

## EXECUTIVE SESSION

NOMINATION OF FREDERICK J. KAPALA TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

The PRESIDING OFFICER. Under the previous order, the hour of 11:50 a.m. having arrived, the Senate will proceed to executive session for consideration of Executive Calendar No. 84, which the clerk will report.

The legislative clerk read the nomination of Frederick J. Kapala, of Illinois, to be United States District Judge for the Northern District of Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, let me say a few words about Judge Kapala. Frederick Kapala has been nominated by Senator OBAMA and myself to be a Federal district court judge in the Northern District of Illinois. Judge Kapala has served with distinction as a State court judge in Illinois for the past quarter century, and he has earned a great reputation. It is a very positive thing to say that 99 percent of the attorneys surveyed gave Judge Kapala a positive recommendation for his temperament, integrity, and management skills. He had a unanimous rating of "well qualified" by the American Bar Association, the highest rating a nominee can receive. He has been judged by many to be an excellent candidate for the Federal bench.

I have met with him personally. I have met his family. I like this man. I think he will serve our judiciary well. I hope when we vote on this in a few minutes he will receive an overwhelming vote of support.

Mr. President, I yield the floor.

Mr. OBAMA. Mr. President, I support the nomination of Judge Frederick J. Kapala to serve as a judge on the United States District Court for the Northern District of Illinois. Judge Kapala's career exemplifies a strong commitment to public service. He currently serves as an appellate judge on the Second District Appellate Court in Illinois, a position he has held since 2001. Prior to his service on the Second District Appellate Court, Judge Kapala was a circuit court judge for the 17th Judicial Circuit for Winnebago and Boone Counties for 7 years. Prior to that service, Judge Kapala was an Associate Circuit Court Judge for the same circuit for 12 years.

After graduating from the University of Illinois College of Law in 1976, Judge Kapala became an assistant State's attorney in Winnebago County. He made a brief foray into private practice, joining the law firm of Peddersen, Menzimer, Conde, Stoner, and Killoren in Rockford from 1977 to 1982.

Judge Kapala is a magna cum laude graduate of Marquette University. He proudly served his country in the U.S. Army on both Active and Reserve duty from 1970 to 1980.

Judge Kapala has dedicated his life and career to the public good. Whether it was his military service or his judicial service to the good people of Rockford and the counties of Winnebago and Boone, Judge Kapala has served with compassion and distinction.

I am pleased to join the Senate in confirming him to the United States District Court for the Northern District of Illinois.

The PRESIDING OFFICER. The senior Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I agree with the Senator from Illinois who has spoken in support of the nomination of Judge Frederick J. Kapala to be a U.S. district court judge for the Northern District of Illinois. He has an outstanding academic record—graduating magna cum laude from Marquette University in 1972, where he was Phi Beta Kappa. He obtained his law degree from the University of Illinois, where he was a moot court board member.

He has a professional career which is diversified and with extensive judicial experience. From 1970 to 1980, Judge Kapala served our country in the United States Army, on both active and reserve duty. He obtained the rank of Captain before his honorable discharge. Upon graduation from law school, he was assistant State's attorney—that is the prosecuting attorney in Illinois—for 1 year. He then practiced law for 5 years. He has been an associate circuit court judge from 1982 to 1994 and a circuit court judge for 7 years, until 2001. Since 2001, he has been an appellate court justice for the State of Illinois. He has extensive community activities. He was rated by the American Bar Association as unanimously "well qualified."

Mr. President, I ask unanimous consent that at the conclusion of my remarks, a summary of Judge Kapala's curriculum vitae be printed in the RECORD.

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

(See exhibit 1.)

Mr. SPECTER. My sense from prior confirmation proceedings and votes in the Senate is that Judge Kapala will receive a strong vote, probably unanimous.

## IMMIGRATION REFORM

In the remaining time, I will discuss what we are doing on the immigration bill because there have been so many inquiries.

We all know the history of the immigration legislation from the 109th Congress. The Judiciary Committee reported out a bill. It came to the floor of the Senate, with many amendments, and it was passed with substantial bipartisan support. The House of Representatives had a very different configuration on the bill. They were concerned only with the border security, contrasted with the Senate bill, which was a comprehensive bill.

We have had numerous meetings in an effort to structure a consensus bill

in the course of the last many weeks. For many weeks, we met on Tuesday, Wednesday, and Thursday from 4 o'clock to 6 o'clock, with as many as a dozen Republican Senators present, with the Secretary of Homeland Security and the Secretary of Commerce present. We have had substantial White House involvement reflecting the President's statement that he wants a comprehensive immigration reform bill. We have spent many hours on extended meetings with Democrats. There were half a dozen Democrats attending these meetings and a rather unique process illustrated last week where we met for 2½ hours with a dozen Senators being present. It is pretty hard to keep a dozen Senators sitting in one room at one time going over a great many ideas. We have come to an agreement on what we have called a "grand bargain," which is the outline of an immigration bill.

