motioned for me to follow him. He led me to the Capitol Rotunda, where President Johnson was about to sign the Voting Rights Act.

I'll never forget the President's sheer physical presence in that room. The room was packed with people, but LBJ was bigger than anyone in there. Every good history book describes him as a larger-than-life, imposing man, and they are all correct. His commanding figure almost filled the rotunda.

But there was another figure there, not as large but just as significant.

Here in this Capitol, Dr. King stood by the President and witnessed the signing of the Voting Rights Act—an act that would not have gained America's support without his efforts.

With its enactment, the promise of the 14th amendment, extending the franchise to newly freed slaves, was finally realized. Sadly, it was a hundred years too late.

I do not believe this country's march towards liberty and equality, and away from racial injustice and division, would have been possible without Dr. King.

It would not have been possible without his leadership of the Montgomery bus boycott, which first began to ignite what he called ''a certain kind of fire that no water could put out.''

It would not have been possible without his plea to America in front of the Lincoln Memorial, when he said:

I have a dream that one day this nation will rise up and live out the true meaning of its creed: We hold these truths to be self-evident, that all men are created equal.

It would not have been possible without his enlisting all of us, Black and White, in the cause of freedom when he said, ''Human progress never rolls in on wheels of inevitability; it comes through the tireless efforts of men.''

Dr. King's faith and courage continue to inspire America. Like Moses, he led his people from the dark night of bondage to the promised land.

Through courage, Dr. King persevered even in the face of death. Constant threats were made on his life. Many times his travel plans were interrupted by bomb threats.

No one would have blamed Dr. King if, fearing for his life, he had retreated from public view. But he refused to.

In 1958 in Harlem, a woman stabbed him in the chest with a letter opener, and the blade came so close to his heart that doctors told the reverend that if he had even sneezed, he would have died.

Dr. King recalled that attack 10 years later in Memphis, in what would be his final speech. ''I am so glad that I didn't sneeze,'' he told a crowd of 2,000. ''I'm just happy that God has allowed me to live in this period to see what is unfolding.''

Dr. King would die in hours, not from a letter opener, but from an assassin's bullet. As he spoke, it seemed he knew his fate was preordained, and he was at peace with it.

''I've seen the promised land,'' Dr. King continued. ''I may not get there with you. But I want you to know tonight that we, as a people, will get to the promised land. And I'm happy tonight.''

America has traveled far since the civil rights movement, to reach that promised land. It's been a difficult journey, and the journey is not yet over.

Dr. King said:

I am convinced that the universe is under the control of a loving purpose, and that in the struggle for righteousness, man has cosmic companionship. Behind the harsh appearance of the world there is a benign power.

Those words serve to remind us that no matter the difficulty or the distance of our journey, our destination is clear, thanks to the foundation laid by Dr. King. That destination is liberty and justice for all.

I yield the floor.

Mr. LEAHY. Mr. President, on Monday, our Nation honors the life and legacy of the late Dr. Martin Luther King, Jr., a national hero and man whose words and deeds brought hope and healing to America.

We commemorate the timeless values he taught us through his example—the values of courage, truth, justice, compassion, dignity, humility and service that so radiantly defined Dr. King's character and revolutionary spirit. Dr. King's belief in the strength of nonviolence was not merely aspirational—though surely it spoke to our aspirations as a nation—but it gave his leadership a unique power that resonates to this day.

I am grateful for this holiday because it is a reminder to listen again to Dr. King's inspiring words and to let the children and grandchildren of those who remember Dr. King hear his voice that filled a great void in our Nation and answered our collective longing to become a country that truly lived by its noblest principles.

