

four years. He is currently involved in a Republican political action committee and serves as Director of the Downtown Republican Club. A few years ago, upon being elected Rector of the Old Dominion University Board of Visitors, Mr. Kelley was asked about the political nature of the position and politics in general, when he answered, "[i]f you really believe strongly in how it is you think Government should act with the citizenry . . . you can't sit on the sidelines and not be in the game. You're either in there trying to make happen that which you believe in, or you're ceding the whole debate to the other side."

I trust that Mr. Kelley will not believe that he can continue this advocacy as a judge. By taking his oath of office he will be expected to assume a position of impartiality and discard his previous partisan advocacy. Certainly, we can all agree that the Federal bench is not the place to advocate any agenda other than fairness.

I congratulate Mr. Kelley and his family on his confirmation today.

Mr. President, again, he had the highest ABA rating and is strongly supported by the two Senators from Virginia. I hope everybody on this side of the aisle will vote for him.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Shall the Senate advise and consent to the nomination of Walter D. Kelley, Jr., of Virginia, to be United States District Judge for the Eastern District of Virginia?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK), the Senator from Utah (Mr. BENNETT), the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), and the Senator from Oregon (Mr. SMITH) are necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "yea."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 142 Ex.]

YEAS—94

Akaka	Campbell	Dayton
Alexander	Cantwell	DeWine
Allard	Carper	Dodd
Allen	Chafee	Dole
Baucus	Chambliss	Domenici
Bayh	Clinton	Dorgan
Biden	Cochran	Durbin
Bingaman	Coleman	Edwards
Bond	Collins	Ensign
Boxer	Conrad	Enzi
Breaux	Cornyn	Feingold
Bunning	Corzine	Feinstein
Burns	Craig	Fitzgerald
Byrd	Daschle	Frist

Graham (FL)	Levin	Rockefeller
Graham (SC)	Lieberman	Santorum
Grassley	Lincoln	Sarbanes
Gregg	Lott	Schumer
Hagel	Lugar	Sessions
Harkin	McCain	Shelby
Hollings	McConnell	Snowe
Hutchison	Mikulski	Specter
Inhofe	Miller	Stabenow
Inouye	Murkowski	Stevens
Jeffords	Murray	Sununu
Johnson	Nelson (FL)	Talent
Kennedy	Nelson (NE)	Thomas
Kohl	Nickles	Voinovich
Kyl	Pryor	Warner
Landrieu	Reed	Wyden
Lautenberg	Reid	
Leahy	Roberts	

NOT VOTING—6

Bennett	Crapo	Kerry
Brownback	Hatch	Smith

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

COSPONSORSHIP—S. 1246

Mr. ROBERTS. I ask unanimous consent that Senator JOHN BREAUX be added as a cosponsor to a bill I introduced on June 12, 2003, S. 1246, to permit charitable and educational organizations to make collegiate housing and infrastructure grants and continue to be treated as tax-exempt organizations.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—S. 2062

Mr. FRIST. Mr. President, briefly I have a consent regarding the class action legislation which has been cleared on both sides. Before proceeding, I remind everyone that an earlier order provided we would proceed to the class action legislation following completion of Defense authorization, which I expect we will be able to complete today. However, we now have a Defense appropriations bill available and it is vitally important for us to proceed with that bill to ensure no disruption in funds to our troops. Having said that, this agreement will allow us to proceed to the class action legislation without any procedural hurdles following the Defense appropriations bill.

Therefore, I now ask unanimous consent that the previous order with respect to Calendar No. 430, S. 2062, the class action bill, be vitiated and further that the Senate proceed to its consideration following the disposition of the Defense appropriations bill.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Reserving the right to object, I want to make sure I understand. The majority leader is proposing that we go to class action immediately following the completion of our work on the Defense appropriations bill; is that correct?

Mr. FRIST. Mr. President, that is correct. The clarification I made was that initially we would follow the Defense authorization with class action. Now in effect what we are doing is we are going to finish the Defense authorization today, go to Defense appropriations, to be followed by class action.