There is no doubt that we need to protect our borders and we have legislated for fencing. We want to provide fencing to protect the major metropolitan areas, and we can't have a fence for the entire length of the border. We have proposed and are prepared to enact legislation which would provide for 6,000 additional Border Patrol agents to bring the number to 12,000. We are proposing very strong employer sanctions. We do not want employment in the United States to be a magnet for illegal immigration, and it is now technically possible to have foolproof identification. It can be costly and we are still working through the details, but there is no doubt we want to secure the border and stop illegal immigration as the first item.

We are talking about triggers so that we don't move ahead to dealing with the 11 million undocumented immigrants or dealing with a temporary worker program until we have solved the problem of securing the border and providing for identification so that there is a basis for using tough sanctions on the employers. But you can't do that unless they have a fair opportunity to know who is legal and who is illegal.

We are rejecting the idea of amnesty for the 11 million undocumented immigrants. They are going to have to earn being on the citizenship path at the end. It will be required that they pay taxes, have community roots, have a substantial period of employment, and that they learn English. We are going to do our best to deport those who have criminal records. There is a real security risk with some of the undocumented immigrants who have criminal records and where they do commit crimes. It is a practical impossibility to deport 11 million undocumented immigrants.

We are trying to structure a temporary worker program which is temporary, coming only for the purpose of filling needs and then returning to their in native countries. We are looking at a system so that if there are U.S.

citizens, people in this country who can take the jobs, they will have the first choice.

The majority leader has stated publicly his intention to proceed under rule XIV and file a bill this week—perhaps tomorrow, and it will be listed for floor debate next Monday. There is a lot of concern among Republicans about proceeding in that way with concern that the bill that was reported out of committee does not have widespread support and the bill that passed the Senate does not have widespread support. And that there is a disinclination how it will go. Nobody knows for sure, but there is a disinclination to support a motion to proceed, raising the possibility that there may be a filibuster there.

There is a concern in many quarters that we need more time. We have been proceeding diligently with very extended meetings. I have to confess there has been a fair amount of wheel spinning, but that we are not ready to proceed next Monday on the 14th to take up the bill the last 2 weeks before Memorial Day, as the leader has scheduled. I can understand the majority leader's concern about moving ahead and holding our feet to the fire to try to produce a bill but we are still working on it. Staff worked over the weekend. There was a meeting at the White House on Sunday. I had an extended discussion yesterday with Senator KENNEDY. Senator KENNEDY met with one of the Secretaries, and we are working at top speed.

It will certainly be preferable if we can come up with a bill that would not have to have S. 2611, which passed the Senate last year or the chairman's mark or the bill that came out of Judiciary. I have been asked about this every time I step into the corridor, so I thought it would be useful to give this brief summary, without impacting on Senator LEAHY's time. I will note that some Democratic time on the judicial nomination was taken up by Senator DURBIN earlier.

I yield the floor.

#### EXHIBIT 1

FREDERICK JOSEPH KAPALA, NORTHERN DISTRICT OF ILLINOIS

Judge Frederick Joseph Kapala was first nominated on December 6, 2006. He was re-nominated on January 9, 2007. A hearing was held on his nomination on March 13, 2007, and he was unanimously reported out of the Judiciary Committee on April 25, 2007.

Judge Kapala has truly outstanding academic and professional qualifications.

He received his B.A. magna cum laude, in 1972 from Marquette University where he was elected to Phi Beta Kappa and Pi Gamma Mu (social science honors). He received his J.D. from the University of Illinois College of Law in 1976. During law school, he participated in Moot Court and served as a member of the Moot Court Board.

From 1970 to 1980, Judge Kapala served our country in the United States Army, on both active and reserve duty. He obtained the rank of Captain before his honorable discharge.

After graduation from law school, Judge Kapala served for one year as an Assistant

State's Attorney in the County of Winnebago, Illinois before joining the law firm of Pedderson, Menzimer, Conde, Stoner and Killoren in 1977. He practiced both litigation and transactional law with that firm until 1982.

Between 1981 and 1982, he also served part time as a Special Assistant Attorney General in the Illinois Attorney General's Office, prosecuting consumer fraud cases.

As a practitioner, Judge Kapala tried over 100 cases to verdict.