A few months ago, we broke ground on a memorial to honor Dr. King. At first glance, it may seem a bit out of place that Dr. King's memorial will be located on our National Mall—a place adorned with memorials to America's greatest Presidents and wartime heroes. Dr. King was neither a President of the United States nor a hero in a foreign war. He never even held public office. Yet he deserves his place in the pantheon of great American leaders because lead a Nation he did. Through words, he gave voice to the voiceless. Through deeds, he gave courage to the faint of heart. Through his bravery and courage, he endured tremendous hardships—he was beaten and jailed 29 times, his family was threatened, his home was fire bombed, and he was placed under surveillance by the FBI—yet he overcame these hurdles and ignited a movement that would lead to historic reforms.

In his famous ''I Have a Dream'' speech, Dr. King noted that ''[w]hen the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir.'' And it was thanks to the work of great civil rights leaders like Dr. King and his wife Coretta Scott King, whom we lost a year ago and whom we honored in reauthorizing the Voting Rights Act, that Jim Crow segregation was uprooted, and legal barriers to the full participation of racial minorities in the political life of the Nation were removed.

Yet, as I was reminded last year during our many hearings on the reauthorization of the Voting Rights Act and again by accounts of voter suppression during the recent midterm elections, the work of the Voting Rights Act is not yet complete and the dream of Dr. King has not yet been fully realized. And so we must not only honor Dr. King's vision by remembering him this week, but we must also continue our work to make his dream a reality.

Dr. King's own words remind us that this holiday is not merely a celebration of a particular time in American history but also a living legacy to the value of service. Dr. King once said that we all have to decide whether we ''will walk in the light of creative altruism or the darkness of destructive selfishness. Life's most persistent and nagging question, he said, is 'what are you doing for others?'''

On this day, we must urge our children and grandchildren to abide by Dr. King's message that if they serve our country and strive for what is just, they can remake a nation and transform a world.

JUDICIAL NOMINEES

Mr. KYL. Mr. President, I rise today to express my regret that nominations to the U.S. Courts of Appeals will not be resubmitted for William G. Myers, Judge Terrence Boyle, William J. Haynes, and Michael B. Wallace. All four of these nominees were eminently qualified to serve on the U.S. Court of Appeals and no reasonable question has been raised as to their integrity. Each of them very likely would have been confirmed had they been afforded to the courtesy of a vote by the U.S. Senate. It is generally understood that the Senate did not vote on these nominations because of Democratic threats of obstruction and filibuster, and that the President chose not to resubmit these nominations as a result of a hard political calculation that the new Democratic majority in the Senate would not allow a vote on these nominations during the remainder of his Presidency. These nominees were not treated fairly by this institution. This week's action reflects poorly on the Senate.

Much could be said about each of these nominees, their qualifications, and the way that they were treated throughout the judicial nominations process. I would like today to simply submit for the RECORD a column published by Edward Whelan in National

Review Online. Mr. Whelan's column raises some disturbing questions about the American Bar Association's actions with regard to Michael B. Wallace, whom the President had nominated to the U.S. Court of Appeals for the Fifth Circuit. Mr. Wallace is a graduate of Harvard University and received his law degree from the University of Virginia, where he served on the law review and was elected to the Order of the Coif. He clerked for Justice William Rehnquist on the United States Supreme Court. He became an associate and later a partner at a major law firm in his home state of Mississippi. His over twenty years of legal practice focused on complex commercial and constitutional litigation and afforded him substantial appellate experience. Mr. Wallace even argued and won a case before the United States Supreme Court. These are obviously superb qualifications to serve on the U.S. Court of Appeals.

It is generally understood that the ultimate reason why Mr. Wallace's nomination has not been resubmitted is that he was rated ''not qualified'' by the ABA. on account of his ''temperament.'' Mr. Whelan's column paints a disturbing picture of the process by which the ABA. came to rate Mr. Wallace. Mr. Whelan presents persuasive evidence that the ABA not only allowed its evaluations process to be corrupted by individuals who used it to carry out personal and political vendettas against Mr. Wallace, but that the chairwoman of the ABA's judicial evaluations committee perjured herself in her testimony before the Senate Judiciary Committee.

