STATEMENT

OF CHARLES MERRILL MOUNT

to the United States Senate

Committee on the Judiciary

on

The Nomination of Stephen C. Breyer

to the United States Supreme Court

I

Ladies and Gentleman of the Judiciary Committee. Good morning. I am Charles Merrill Mount and I have come here to oppose confirmation to the United States Supreme Court of Stephen G. Breyer.

I do so with profound apologies to President Clinton. It grieves me infinitely to oppose a President whom I consider to be extraordinarily decent and well-meaning as a man. But I act as a matter of conscience and to save this country the presence on the Supreme Court of a man morally and ethically unfit. The President has chosen a candidate whose patented dualism, of portentious principles expounded in public and vicious retaliations in private, show him to lack the essential quality of judicial impartiality. Moreover Judge Breyer has demonstrated an absolute contempt for the Constitution and into this he has led the First Circuit. At Boston no matter of constitutional magnitude receives fair Hearing, nor even respectful Hearing. I shall spell this out for benefit of the Committee by Article, Section, and Amendment.

But first I must tell you who I am and how I came to be concerned with Judge Breyer. To start at the beginning then, some members of this Committee may know me, or at

least find me familiar. Senator's Hatch, Thurmond, and Simpson surely recall that my friend the former Chief Counsel of this Committee, Francis Coleman Rosenberger, had me paint a large portrait of Senator Eastland at the time of his retirement in 1978. Senator De Concini walked through this Hearing Room on the Saturday when Francis Rosenberger, J.C. Argitsinger, and some others had a scaffold erected to hand the portrait on that wall, where I am sorry to see it no longer is present. That day may have been auspicious in other respects too; I recall Senator De Concini remarking that the Bill to double the federal judiciary was to be voted on at 1 O'Clock.

Senator Kennedy may recall me too. With his respect for scholarship and enormous humanity he arranged for me to have an office in the Library of Congress, which caught me up in the soiled conspiracies of that place which destroyed my career and ultimately brings me here today. Senator Kennedy is not to blame. He does not know what transpires inside the Library of Congress; his only impulse was compassion for a well-known historian like myself whose real home is Dublin, in Ireland, which my heart never has left. There I left behind a wife and four children whom Judge Breyer has made certain I shall never see again.

Senator Biden knows me too. One Sunday long ago when his brother was being married in Delaware his vote was needed

on a finance Bill. He rushed back to Washington and in striped trousers and morning coat cast his vote. That duty performed, he stood with me on the steps of the Senate Wing to await an ambulance that with screaming sirens would take him back to National Airport. I was immensely flattered that a man so eminent and beautifully dressed would stop for frivolous conversation with me at a moment of such strain. Senator Biden, you are not just Chairman of this Committee. You are a nice man.

What I, an artist and historian, do before a Committee of the United States Senate may well be asked. My first book of history, published when I was twenty-six, was a biography of the great American artist John Singer Sargent. THE NEW YORK TIMES listed it for biography in its BEST BOOKS OF THE YEAR and later it was chosen by Mrs. Jacqueline Kennedy for the Presidential Library she was forming in the White House as her example of the new variety of American Biography. An influential book critic wrote of my later biography MONET:

> Mount is a biographer virtually unique in the 20th century; the supreme example of the writer as devil's advocate. He takes nothing for granted, certainly not the self-portraiture of his subject. A portrait-painter himself, his overriding aim is truth, no matter how unpalatable it may be.

How then did this "biographer virtually unique in the 20th century become transformed into federal prisoner number 16431-038, and how did the Chief Judge of the First Circuit

keep him that way for six years? Why is it that every Memorandum Decision he wrote was marked NOT FOR PUBLICATION? What horrible secret has Stephen G. Breyer been keeping right up to the threshold of this Hearing Room?

We must examine together how it happened that all the irregularities of a railroading trial, including denial of all indigent subpoenas for witness, denial of documentary evidence, trial for a crime not on the indictment, trial at Boston contrary to the constitutional bar for a crime alleged to have taken place in Washington, were denied again and again by this man whom today is presented before this Committee of the Senate as a paragone of judicial virtue.