In 1982, Judge Kapala was first appointed to the state court bench as an Associate Circuit Court Judge for the 17th Judicial Circuit, a state trial court. While serving in this office, he was presiding judge of the juvenile court in Winnebago County from 1989 until 1991.

In 1994, Judge Kapala was first elected a full Circuit Court Judge in the same circuit, and since then, he has been re-elected twice. During his tenure in this capacity, Judge Kapala was appointed as the presiding judge of the criminal court division in Winnebago County from 1995 until 2001. In 2001, he was assigned to serve as a Judge of the Appellate Court of Illinois, Second District.

The ABA unanimously rated Mr. Kapala as "Well Qualified."

Mr. LEAHY. Mr. President, how much time does the Senator from Vermont have?

The PRESIDING OFFICER. The Senator from Vermont is recognized for 6 minutes.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 1327 and S. 1328 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEAHY. Mr. President, we are making significant progress today with another confirmation of a lifetime appointment to the Federal bench. I am sure Frederick J. Kapala will be confirmed for the District Court for the Northern District of Illinois. His nomination is supported by the home State Senators. I thank Senator DURBIN for chairing the hearing on this nomination.

Judge Kapala serves as a state appellate judge on the Second District Appellate Court in Illinois. He has almost 20 years of experience as a state trial court judge. Before coming to the bench, he worked for the Rockford, Illinois law firm of Pedderson, Menzimer, Conde, Stoner and Killoren, and he worked as an Assistant State's Attorney in Winnebago County. Prior to his legal career, he served 10 years in the U.S. Army.

This will be the 17th judicial confirmation this year. The calendar just turned to the month of May, it is spring, and we have already confirmed as many judges as were confirmed during the entire 1996 session, when President Clinton's nominees were being reviewed by the Republican-controlled Senate majority. We have done as much in May in a Democrat-controlled Senate as the Republican-controlled Senate did in a whole year for President Clinton. That was a session when not a single circuit court nominee was confirmed. Of course, we have already confirmed two circuit court nominees in the early months of this session.

I mention this because it is somewhat frustrating to hear the gross misstatements made by some of the Republican leaders, such as Vice President CHENEY, Mr. Rove, and others, who speak for the President on the pace of judicial nominees. Not only is this the 17th judicial confirmation this year, it is also the 117th judicial confirmation in the approximately 2 years I have served as Judiciary chairman over the past 6 years. That exceeds by more than a dozen the confirmations Senator HATCH presided over during the 2 years he was Judiciary chairman. It also exceeds by more than a dozen the district court nominees confirmed during the two years he was Judiciary Chairman.

With the confirmation of Judge Hardiman to the Third Circuit earlier this year, the total circuit court confirmations achieved during my chairmanships, which have not yet extended over the 24 months of Senator HATCH's chairmanship, also exceed those achieved during his. I only mention this because if you listen to what comes down to being total mistruths by the Vice President or others, you would think we blocked the President's judges.

Actually, we have done far better for President Bush—far better than when a Republican majority was here and pocket filibustered 61 of President Clinton's nominees. It is a little known, and obviously unappreciated, fact that during the more than 6 years of the Bush Presidency, more circuit judges, more district judges, and more total judges have been confirmed while I served as Judiciary Committee Chairman than during the tenures of either of the two Republican Chairmen working with Republican Senate majorities did.

The Administrative Office of the U.S. Courts lists 48 judicial vacancies. Yet, the President has sent only 25 nominations for these vacancies. Twenty-three of these vacancies—almost half—have no nominee. Of the 16 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for six of them.

Despite the harping and the criticism, the Judiciary Committee has been working hard to make progress on those nominations the President has sent to us. Of course, when he sends nominees that he knows are unacceptable to home state Senators, it is not a formula for success.

I congratulate Judge Kapala, and his family, on his confirmation today.

Mr. LEAHY. Mr. President, have the yeas and nays been requested?

The PRESIDING OFFICER. No.

Mr. LEAHY. 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 Frederick J. Kapala, of Illinois, to be United States District Judge for the Northern District of Illinois?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Connecticut, (Mr. DODD), the Senator from California (Mrs. FEINSTEIN), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Arizona (Mr. MCCAIN), the Senator from New Hampshire (Mr. SUNUNU), and the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 153 Ex.]