To Mr. Whelan's column, I would simply add that I found the ABA's written justification for its rating of Mr. Wallace to be stunningly unpersuasive. The grounds cited in the ABA's written testimony, to the extent that they provided any verifiable basis at all for the ABA's rating of Mr. Wallace, do not stand up to even the most cursory scrutiny. To cite just one example: the ABA found that Mr. Wallace lacked the ''temperament'' to be a judge in part because ''positions taken by Mr. Wallace related to the Voting Rights Act'' in the course of the Jordan v. Winter litigation were ''not well-founded and [were] contrary . . . to existing interpretations of the Voting Rights Act.'' Mr. Wallace had argued in the Jordan case that the 1982 amendments to the Voting Rights Act did not invalidate a State's redistricting plan absent some evidence that the plan was the product of racial discrimination. At the time that Mr. Wallace made this argument, the 1982 amendments were less than a year old. Moreover, when the very case that Mr. Wallace litigated went to the Supreme Court, two Justices of that Court filed an opinion that substantially agreed with Mr. Wallace's litigating position. These two Justices also noted that ''the language used in the amended statute is, to say the least, rather unclear.'' Mississippi Republican Executive Committee v. Brooks, 469 U.S. 1002, 1010, Rehnquist, J., dissenting. See also id. at 1012, ''we have a statute whose meaning is by no means easy to determine.''

Thus the ABA has rated Mr. Wallace as ''not qualified'' on the basis that he argued for a particular interpretation of a statute when the statute was new and was not yet subject to an authoritative interpretation, when Mr. Wallace's position was later adopted by two members of the U.S. Supreme Court, and when those same Supreme Court Justices characterized the statute as ''unclear.'' I find the ABA's analysis to be wholly unreasonable. It is a lawyer's duty to make good-faith arguments on behalf of his client. Yet in the case of Mr. Wallace, the ABA has effectively taken the position that if a lawyer argues for an interpretation of a statute that is ultimately rejected by the courts, then even if the statute is new and unclear and the lawyer's interpretation is even endorsed by some members of the U.S. Supreme Court, the lawyer's litigating position shows that he lacks a ''judicial temperament'' and that he is ''not qualified'' to serve as a Federal judge. This is a frivolous argument. It is an argument that the ABA should be embarrassed and ashamed to have made to the Senate Judiciary Committee.

I ask unanimous consent that the following column be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the National Review Online, Jan. 10, 2007]

NOT CREDIBLE ''WHATSOEVER''

(By Edward Whelan)

Among the many challenges that new White House counsel Fred Fielding will face on judicial nominations is ensuring that the American Bar Association's ideologically stacked judicial evaluations committee behaves responsibly. Now that Mississippi attorney Michael B. Wallace has requested that President Bush not renominate him to serve on the U.S. Court of Appeals for the Fifth Circuit, it is instructive to complete an accounting of the ABA's thoroughly scandalous ''not qualified'' rating of Wallace.

Although it determined that Wallace ''has the highest professional competence'' and ''possesses the integrity to serve on the bench,'' the ABA judicial-evaluations committee found him lacking on the highly malleable element of ''judicial temperament.'' As I have previously documented, bias, a glaring conflict of interest, incompetence, a stacked committee, violation of its own procedures, and cheap gamesmanship marked the ABA's evaluation of Wallace. Those internal defects were compounded at Wallace's September 2006 hearing by the incredible testimony given under oath—flat-out perjury, in my judgment—by the new chair of the ABA committee, Philadelphia lawyer Roberta Liebenberg. Liebenberg's testimony merits careful scrutiny as an illustration of the depths to which the ABA will descend to defend its internal failings.