The essential matter to be recalled is that like most active historians most of my life I had collected manuscript documents. Now, grown old and ill, recovering from a stroke, to sell some of these on the understanding that my active career was over, I travelled to Boston where Goodspeed's Book Store advertized that it paid cash for autograph letters. Only when I appeared in Boston I was arrested. For a few weeks thereafter I was beseiged by the media. Invitations to appear on television were frequent. The newspapers sent Reporters whom knocked on my door three and four a day. To the more acute Philip Shenon of THE NEW YORK TIMES when he appeared at my door I commented with a laugh: "You're the only one today - I was feeling neglected". Hustling past me into my

very modest accomodation Shenon's first words were: "This case doesn't make sense. Were you set up?"

* * *

For trial at Boston I was brought before United States District Judge Rya Weickert Zobel, a remarkable experience. A holocaust survivor whom has had numerous other names, trial before her was not unlike being tried by Zsa Zsa Gabor. Judge Zobel's utterances made an unstable sense in her mind alone, and because she equated the gossip of Boston on equal basis with judicial proceedings in the court before her, she saw no need for all the impediments of trial which has come to be called "constitutional rights". To be certain of conviction she denied me all indigent subpoenas for witnesses and most documentary evidence was not admitted. My doom was a certainty.

My court appointed attorney, Charles P. McGinty of the

Federal Defender Office, refused to listen to me concerning The Boston Athenaeum. It was named in FBI Reports of conversation with the Book Store, and we noted that Judge Zobel altered any piece of evidence, and even letters, naming it. That I should have suffered for so many years from The Boston Athenaeum, due to its slanders and libels lost two wives and five children, then been arrested across from The Boston Athenaeum on Beacon Street, is improbable at best. That in telephoning the Library of Congress the FBI should have contacted no high official but the petty functionary whom had been spreading the same Boston Athenaeum defamations, stretches credulity.

But in his own way Charles P. McGinty had a certain genius. He instructed me to trace the history of each of the 167 documents on the indictment. As an experienced historian I was able to give him individual reports, which he used to great effect while the government attempted to prove the documents belonged to them. There was electricity in the air of that courtroom when after each government "expert" gave evidence by inference and belief, McGinty rose and cut them to pieces. Often he showed significant portions of the history were suppressed and replaced by pious claim for which no evidence existed.

Then, on the fourteenth day of trial, McGinty rose on a motion to strike. I read from the transcript:

MR. MCGINTY: Your Honor, with respect to the other exhibits, my motion to strike had identified certain exhibits for which there were insufficient proof of ownership by the Library of Congress and insufficient proof of ownership at trial by the National Archives. They are listed, and there is a substantial number of them that are listed on my motion.

THE COURT: This is the motion filed on the 4th?

MR. MCGINTY: The motion to strike exhibits as just characterized.

THE COURT: Okay. Well, some of those have now gone out, 30 to 39 are out.

MR. MCGINTY: Correct.

THE COURT: One -- 93 to 96, 98, 100 to 202 are out. So, 100 to 202 are out. 189 to 207 are out. And as for the others, the motion is denied. And the motion to seal.

Of 167 documents on the indictment, McGinty had forced dismissal of 135, or seventy per cent. Any impartial judge must have recognized that the government's case was just so much nonsense and granted the motion to acquit which followed. But I was not before an impartial judge. Working in tandem McGinty and I had achieved the impossible. We had proved the documents were not government property as claimed, - and I was convicted. The sheer brilliance of this accomplishment requires amplification.

The dynamics of a trial includes elements never mentioned at Law School. Born at Zwickau, Germany, December 18, 1931,

and tragically orphaned, Judge Zobel was a heavily accented divorce lawyer without federal court practice or experience when this Committee added her to the roster of federal judges. Become the Holly-Golightly of the federal judiciary, anyone suffering through her courtroom performance, noting her obsessions and delusions, her ferocious will to dominate and craving for adulation (every tirade was punctuated by sweet smiles to the jury) must wonder if she is entirely sane.