Mr. DASCHLE. Mr. President, I appreciate that. I have made it clear I am not a supporter of the class action bill, but I have made a commitment to many of the colleagues in my caucus with regard to the assurances we have provided to them in the past that they would have a chance to have this legislation brought before the Senate and offer the appropriate amendments. They have been very patient. We have asked them to delay consideration of this bill now on several occasions, but with the assurances given by the majority leader, I have no objection.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Reserving the right to object, I will not object, I express my thanks to both leaders for that colloquy and this brief discussion we have had. As both leaders know, the movement of this legislation is a priority for a number of us, certainly for me, and I am gratified that once we have disposed of the Defense appropriations bill, the next bill we will turn to is class action. I express my thanks to the majority leader for making that clear, and to the Democratic leader, Senator DASCHLE, for his steadfast position, realizing this is not legislation that is at the top of his list of priorities.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO MATTHEW "MATTIE" JOSEPH THADEUS STEPANEK

Ms. MIKULSKI. Mr. President, I rise to inform my colleagues and all who are watching that a wonderful American passed away yesterday. He was a 13-year-old boy who lost his life to muscular dystrophy. He was known to the world because of his many appearances on radio and TV reading his poetry. His name was Matthew Joseph Thadeus Stepanek. The world knew him as "Mattie."

Though this young man's death is a great tragedy, his life was a triumph. At age 13, he was a gifted author. He was even a noted peacemaker. He took a personal challenge and turned it into a life of inspiration for all of us.

Mattie Stepanek once said, "I want my message to live beyond me," and it certainly will. His message of peace and hope has reached millions.

He was born in 1990 in Upper Marlboro, MD, and doctors did not expect him to live more than 24 hours. He suffered from a rare form of muscular dystrophy. He had two brothers and a sister, all who died before the age of 4. His own mom also has muscular dystrophy.

Though the disease would eventually render him unable to walk or breathe

on his own, he was more than a survivor. He began writing poetry at the age of 3; poems about hope, peace, love. His life philosophy was, "Remember to play after every storm." And he did.

Mattie believed wishes could come true. Once when he was near death, he said he had three wishes. He wanted to talk to Jimmy Carter; he wanted to have his book of poems published; and he wanted to see his poetry read on Oprah.

Guess what. All three happened. President Carter did call him and talk to him several times. He wrote several volumes of poetry. I have one with me today called "Heartsongs." This book reached the best seller's list because it reached the hearts of so many people. As soon as Oprah heard it, she had not only read his poetry but had Mattie on the show.

He was so sick at times the doctors were afraid he wouldn't make it, but through hope and prayer his life was saved, one miracle at a time.

After the chaos and confusion and heartbreak of September 11 and the terrible anthrax attack on the Capitol, I was pretty grief stricken. One night watching C-SPAN, like so many Americans at the end of the day, I saw this wonderful young boy reading poetry. I found his words so inspirational, so touching, that I immediately contacted him through his hospital, the wonderful Children's Hospital here in Washington.

Through the hospital, I arranged a visit to him at his home in Upper Marlboro, Maryland. I visited with Mattie and his mom, in their apartment especially arranged for people who live a life in wheelchairs but refuse to be handicapped. We had a great time, talking about life. Mattie was so lively, so witty. He was so filled with enthusiasm. He was filled with energy.

I brought the book that I wrote and he had his. I did a little reading from mine and he read his poems. It was a great afternoon with this special boy, there he was in a special motorized wheelchair with a special apparatus that enabled him to breathe.

Later on, I went to the Children's Hospital to give him the Children's Hope Medal of Honor. This medal is given to young heroes who have shown valiant effort and courage in facing life's daily challenges when they have a chronic or life-threatening illness. If anyone deserved it, Mattie deserved it.

I want the world to know who this little boy is. I want to tell you first of all what he said about himself and then what he said to us in what then proved to be a farewell. This is the poem.

I am Mattie J.T. Stepanek.
My body has light skin,
Red blood, blue eyes, and blond hair.
Since I have mitochondrial myopathy,
I even have a trach, a ventilator, and oxygen.