First, some background: One of the several scandals surrounding the ABA's evaluation of Wallace relates to the fact that the chair of the ABA committee at the time of the evaluation, Stephen Tober, had had a major run-in with Wallace in 1987 when Wallace served on the board of the Legal Services Corporation (a federal agency that funds legal services for the poor and that was the focus of contentious reform efforts). In the course of strikingly intemperate and buffoonish testimony before an LSC committee headed by Wallace, Tober twice accused him of a ''hidden agenda.'' (The ABA president at the time of the ABA's evaluation of Wallace, Michael Greco, and another ABA committee member, Marna Tucker, had likewise attacked Wallace over contentious LSC matters.) On the Wallace evaluation, Tober played the customary role that the ABA committee chair plays (and that is set forth in the ABA's so-called Backgrounder): He assigned Fifth Circuit member Kim Askew—whose own biases and conflict of interest concerning Wallace are an even greater scandal—to conduct the investigation. He reviewed her draft report with her. In light of her proposed ''not qualified'' rating, he assigned a second person, Thomas Hayward, to conduct a second evaluation of Wallace. He reviewed Hayward's draft report with him. He determined that he was satisfied with the ''quality and thoroughness'' of Askew's investigation, and made the same determination regarding Hayward's investigation. He then directed his committee colleagues to read Askew's report and Hayward's report in tandem.

Without any deliberation among the committee members (so Liebenberg has informed me), Tober then received and tallied the votes of the other committee members. Under the ABA committee's procedures, the chair votes only in the event of a tie, so Tober did not cast a vote. Tober then reported the committee's unanimous ''not qualified'' rating to the Senate Judiciary Committee.

Beyond the fact that Tober plainly should have recused himself from the Wallace evaluation, many of the facts that I recite about Tober's role are in themselves of little interest. What ought to be of considerable interest, however, to anyone who cares about the integrity of the manner in which the ABA committee carries out the privileged role in the judicial-confirmation process that the Senate Judiciary Committee accords it, are Liebenberg's sworn statements about Tober's role in the Wallace evaluation.

Time after time, in emphatic, categorical declarations, Liebenberg testified that it was immaterial that Tober had not recused himself because, she claimed, he simply had no role at all in the ABA committee's evaluation of Wallace:

''This is not a process where Mr. Tober had any role whatsoever in the evaluation or the vote.'' (Transcript, p. 134 (emphasis added))

''it is important to emphasize that Mr. Tober did not participate in any way in the rating'' of Wallace (Transcript, p. 126 (emphasis added))

Tober ''did not participate in either the evaluation or the rating'' (Transcript, p. 126)

''neither Mr. Tober, nor Mr. Greco participated in the evaluation or the rating of Mr. Wallace'' (Transcript, p. 128)

''I would just, again, add that Mr. Tober did not participate in the evaluation'' (Transcript, p. 131)

Tober, as chair of the committee, ''does not oversee the evaluations'' (Transcript, p. 131)

I have the same reaction to these sworn statements that I had when I first heard them in Liebenberg's live testimony: These statements are patently false, and Liebenberg, as an ABA committee member during the Wallace evaluation and as chair at the time of her testimony, had ample reason to know that they were false. Indeed, in

her prepared testimony, Liebenberg stated, ''The evaluation of Mr. Wallace was conducted in accordance with the normal practices and procedures'' of the ABA committee, and she referred senators to the ABA's Backgrounder for a ''more detailed description of these procedures.''

In recent weeks, I have, through an intermediary friendly to Liebenberg, afforded her the opportunity to dispute or clarify my understanding of the facts that render her testimony false. She has availed herself of the opportunity, and the exchange, in my judgment, has clearly confirmed my understanding. (See the appendix below.)

In sum, Liebenberg's sworn testimony that ''This is not a process where Mr. Tober had any role whatsoever in the evaluation or the vote,'' and her other categorical statements to the same effect, are truthful only if ''whatsoever'' is not given anything close to its ordinary meaning but is instead a secret code that means, at a minimum, ''except that he assigned the first investigator, reviewed her draft report with her, assigned the second investigator, reviewed his draft report with him, determined that he was satisfied with the quality and thoroughness of both investigations, directed his committee colleagues to read the investigators' reports in tandem, received and tallied the votes, and reported the ABA's rating to the Senate Judiciary Committee.''