That her ire was concentrated on me quickly became known to the jury. When a blind man staggered into the courtroom and all but fell into my lap, she called out to me in a tone of severe reprimand. When I made objection to the fact the government had gone into my sealed gift to the Library of Congress, and was cross-questioning me from those documents sealed in my lifetime, she declared me in contempt and sent me to Salem Jail. She credited Boston gossip, or an interview with The Boston Athenaeum, so completely that she sat before the court somber like a chapter of the Apocalypse. Yet no one from THE BOSTON ATHENAEUM appeared to give testimony under oath, lest we cross-question that party about David McKibbin's theft of my proof sheets, his own plagiaries and those of Richard Ormond, the libels with actual malice published in London and New York, and their more recent reiteration.

Forgetting that the Bible begins with a cunning snake but ends with Revelations, Judge Zobel gave an involuntary

shudder each time she looked at me, denied me all indigent subpoenas for witnesses whether from Ireland or the United States, and allowed me no documentary evidence. The government meanwhile was allowed to fly into Boston scores of pseudo-experts from every part of the country. In the varnacular peculiar to such matters this process is known as "railroading", and in this Judge Zobel proved herself one of the most blatant and devoted Railroad Engineers in history. The jury little noted nor long remembered that the documents themselves had been proved my own property in clear title. Every government witness, and the list was extensive, gave evidence not to the indicted crime of "transportation", to to THEFT. On the fourteenth day of trial, almost immediately after 135 documents were dismissed leaving the government's case smashed and in tatters, in his summation the prosecutor boldly said to the jury:

> How do we know that he <u>stole</u> these documents from the Library of Congress?

What documents? Everything claimed by the Library of Congress had been dismissed from the trial.

* * *

Here enters Hon. Stephen G. Breyer, whom the President has nominated to the Supreme Court subject to the Confirmation

of this Committee. From this point forward we have opportunity to examine whether this man believes in justice as the primary mission of the federal courts, and whether he would "preserve and protect the Constitution of the United States", or ever has done so.For with "railroading" by Judge Zobel as established fact, it was Judge Breyer, after he became Chief Judge of the First Circuit in April, 1990, whom barred my escape from her injustice.

The Committee knows my background. But Judge Zobel had been told ex parte and extrajudicially, by which I mean outside the court or in chambers, not where my attorney and I could hear or challenge its truth, that (1) I had appropriated David McKibbin's work on Sargent, and (2) that I was a picture forger. The sensational and groundless talk circulated at Boston showed me to be a truly accursed character, and Judge Zobel had acted on this. The proper enquiry of this Committee now is to examine whether Judge Breyer acted in an ethical manner and with scrupulous adherence to his oath of judicial impartiality.

Of my direct appeal the less said the better. The Appeals Court appointed an attorney who made no pretense of seeking to reverse the district court. He refused all contact with me, neither accepting telephone calls nor answering letters. I was appalled at the continuation of a railroading suffered in the lower coirt. The appeal process completed in Boston,

to atone for a crime never committed long years of wrongful imprisonment stretched before me. My court appointed lawyers had finished their tasks. Left to myself, slowly I began a campaign by Habeas Corpus. The numbers of issues were phenomenal: one 2255 motion (for such they are called) succeeded another.

Judge Zobel of course denied each effort out of hand. Her ear to the ground, she knew what Boston gossip said of me. My 2255 motions thereafter reach the First Circuit on appeal, where a panel of which Chief Judge Breyer was the most prominent member examined them for legal probity. By a decision dated June 28, 1991, and marked NOT FOR PUBLICATION, Judge Breyer ripped apart four of my submissions. These were a third 2255 motion, a second motion for recusal of Judge Zobel, a Rule 27 motion to Declare Nullity, and a motion for Evidentiary Hearing.

Judge Breyer's unique judicial approach becomes apparent, for in this decision he first reduces the issues to those less troublesome, then disposes of these by conclusory statements. Issues of law are never adjudicated - just disposed of. At page 3 elimination of issues came first:

> Of the numerous allegations contained in Mount's various court submissions, we decline to address those raised for the first time on appeal, as well as those raised below but not argued here. What remain are challenges to the following: (1) an alleged variance between the charge in the indictment and the government's proof at trial; (2) the court's instruction that proof of guilt was not required as to every charged document; (3) the failure to explain to the jury why 122 of 144 documents priginally charged in count two had been struck from the indictment; (4)

> the admission of fourteen documents not charged in the indictment; and (5) the exclusion of two letters of James McNeill Whistler, memoranda from the Library of Congress, documents from the United States Patent Office, and copies of articles from a 1905 French Journal.