Very poetic, I am, and very smart, too.
I am always brainstorming ideas and stories.
I am a survivor, but some day, I will see
My two brothers and one sister in Heaven.
When I grow up, I plan to become

A daddy, a writer, a public speaker,
And most of all, a peacemaker.
Whoever I am, and whatever happens,
I will always love my body and mind,
Even if it has different abilities
Than other peoples' bodies and minds.
I will always be happy, because
I will always be me.

Isn't that great? But the last page in his book is "The Daily Gift."

You know what?
Tomorrow is a new day.
And today is a new day.
Actually,
Every day is a new day.
Thank you, God,
For all of these
Special and new days.

Mr. President, thank God for Mattie Stepanek and thank God for a loving, wonderful mother, Jeni Stepanek. Our hearts go out to express our condolences and our sympathy to her for all of the heartache she has had to endure. But we thank her for giving us this very special gift, Mattie Stepanek, who truly sang from his heart and was a peacemaker.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the distinguished Senator from Maryland for what she had to say. My wife and I got to know Mattie. My wife invited him to speak at the spouses dinner, the First Lady's luncheon. She told me I had to come down and meet this young man. I remember coming in there and talking with him. I also talked with him again by phone. I sort of hung back because I was not a Senate spouse. I sort of hung back in the corner and listened when he spoke. What an inspirational little boy.

I know the tug I felt when I turned on the news this morning and heard what we all knew was going to happen had happened. He is no longer with us.

Somebody in the news said he probably had more life in that short span than most people have. The Senator from Maryland said similar things. In this case, it is true. He really had.

I thank her for her statement. I know Marcelle and I had our hearts enriched by having met him.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mr. LEAHY. Mr. President, I have the floor, though I see the distinguished Senator from Virginia and, of course, I will yield to him if he is seeking the floor.

Mr. WARNER. Yes, Mr. President, I am seeking the floor at this point in time.

We have reached a juncture in the bill where the majority leader and the distinguished minority leader, together with the two managers, are trying to resolve what further business may occur on this bill. At this point in time I can only suggest to colleagues we are very close, hopefully, to resolving this matter. But until such time as we get

an indication on my side of the aisle of the ability with regard to the other side to reach constructive resolution of this matter, I am going to have to ask that a quorum be put in.

Mr. LEAHY. Mr. President, if the Senator—

Mr. WARNER. Reserving the right to the floor, I yield for a question from my colleague.

Mr. LEAHY. I wanted to accommodate the distinguished chairman, of course. I thought he was about to bring something up. I hope he would not put in a quorum call. I would like to speak about some of the matters that may be coming up later. I have been talking with him and Senator REID and Senator LEVIN. If it becomes ripe to make that agreement, naturally I would yield the floor immediately as I did for the chairman. But I find in the joys of allergies, my voice is fast disappearing and I would like to speak now while I know I can so speak.

Mr. WARNER. Mr. President, my good friend and I have done many things together. At this point in time, I think, in good faith, the leadership of the Senate, together with the two managers, has developed a construct. Until such time as that construct is put in place, I must say with due respect I will have to maintain the quorum call.

Mr. LEAHY. If the Senator will yield again before he did that? I note, as the Senator knows, I could be speaking now if I wanted to because I already had the floor and I could have refused to yield to him. I did not.

Mr. WARNER. I think you yielded to me.

Mr. LEAHY. I yielded to him, and had I not done that, of course I would have retained the floor and would have gone forth.

Yesterday we had hours upon hours of quorum calls. All I am suggesting is that I be allowed to continue, and at such point as the Senator reaches an agreement, I would, of course, yield to whomever wishes to make the unanimous consent request. Being unable to do that, I believe my courtesy in giving up the position I had has not been returned. But, of course, the Senator has the parliamentary right to do whatever he wants because he has the floor.

Mr. WARNER. Mr. President, I hope this is not a matter of courtesy. It is a matter of pure management of the bill. There has been a clear understanding between both sides, and I am abiding by the understanding on this side. I think this side has, in good faith, lived up to its commitments. From all I know, the manager on this side and the leadership on that side is doing everything to live up to their commitments.

Until that time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.