In her exchange with me, Liebenberg now maintains that Tober ''did not play a substantive role in the evaluation or rating of Mr. Wallace.'' (Emphasis added.) That modifier ''substantive'' is conspicuously absent from her Senate testimony. Indeed, her categorical denial that Tober had ''any role whatsoever in the evaluation'' and her assertion that he ''did not participate in any way'' do not permit reading in that modifier. Moreover, I think it plain that Tober did play a ''substantive'' role—among various respects, in selecting the two investigators and in determining that he was satisfied with the ''quality and thoroughness'' of the investigations.

It is also worth noting that Liebenberg's effort to obscure Tober's actual role stands in striking contrast to the ABA's effort to justify its re-rating of D.C. Circuit nominee (and now judge) Brett Kavanaugh. In that case, the shenanigans of the circuit investigator, Mama Tucker, deserved scrutiny. But Tober, who played essentially the same role as chair there as he did on Wallace's nomination, gave Tucker cover by presenting the entire testimony for the ABA committee. He never remotely suggested the absurd notion that he had played no role in the evaluation or rating and was therefore not competent to testify.

I have no reason to doubt that Liebenberg is a fine lawyer and, by the standards of the legal profession, generally an honorable person. The interesting question is how such a person could ever have made the statements that she did, let alone under oath. The answer, I would suggest, is that the ideological partisanship, intellectual mediocrity, and institutionalized mendacity of the ABA—the ABA's culture, so to speak—tend to degrade those who rise within its ranks.

I don't know Wallace, and I leave open the theoretical possibility that, notwithstanding what his many supporters say, he lacks the necessary judicial temperament. The thoroughly scandalous process by which the ABA reached that judgment, however, provides no basis for confidence in its assessment. Nor, given the ''go along to get along'' collective posterior-covering ethos of the ABA, is there any reason to credit the more recent supplemental evaluations of Wallace. This is especially so because assessments of judicial temperament are so subjective and manipulable. Indeed, it is striking to contrast the extrapolations made about Wallace's judicial temperament from his experience as a litigator with the ABA's unanimous conclusion a dozen years ago that federal district judge Lee Sarokin was ''well qualified'' to be elevated to the Third Circuit. Despite the fact that the Third Circuit had lambasted Sarokin for ''judicial usurpation of power,'' for ignoring ''fundamental concepts of due process,'' for destroying the appearance of judicial impartiality, and for ''superimpos[ing his] own view of what the law should be in the face of the Supreme Court's contrary precedent,'' the ABA had no concerns about his judicial temperament. But, of course, Sarokin was a nominee of President Clinton and was a self-described ''flaming liberal'' as a judge.

Can the ABA possibly sink any lower? Let's see what these next two years bring.

APPENDIX

On November 27, 2006, I sent to an intermediary who is friendly to Roberta Liebenberg the twelve propositions set forth below and invited her to let me know whether she agreed or disagreed with the propositions and to provide any amplification (or any reference to other material) that she saw fit to provide. On December 1, 2006, that intermediary responded, stating that he had reviewed the propositions with Liebenberg and providing her responses (which ''she has confirmed with Mr. Tober''). I set forth in full below those responses and my brief replies.

Proposition 1: Tober assigned Askew to conduct the investigation of Wallace.

Liebenberg response: ''Consistent with the standard practice of the Standing Committee, which generally provides for an evaluation to be conducted by the Committee member from the circuit to which the nomination has been made, Ms. Askew was assigned by Mr. Tober to conduct the Wallace evaluation because she served as the Fifth Circuit representative on the Committee.''