An impressive list, even so. But now Judge Breyer improvises rationalizations so that these need not be addressed either. The Committee will recall that the attorney appointed to do the direct appeal refused all contact with me. Judge Breyer now finds (at 4) "Mount's failure to advance these issues on direct appeal creates other procedural barriers, however ...." And so, after devoting page 5 to discussions of further barriers he perceives to exist, at page 6 he finds that it is not necessary to consider anything at all:

> Those of Mount's claims that conceivably implicate constitutional concerns are plainly without merit. And the failure to raise his other claims on direct appeal clearly precludes their consideration by way of a section 2255 motion. These additional claims, in any event, are also without substantive merit.

By slithering between Scylla and Charibdis, Judge Breyer does nit sully himself entertaining legal issues put before his court. They had been disposed of, neither more nor less. But what about the needs of justice?

For a fourth Habeas Corpus I made issue of a Supreme Court case from 1989, published after my trial before Judge Zobel. By Schmuck v. United States that high court taught "that a defendant cannot be held to answer a charge not

contained in the indictment brought against him". This seemed to address directly one of the principle evils of trial before Judge Zobel. I had been indicted for "Transportation of goods knowing them to have been stolen", and at trial in every instance the government witnesses gave evidence to theft. Judge Zobel wrote on the face of the motion:

> Denied. Since the jury was not instructed as to an unindicted offense, Schmuck v. U.S. is inapposite.

But the issue was not what the jury was charged. The issue was that the government had set out to prove a charge "not contained in the indictment brought against him". The Circuit Court affirmed her denial employing unique method typical of Judge Breyer, whom continued his practice of not soiling himself by discussion of issues. Though I had brought this Habeas Corpus to show that the actions of the district court defied the lesson of the Supreme Court, Judge Breyer makes no mention of the Supreme Court. Under date of April 14, 1992, he nimbly combined this proceeding with another for change of venue, leaving the Supreme Court ruling unconsidered. His second paragraph disposes of the matter:

> Appellee (the government) has moved under Loc. R. 27.1 for summary disposition in No. 91-2200, arguing that the sole issue there raised has previously been considered and rejected by this court in one of petitioner's earlier habeas appeals. We agree. See Mount v. United States, No. 90-1964, slip op. at 6-7 (1st Cir. June 28, 1991). Nothing contained in petitioner's submissions calls our conclusion there into question.

Side-stepping the Supreme Court has resulted in very bad law. For this was a Supreme Court lesson taught since the conviction, and in Davis v. United States, at116, Mr. Justice Stewart showed: "intervening change in the law" eliminates all possible bar to Habeas Corpus. We begin to comprehend that Judge Breyer never would heed any Supreme Court ruling that interfered with his basic mission to cover-up what had happened in the court of Judge Zobel.

In the same opinion of the Supreme Court (Davis) Justice Stewart had shown "that relief in 28 U.S.C. section 2255 cannot be denied as to constitutional claims solely on ground that relief should have been sought by appeal". Had Judge Breyer heeded that ruling he must have reversed his own opinion of June 28, 1991, in which he wrote "Mount's failure to advance these issues on direct appeal creates other procedural barriers ...." That had been untrue. We see emerging a special, eccentric view of law, which in no particular corresponds with the law of the United States. This is Breyer's Law. And it much encouraged the wanton and reckless nature of Judge Zobel's acts.

Sixth and seventh Habeas Corpus petitions submitted to the district court now received no consideration at all. Judge Zobel wrote DENIED on the lower left corner of each face sheet. Notoriously unaccountable on the bench, she had a protector in Chief Judge Breyer of the Appeals Court. This

was a conspiracy of two to flout the law of the United States. Judge Zobel's proceedings passed without criticism, nomatter how wild. An added grace was that the appeals of her cases are almost never published.