#### YEAS—91

Akaka	Dorgan	Mikulski
Alexander	Durbin	Murkowski
Allard	Ensign	Murray
Baucus	Enzi	Nelson (FL)
Bayh	Feingold	Nelson (NE)
Bingaman	Graham	Obama
Bond	Grassley	Pryor
Boxer	Gregg	Reed
Brown	Hagel	Reid
Brownback	Harkin	Roberts
Bunning	Hatch	Rockefeller
Burr	Hutchison	Salazar
Byrd	Inhofe	Sanders
Cantwell	Inouye	Schumer
Cardin	Isakson	Sessions
Carper	Kerry	Shelby
Casey	Klobuchar	Smith
Chambliss	Kohl	Snowe
Clinton	Kyl	Specter
Coburn	Landrieu	Stabenow
Cochran	Lautenberg	Stevens
Coleman	Leahy	Tester
Collins	Levin	Thomas
Conrad	Lieberman	Thune
Corker	Lincoln	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	Webb
Crapo	Martinez	Whitehouse
DeMint	McCaskill	Wyden
Dole	McConnell	
Domenici	Menendez	

#### NOT VOTING—9

Bennett	Feinstein	McCain
Biden	Johnson	Sununu
Dodd	Kennedy	Vitter

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

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

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:36 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

#### PRESCRIPTION DRUG USER FEE AMENDMENTS ACT OF 2007—Continued

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business for not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Maine is recognized.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 1329 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from New York is recognized.

#### IRAQ

Mr. SCHUMER. Mr. President, this week we in Congress are continuing to work toward a solution in Iraq that both supports our troops and changes our mission away from policing a civil war to more narrowly focusing on what should be our first and foremost goal—fighting terrorism, counterterrorism, to make sure al-Qaida cannot set up a camp and strike at us.

I rise today because we are beginning. We have said all along that this is going to be a long battle. Because we do not have 61 votes in the Senate, because the President has the veto power and we certainly do not have 68 votes to override a veto in the Senate, we are going to have to continue to bring up resolution and amendment after resolution and amendment until we persuade our colleagues on the other side of the aisle to do what the American people want, to do what the American people asked for in November of 2006; that is, dramatically change the course in Iraq, the mission—greatly reduce the number of troops so we can keep some troops there who can fight terrorism, but that will be many fewer. Most will be out of harm's way.

We are getting good signs. First, 6 months ago President Bush said he wouldn't accept any benchmarks or any limitation. Now the word from the White House seems to be that they will accept some types of benchmarks or other types of language that would not just be a simple funding the troops without our other goal, changing the mission. But second and more significant, what I and my colleague from Washington—and I believe my colleague from Illinois will be speaking about—are seeing is our Republican colleagues begin to set their own timetables, their own deadlines. This weekend, House minority leader JOHN BOEHNER signaled that, as this debate wears on, the President will continue to lose support among the members of his own party.

By the time we get to September or October, members are going to want to know how well this is working and, if it isn't, what is plan B?

That sure seems similar to what we are trying to do, although we want to do it now.

Mr. BOEHNER's comments are echoed by a number of other Republicans who are hearing back in their States and districts that we must change the mission in Iraq. There are many comments.

TRENT LOTT:

I do think this fall we have to see some significant changes on the ground in Baghdad and other surrounding areas.

There are many more. One of those is JIM WALSH, from my home State of New York. Today, the New York Times reports that Mr. WALSH is replying to his constituents that he could soon be prepared to reassess our policy and begin withdrawing our troops.

Republican Congressman RAY LAHOOD is indicating he expects Republican members will grow increasingly "nervous" about the President's strategy.

Asked about the President's demand for a funding bill with no benchmarks, no conditions, and no reports, says Senator COLLINS, who just spoke here:

Many of us on both sides of the aisle don't see that as viable.

We are going to try to come up with a very strong resolution that both supports our troops and changes the mission. But we know we are making progress because our Republican colleagues themselves have been setting timetables, benchmarks, and other types of goals—limitations that are not terribly dissimilar from ours.

We will continue this battle, this struggle to require the President to change course in Iraq. We eagerly await our Republican colleagues joining us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank my colleague from New York. I know my colleague from Illinois, Senator DURBIN, will be here shortly as well to talk about a critical juncture at which we are now in terms of the war in Iraq.

Last week, both the House and Senate sent a very strongly worded bill to the President of the United States supporting our troops, saying we are there for them when they need us, but we also said it is time for a change of course in Iraq, that we can no longer leave our troops in the middle of a civil war. It is disappointing to all of us that the President chose to veto that bill and sent it back to us. But I think it is very important for us to set the context of where we are now as we look at what we are going to send back to the President.

These are the facts. There is increased violence in Baghdad as we speak. There is increased violence outside Baghdad today. In fact, over 100 American soldiers died last month alone, and at least 27 more American troops have been killed this month. In my home State of Washington, we got the sad news yesterday morning that six of our Fort Lewis soldiers were killed over the weekend. These are