My reply: Liebenberg concedes Tober's role. As Tober testified, the investigation is ''ordinarily assigned'' to the circuit member, ''although it may be conducted by another member or former member.'' Whether or not to apply the default rule, and what sort of preliminary inquiry ought to be undertaken, requires a decision-indeed, a substantive judgment (or a failure to exercise judgment)—on the part of the chair. Tober decided to have Askew perform the review despite her ideological bias against Wallace. Further, when Tober became aware (or should have become aware) of facts demonstrating that Askew had an actual conflict of interest, he continued to let her perform the review.

Proposition 2: Tober reviewed Askew's draft report with her.

Liebenberg response: ''Mr. Tober did not review Ms. Askew's draft report with her, nor did he perform a substantive review of that report. Instead, his review was solely procedural in nature. He utilized a procedural checklist to ensure that, among other things, all disciplinary agencies had been contacted, the requisite number of interviews had been conducted, and a sufficient number of writing samples had been submitted and reviewed. Mr. Tober did not edit, delete, modify, or add anything to the report. He did not tell Ms. Askew whom to interview or what to ask during her interviews. Nor did he ask Ms. Askew to take any further actions with respect to the report or her evaluation before she circulated her report to the rest of the Standing Committee.''

My reply: (a) The first clause of Liebenberg's response contradicts her testimony that the Backgrounder's procedures were followed. The Backgrounder states (on page 7): ''The Chair reviews the informal report with the circuit member.'' (b) Liebenberg' s response contradicts itself. The first sentence states that Tober did not review Askew's draft report, but the second sentence concedes that he did review it. (c) Liebenberg's response contrives an unsustainable distinction between ''substantive'' and ''procedural'' review. Tober himself had authority to determine the substantive content of his checklist.

Proposition 3: Tober assigned Hayward to conduct a supplemental investigation of Mr. Wallace.

Liebenberg response: ''Mr. Tober assigned Mr. Hayward to perform a second evaluation of Mr. Wallace. Mr. Hayward, who is a former Chair of the Standing Committee, had participated in the ratings of over 500 nominees during his tenure on the Committee. Incidentally, Mr. Hayward is a Republican who has made contributions to a number of Republican political candidates.''

My reply: Liebenberg concedes Tober's role. (Incidentally, Hayward did not re-interview any of the individuals interviewed by Askew but instead accepted, and relied on, her interview summaries. So much for an independent check.)

Proposition 4: Tober reviewed Hayward's draft report with him.

Liebenberg's response: ''Mr. Tober did not review Mr. Hayward's draft report with him, nor did he perform a substantive review of that report. Instead, his review was solely procedural in nature, and entailed the same process set forth above in No. 2. As was true with Ms. Askew's report, Mr. Tober did not edit, delete, modify, or add anything to Mr. Hayward's report. He did not tell Mr. Hayward whom to interview or what to ask during his interviews. Nor did he ask Mr. Hayward to take any further actions with respect to the report or his evaluation before Mr. Hayward circulated his report to the rest of the Standing Committee.''

My reply: My reply on Proposition 2 applies fully here.

Propositions 5 and 6: Tober determined that he was satisfied with the quality and thoroughness of Askew's investigation. Tober determined that he was satisfied with the quality and thoroughness of Hayward's investigation.

Liebenberg's response: ''Mr. Tober's review of the draft reports by Ms. Askew and Mr. Hayward for 'quality and thoroughness' did not entail any substantive input on his part. Instead, his review was procedural in nature, as set forth above in Nos. 2 and 4.''

My reply: The Backgrounder (which Liebenberg testified was followed) makes clear that the chair must be ''satisfied with the quality and thoroughness of the investigation.'' This standard plainly requires a decision by the chair. Again, Liebenberg's posited distinction between procedure and substance is incoherent. Further, she conflates the issue whether Tober provided ''any substantive input'' with the distinct question whether he performed a substantive review. (Incidentally, the fact that Tober evidently performed his substantive role in such a perfunctory fashion undermines the integrity of the ABA process. One reason to have a chair, rather than simply a checklist, is to harmonize the approaches taken by investigators so that ratings are consistent and don't turn unduly on the assignment of the investigator.)