Now imprisoned four years, for all these reasons in the late spring of 1992 I made effort to free myself from the reprehensible jurisdiction of this twosome. Administration of the district court was shocked June 17, 1992, by arrival of my eighth Habeas Corpus, and the next day by Affidavit of Bias pursuant to Halliday v. United States, 380 F.2d 270 (1st Circuit, 1967). Court administration rasped to a halt. No assignment was made. The same frozen malaise seized the Circuit Court where Judge Breyer had erected cordon sanitaire around Judge Zobel. For a year past her cases had been banned from publication. When unaccountably United States v. Grant (September 26, 1991) 956 F.2d 1, slipped through into paperback edition of Federal Reporter, revealing that again Judge Zobel had convicted a defendant of whom it was found "legally impossible for defendant to commit the crime charged" (!), quickly this was withdrawn from hard cover edition.

Aware that Judge Zobel menaced their viability as tribunals, together the district court and the First Circuit instituted a policy to limit the numbers of certiorari petitions I could forward to the Supreme Court. Cooperative effort was made to group submissions into single negative Orders. The 22nd day of April, 1992, Judge Zobel therefore denied six (6)

matters gathered together in her court over a period of four months. None were denials on the merits nor provided opinion of any nature. All merely were subscribed "Denied". Three of these matters were appealable including (a) motion for return of $18,400 sent for filing in the district court January 22, 1992; (b) motion pursuant to section 2255 to vacate and set aside conviction unlawfully obtained by constitutional violations, sent for filing February 10, 1992; and (c) another section 2255 motion sent for filing February 14, 1992.

May 4, 1992, I dispatched three appeal notices, each in separate envelope. Only one such Notice of Appeal was forwarded to the Circuit Court by the district court clerk. The single briefing schedule to reach me seemed an effort to bunch three appeals together and June 4 I sent Motion To Sever for filing with the Circuit Court. By Order dated September 11, 1992, the Circuit Court decreed investigation of the two lost cases:

> ... under Fed R. App. P 10(c) we direct the district court to investigate this matter and, if appropriate, to reconstruct the record nunc pro tunc.

Briefing schedules with respect to the "lost" section 2255 motions filed in February arrived without explanation in October 1992, when I was in my fifth year of imprisonment.

* * *

The test for judicial impropriety established by the Supreme Court in Liljeberg v. Health Services Acquisitions Corp. (1988) was far exceeded, and I was without adequate remedy. That Judge Zobel continued to commit profoundly sociopathic acts violating the fundamental mission of the federal courts to provide justice and protect the innocent, was drowned in more complex pathologies of a cover-up. By Liljeberg the Supreme Court found that judicial propriety is established by a specific test: "if it would appear to a reasonable person that a judge has knowledge of the facts which would give him an interest in the litigation, then an appearance of partiality is created even though no actual partiality exists". The Supreme Court taught further that it is appropriate to consider (1) thr risk of injustice to the parties in the particular case, (2) the risk that denial of relief will produce injustice in other cases, and (3) the risk of undermining the public's confidence in the judicial process: "a court, in making such a determination, must continuously bear in mind that, in order to perform its function in the best way, justice must satisfy the appearance of justice".

Yet here, knowingly, wantonly and deliberately, the district court and the First Circuit carried on the most

shameful cover-up of a railroading. Proceedings disappeared or were not assigned for adjudication. Denials were without Memorandum or Opinion. Every lesson of the Supreme Court in this century was violated. District court and Circuit Court were devoted to the most appalling dishonesty in support of an aberant judge whom demonstrated absolute contempt for law.

The partiality of Judge Zobel was grotesque and overwhelming. The time was past due to admit the corroded environment in which this unworthy judiciary operated by open bias and prejudice, denial of witnesses and evidence, tampering with evidence false charge to the jury, fatal variance, withholding of court documents, and loss or destruction of multiple submissions. Judge Zobel claimed the powers of a Deity to convict any person brought before her, whether by whim or extrajudicial bias and prejudice.

The interests of justice and constitutional due process cannot allow this to continue. Social costs to the First Circuit from year after year hiding intolerable acts on part of an unstable judiciary, all contrary to the needs of justice, are too great. Judge Breyer exists as co-conspirator with Judge Zobel by allowing her to imprison an eminent scholar whom had been fully vindicated at trial. Inevitably all this must unravel before the public. At stake then, <u>and here today</u>, is the credibility of the entire federal judicial system.

