such question in any way involved either in the arbitration proceeding or in the court action.

I have known John Paul Stevens since about 1952 and have participated in litigation in which he was also serving as attorney. His conduct and demeanor has always been above reproach, his exceptional legal ability manifest.

At the time that Attorney Stevens' nomination to the Court of Appeals was under consideration, I wrote a letter similar to this one to the then Senate Judiciary Committee. I wrote that letter, and I write this one, to lay at rest any charge or intimation of any impropriety on the part of the arbitrator, John Paul Stevens, in his rendition of the above referred to award.

In my opinion Judge Stevens will make an outstanding member of the Supreme Court of the United States.

Respectfully submitted,

HARRY D. LAVERY.

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BAR ASSOCIATION OF THE SEVENTH FEDERAL CIRCUIT.

Chicago, Ill., December 8, 1975.

HON. JAMES O. EASTLAND,  
Senate Judiciary Committee, U.S. Senate,  
Washington, D.C.

MY DEAR SENATOR EASTLAND: It is my great pleasure to submit to you, for your consideration and that of other Committee members, and for inclusion in the record of confirmation hearings of the Senate Judiciary Committee being held on the nomination of Circuit Judge John Paul Stevens to the Supreme Court, true copies of a resolution unanimously adopted by the Board of Governors of the Bar Association of the Seventh Federal Circuit, at its meeting on December 6, 1975, in Chicago, Illinois.

Sincerely,

WILLIAM M. EVANS,  
President.

Enclosure.

RESOLUTION

Whereas, President Ford has nominated John Paul Stevens, Circuit Judge, U.S. Court of Appeals for the Seventh Circuit, to fill a vacancy in the U.S. Supreme Court; and

Whereas, the U.S. Senate Judiciary Committee is about to hold hearings on the confirmation of that appointment; and

Whereas, Supreme Court Justice designate Stevens is uniformly recognized by the Bar and Bench alike, in both the Seventh Federal Judiciary Circuit and elsewhere, to be highly qualified to serve on our highest Court by reason of demonstrated fairness, integrity and high intellect; and

Whereas, after an excellent college and law school record interspersed with distinguished service in the Armed Forces, John Paul Stevens has demonstrated in a career of nearly three decades as law clerk, scholar, counsel to a Congress-

sional Committee, lawyer and advocate, law teacher and author and finally as a Circuit Judge on the second highest Court in the Federal Judiciary—exceptional capacity, character and fitness for this highest judicial office; and

Whereas, designate Stevens has served with great dedication and distinction for more than five years as a Circuit Judge of the U.S. Court of Appeals for the Seventh Circuit, and by demonstrating, for all to see, his exceptional judicial talents: Now, therefore, be it

*Resolved*, that this Association, on behalf of the Bar of the Federal Courts in Illinois, Indiana and Wisconsin, does hereby record its abiding conviction that Circuit Judge John Paul Stevens is eminently well qualified by demonstrated character, temperament and experience, to serve as a Justice of the U.S. Supreme Court; that his appointment to that high office should be confirmed promptly by the Senate; and that his service on that Court will be in its highest traditions; and be it further

*Resolved*, that the proper officers of the Association be, and they hereby are, authorized and directed to submit suitable copies of this resolution to the Chairman and Members of the Senate Judiciary Committee for their consideration, and for inclusion in the record of the confirmation hearings of that Committee on the nomination of Circuit Judge Stevens to serve on the U.S. Supreme Court.

I hereby certify that the Board of Governors of the Bar Association of the Seventh Federal Circuit unanimously adopted the foregoing resolution in a meeting assembled in Chicago, Illinois, on the 6th day of December, 1975.

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FEDERAL BAR ASSOCIATION,  
Washington, D.C., December 11, 1975.

HON. JAMES O. EASTLAND,  
Chairman, Judiciary Committee, U.S. Senate,  
Washington, D.C.

MY DEAR SENATOR EASTLAND: It is my pleasure to inform you of the position of this Association's National Judicial Selection Committee to support President Ford's nomination of Honorable John Paul Stevens to the Supreme Court of the United States.

The Judicial Selection Committee has evaluated the qualifications of the nominee and has found, without dissent, that Judge Stevens is exceptionally well qualified for appointment.

We request that this communication be made a part of the official proceedings of the Judiciary Committee of the Senate.

Sincerely,

JOSEPH S. FONTANA,  
Chairman, National Judicial Selection Committee.