Proposition 7: Tober directed his committee colleagues to read Askew's report and Mr. Hayward's report ''in tandem''.

Liebenberg's response: ''Consistent with the practice of the Committee, Ms. Askew circulated her report directly to the Standing Committee members. In her transmittal

letter accompanying the report she advised the members that they would separately receive Mr. Hayward's report at or about the same time. She also advised the Committee members to review all of the evaluation materials, including the documents pertaining to the Standing Committee's 1992 evaluations of Mr. Wallace, before voting on Mr. Wallace's rating. It should be noted that Ms. Askew advised Committee members that she was the person who should be called if they had any questions about her report or the accompanying materials.

''Subsequently, Mr. Tober similarly advised Committee members to review the reports by Ms. Askew and Mr. Hayward in tandem. He did not direct Committee members to ascribe more significance to one report than another; did not suggest how Committee members should vote; and did not discuss with Ms. Askew, Mr. Hayward, or any members of the Committee his own views of the professional qualifications of Mr. Wallace.''

My reply: Liebenberg concedes Tober's role.

Proposition 8: Whether in person, by telephone, by e-mail, or in some other fashion, Tober was party to the ABA committee's deliberations on Wallace.

Liebenberg's response: ''There were no 'deliberations' among Standing Committee members with respect to the rating of Mr. Wallace. Each Committee member independently reviewed the evaluation materials and voted on a rating to be given to Mr. Wallace. Mr. Tober and the rest of the Standing Committee did not have an in-person meeting, conference call, or e-mail discussion regarding Mr. Wallace's qualifications or the rating to be given to him.''

My reply: For present purposes, I assume the correctness of Liebenberg's account. (If there were no deliberations on a ''not qualified'' recommendation—and on Askew's badly flawed report—that would seem yet another damning indictment of the ABA's processes.)

Propositions 9 and 10: Tober received and tallied the votes from other committee members. Tober reported the ABA committee's rating to the Senate Judiciary Committee.

Liebenberg's response: ''The 14 voting members of the Committee conveyed their votes to Mr. Tober, who in turn reported the Committee's unanimous 'Not Qualified' rating of Mr. Wallace to the Senate Judiciary Committee.''

My reply: Liebenberg concedes Tober's role.

Proposition 11: At the Judiciary Committee hearing, Senator Sessions asked Mr. Hayward, ''Are you aware that other members of the [ABA] committee probably were aware that the chair of the committee [i.e., Mr. Tober] had had a personal run-in with the nominee, Mr. Wallace?'' Mr. Hayward replied, ''I said I was aware. If you read the record, you are aware.'' (Transcript, pp. 142–143) I understand this exchange to indicate that the confidential ABA committee report on Mr. Wallace included a discussion of Mr. Tober's experience with, and views of, Mr. Wallace.

Liebenberg's response: ''Neither the report by Ms. Askew nor the report by Mr. Hayward included a discussion of Mr. Tober's experience with, and views of, Mr. Wallace. The evaluation materials did not include a discussion of any 'run-in' between Mr. Tober and Mr. Wallace in 1987, or any other interactions between them. Mr. Tober was not interviewed by Ms. Askew or Mr. Hayward about Mr. Wallace, they did not solicit his views regarding the nominee, and he did not volunteer to them his views.''

My reply: For present purposes, I assume the correctness of Liebenberg's account.

Proposition 12: Liebenberg testified at the Judiciary Committee hearing that ''it is important to emphasize that Mr. Tober did not participate in any way in the rating'' of Wallace (Transcript, p. 126); that Tober ''did not participate in either the evaluation or the rating'' (Transcript, p. 126); that ''neither Mr. Tober, nor Mr. Greco participated in the evaluation or the rating of Mr. Wallace'' (Transcript, p. 128); that ''I would just, again, add that Mr. Tober did not participate in the evaluation'' (Transcript, p. 131); that Tober, as chair of the committee, ''does not oversee the evaluations'' (Transcript, p. 131); and that ''This is not a process where Mr. Tober had any role whatsoever in the evaluation or the vote'' (Transcript, p. 134).