AND THEN THINGS BECAME NASTY. Judge Breyer began to

play a badger game, dismissing submissions with direction to try elsewhere - and elsewhere dismissing again. October 23, 1991, a complaint to the Judicial Council had been acknowledged by the Circuit Executive. Significant aspect of that complaint was willful destruction by Judge Zobel before trial and afterward of letters to the court, two petitions for writs, and a 2255 motion. Her destructive rampage, unprecedented in the history of the federal court system, was considered in parallel with issues from the trial, including fatal variance, gross extrajudicial bias and prejudice, misapplication of the First Circuit's binding precedents, and wanton denial of the Supreme Courts leading cases. Added to grievous constitutional violations was more recent discovery that Judge Zobel also had destroyed the further motion pursuant to 2255 submitted the 29th day of Jabuary, 1991. All was done in evident belief that protection given her by Judge Breyer rendered her acts impervious to discovery.

She was correct. Even when these matters were put before the Judicial Counsel the adjudication entered August 21, 1992, was written by Stephen G. Breyer. Delicately omitting the name of the district judge, he exulted in his own cleverness:

> I dismiss this complaint in part as "directly related to the merits of a decision or procedural ruling." 28 U.S.C. section 372(c)(3)(A)(ii). Insofar as complaint has sought, or seeks, to reverse his conviction, to recuse the district judge, and to prevent the seizure or effect the return of the funds and letters in question, complainants proper

> recourse, following adverse actiob by the district judge, is by way of appeal to the court of appeals.

In a letter to William R. Burchill, Jr., General Counsel of the Judicial Council of the United States, I observed:

> In the end the matter comes down not alone to the ethical disgrace being perpetrated by District Judge Zobel and Circuit Judge Breyer, but question whether justice knowingly can be denied a defendant in the United States' Courts when it becomes a certainty that no crime was committed. Or, alternately, whether such obsessive protection of a district judge whom disgraces her court to obtain conviction of an innocent person is of equal or greater importance than the Federal Courts mission to provide justice.

And still the battle by Habeas Corpus went on. Gloating over his badger game by refering the Judicial Council complaint back to the Court of Appeals, Judge Breyer now wrote dismissive denial for appeal of the ninth Habeas Corpus. It will be recalled that at trial in Boston from a total of 167 documents 135 had been dismissed for "insufficient proof of ownership" by the government. Also, that so large a proportion of the allegedly "stolen" documents having been proved my own property without taint, more than reasonable doubt existed any had been stolen. This comports with the finding of the Supreme Court by Jackson v. Virginia that evidence is insufficient if:

> ...it is found that upon the record evidence adduced at trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt in terms of the substantive elements of the criminal offense ....

Judge Zobel of course would have nothing to do with this. She

wrote on the face page:

> Denied, judgement may be entered dismissing the claim.

Consistent in his own way, Judge Breyer, whom wrote the Opinion of the Court of Appeals, never touched on the issue. I quote his entire twelve lines:

> In this most recent challenge to his 1988 conviction for interstate transportation of stolen property (one of a series of such challenges he has brought pursuant to 28 U.S.C. section 2255), petitioner alleges that the evidence was insufficient to support the jury's finding of guilt. In particular, he contends that the testimony of two government witnesses was unworthy of credence. In our decision on direct appeal, we discussed such testimony at some length and found that the jury was justified in relying thereon. See United States v. Mount, 896 F.2d 612, 616-20 (1st Cir. 1990). The arguments now advanced by petitioner, even if not procedurally barred, provide no basis for revisiting this issue.

But the "arguments now advanced by petitioner" were the lesson of the United States Supreme Court, again discarded in favor of Breyer's Law. And of course this evasion was held in complete secrecy by being marked NOT FOR PUBLICATION. No one must ever know to what depths Judge Breyer sank by continuously disallowing the findings of the Supreme Court. My Habeas Corpus motions numbered 8,9 and 10, dated June 14, 1992, August 3, 1992, and December 2, 1992, were each submitted to the district court with AFFIDAVIT OF BIAS pursuant to Halliday v. United States, a First Circuit case from 1967 reported at 380 F.2d 270. Of this case the Harvard Law Review, Volume 83, at pages 1207-1208, wrote:

> The Court of Appeals for the First Circuit has held that a judge other than the trial judge should rule on the 2255 motion ... There is a procedure by which the movant can have a judge other than the trial judge decide his motion in courts adhering to the majority rule. He can file an affidavit alleging bias in order to disqualify the trial judge ....