Liebenberg's response (presented in the third person): ''When Ms. Liebenberg testified that Mr. Tober did not 'participate' in the evaluation or rating of Mr. Wallace, her testimony was based on the fact that Mr. Tober did not conduct any of the evaluation interviews; was not interviewed by Ms. Askew or Mr. Hayward; did not prepare the evaluation reports or make any revisions to them; did not vote on Mr. Wallace's rating; and did not express his own opinion of Mr. Wallace's professional qualifications or what Mr. Wallace's rating should be to Ms. Askew, Mr. Hayward, or anyone else on the Committee. Thus, Mr. Tober did not play a substantive role in the evaluation or rating of Mr. Wallace. Ms. Liebenberg explained to the Senate Judiciary Committee that the evaluations were the sole responsibility of Ms. Askew and Mr. Hayward, and that each of the 14 voting members of the Committee independently voted on the rating, with no influence being exercised over their votes by Mr. Tober. (transcript pp. 116, 121)''

My reply: Propositions 1–7, 9 and 10 establish that Liebenberg's testimony was false. The transcript pages cited in her response do not put a different gloss on Liebenberg's testimony. Indeed, they consist entirely of (unrelated) testimony by Askew, not Liebenberg.

THE PASSING OF JUDGE JANE BOLIN

Mr. LEAHY. Mr. President, this week we lost Judge Jane Bolin, the Nation's first African-American female judge, whose career marks a shining example of a person knocking down barriers and leaving a footprint for others to follow.

Stirred by a strong sense of justice and a forceful determination to contribute, Judge Bolin overcame the indignity of signs saying ''no women should apply'' and ''no blacks allowed,'' and rose to have a career defined by ''firsts,'' the first African-American woman to graduate from Yale Law School, the first to join the New York City Bar Association, the first to work in the office of the New York City corporation counsel, and the first to serve on the judicial bench. Her legacy will live on, not only through her accomplishments on the bench of ending the placement of children in childcare agencies on the basis of ethnic background and ending the assignment of probation officers on the basis of race but also through the example of her lifelong struggle to show ''a broad sympathy for human suffering'' which will continue to inspire generations to come.

I salute her life and hope that our Nation will continue its march towards a more representative judiciary.

MESSAGE FROM THE HOUSE

At 3:20 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4. An act to amend part D of title XVIII of the Social Security Act to require the Secretary of Health and Human Services to negotiate lower covered part D drug prices on behalf of Medicare beneficiaries.

The message also announced that pursuant to 22 U.S.C. 3003 note, and the order of the House of January 4, 2007, the Speaker appoints the following named Member of the House of Representatives to the Commission on Security and Cooperation in Europe: Mr. HASTINGS of Florida, Chairman.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4. An act to amend part D of title XVIII of the Social Security Act to require the Secretary of Health and Human Services to negotiate lowercovered part D drug prices on behalf of Medicare beneficiaries; to the Committee on Finance.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 3. An act to amend the Public Health Service Act to provide for human embryonic stem cell research.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 287. A bill to prohibit the use of funds for an escalation of United States military forces in Iraq above the numbers existing as of January 9, 2007.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. THOMAS (for himself and Mr. ENZI):

S. 277. A bill to modify the boundaries of Grand Teton National Park to include certain land within the GT Park Subdivision, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THOMAS:

S. 278. A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 279. A bill to repeal certain sections of the Act of May 26, 1936, pertaining to the Virgin Islands; to the Committee on Energy and Natural Resources.

By Mr. LIEBERMAN (for himself, Mr. MCCAIN, Mrs. LINCOLN, Ms. SNOWE, Mr. OBAMA, Ms. COLLINS, and Mr. DURBIN):