This is precisely what I did for these three 2255 motions. Nevertheless Judge Zobel seized and denied them without opinion or reference to the merits. Each denial by Judge Zobel was then affirmed, in the manner of a rubber stamp, by the Circuit Court presided over by Judge Breyer. Nowhere had the merits been considered; no one examined on what basis I languished wrongfully in prison year after year. An appalling situation continued to worsen.

* * *

Then, early in January 1993 this country had a new President. Young, curious, interesting himself in every aspect of government, his first task was to select a Cabinet. Judge Zobel thereupon contracted the notion that as a German woman, born at Zwickau, Germany, December 18, 1931, a Jew and a holocaust survivor, she must be made Attorney General of the United States in the new administration of President William J. Clinton. Her candidacy was considered by this President most anxious to explore every avenue, and eventually she arrived in her little hat for interview at the White House.

By sending the President copy of a mandamus petition recently filed with the First Circuit, naming Judge Zobel as respondent and demonstrating a broad spectrum of improprieties, contribution was made to the defeat of her unseemly ambition.

Worse then arose when in his turn, in that year 1993 Hon. Stephen G. Breyer felt that the new President must nominate him to the United States Supreme Court. June 3, 1993, I wrote a letter to Judge Breyer himself one paragraph of which said:

> Appeal of eleven section 2255 motions have reached the First Circuit, plus a bevy of petitions for mandamus, recusal, and change of venue, and a suit for damages from Judge Zobel's thefts of $18,400 cash and the 135 historical documents dismissed from the indictment at trial. Like my funds, the documents have not been returned to me. In each instance you defied established law to protect a woman whom long ago must have been removed from the bench. Most recently, in No. 92-1576, you even refused to examine the two pages of transcripts enclosed herein, showing dismissal at trial of the 135 historical documents. On petition for rehearing to which the same transcripts were annexed, once more you refused to examine them.

The letter honorably dispatched to Judge Breyer himself, in the same mail copy went to President Clinton.

Original letter to Judge Breyer and copy to the President seem to have been delivered Monday, June 7, 1993. The reaction of Judge Breyer was spectacular. The following day, June 8, 1993, he gathered together three of my cases on appeal before the First Circuit and denied them in a single Order showing no cause. A district judge at Boston, Hon. Joseph L. Tauro, then also weighed in with a dismissal. I sent Judge Breyer's

very unusual triple dismissal to the President. One paragraph of my covering letter said:

> Question arises whether a federal judge so petty, unprincipled, and filled with naked vindictiveness, who retaliates by violation of all civilized standards and standards of jurisprudence, can be fit to sit on the Supreme Court.

President Clinton abandoned the candidacy of Stephen G. Breyer and nominated to the Supreme Court Hon. Ruth Bader Ginsburg.

As we have seen by his Orders, Judge Breyer treats substantial matters of law solely as avenues for expression of a puerile cleverness and a pervasive personal egotism. By uts corresponding contempt for the proper functions of a Court of Appeals, the First Circuit under his guidance leaves vast constitutional infirmities uncorrected. Direct test of this followed again, July 1, 1993, when the First Circuit received from me a petition for writ of mandamus which called attention to gross violation of Article III, Section 2, of the Constitution, as well as the Sixth Amendment.

The indicated portion of the Constitution says:

> The Trial of all Crimes, except in cases of Impeachment, shall be by Jury; and such Trial shall be held <u>in the State</u> where the said Crime shall have been committed ....

How then was I tried at Boston with the government producing squads of witnesses whom gave evidence to "theft" in Washington? For this single violation to hit two governing expressions of the Constitution is remarkable in an extreme.

The enormous gravity of the wrong committed is well demonstrated. The Sixth Amendment says:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law ....

In sipler words, to have put me on trial at Boston and allowed exhaustive testimony that I had "stolen" documents from the Library of Congress at Washington, was constitutionally barred. And it is typical of proceedings conducted at Boston that it was done anyhow. One wondered how could Judge Breyer evade this direct challenge to unconstitutional law, of the sort he always affirmed by sidestepping the issue. The answer was not long in coming. Within fifteen days from its arrival in Boston, hardly time enough for the Appeals Court to docket and review the petition, it also had determined to dismiss, and to do so not on the merits. The Order of Court entered July 15, 1993, was seven words only:

> The petition for writ of mandamus is denied.

This is barbarous treatment and gross impropriety on part of a Circuit Court with duty to supervise proceedings in its district courts. Here a district judge in Massachusetts had the presumption to try a defendant alleged to have committed a theft in the City of Washington, District of Columbia. Wherever one looked, whether to Article III, Section 2, of the Constitution, the Sixth Amendment, or even Rule 18,

Federal Rules of Criminal Proceedings, no jurisdiction for such a trial existed at Boston.

The district court had exceeded authority, jurisdiction, and powers, and for the First Circuit Judge Breyer merely looked away. Were there any principle orprivilege which would have supported the action of the district court, or rendered it even quasi-legal, this must have been stated. Instead the Circuit Court dismissed not on the merits, leaving gross constitutional infirmity and a state of legal quagmire. An unlawful act was neither justified nor condemned, an innocent scholar left imprisoned without cause.

Examining the situation left by this insolubrious disposition, one sees forthwith that to have imprisoned me without the commission of any crime, but merely on clandestine whisperings of unstable librarians who know nothing of me or my affairs, is a crime against humanity. That I should have been imprisoned by a Boston court that denied me all indigent subpoenas, denied me documentary evidence, and held trial in violation of the absolute bar found in Article III, Section 2, of the Constitution, is too heinous to be properly described. That this man, the Chief Judge of the First Circuit Court of Appeals, should wrongfully have kept me in prison year after year, for six years, never bothering to examine my endless submissions showing so many judicial irregularities, beggars description.

To say that Judge Breyer is like Shakespeare's Iago,

who believed in a cruel God, would not be correct. Judge Breyer belives that he himself has immutable right to inflict cruelty on those before his court. His bias and prejudice can be activated by rumor, frivolous gossip, or the schemes of unstable individuals. He enjoys displaying a superficial cleverness, but lacks the incisive intelligence that would distinguish extrajudicial gossip from evidence. Willingly and obtusely and with singleness of purpose he denies justice, denies all law, all precedents, all statute. The Constitution itself is nothing to him when for whatever private motive he desires to inflict cruelty. He has been called "smug" and "arrogant", and if the media can be trusted, these were President Clinton's original perceptions. So far as they go they are correct. But the reality is that Stephen G. Breyer practices the prerogatives otherwise reserved for God.

He is without human compassion. He taunts and torments with persistent ridicule persons whom he knows to be wrongfully imprisoned, exulting in what he believes to be his own cleverness while they suffer the pain of the Damned. Especially in this age when humanitarian concerns have become an essential element of legal consideration, and the lessons of the Supreme Court show regard for persons in every social range, this man whom is concerned only for himself lacks fundamental qualification. It is a maxim of law, and employed by the Supreme Court in Liljeberg (at 875), that "to perform its high function in the best way 'justice must satisfy the appearance of justice'".

Contrarily Judge Breyer, as we have seen here, deals out injustice couched in a cute cleverness, and hides it under NOT FOR PUBLICATION restriction.

Finally, we hear that he is a builder of "consensus" and this must be examined for whether it is a force for good or evil. In every opinion quoted here, even the most cleverly malign denying basic holdings of the Constitution and the Supreme Court, he has convinced two other judges of the First Circuit at Boston to go along. This is not a form of consensus that would be solubrious on the Supreme Court, for we must recall that "The Devil can quote scripture".

The Breyer nomination, in short, presents a Pandora's Box of courtroom cliches, myths and stereotypes - the ruthlessly ambitious judge who sees a railroading and again and again affirms it. These are issues never addressed in polite company, but I have come here today to expose them. The plain issue before this Committee is whether it can confirm to the Supreme Court a man to whom JUSTICE is an irrelevance; the Constitution something that does not matter.

This man is a threat to the public, to the common good, and to the liberties of every person. What happened to me can happen to any one of you. Were Stephen G. Breyer confirmed to the Supreme Court it would mark the end of liberty in this country. I ask each of you, and I beg and pray, that you decline to confirm Stephen G. Breyer.

THANK YOU.