

Statement of

The Honorable Orrin Hatch.

United States Senator
Utah
April 29, 2004

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Executive Business Meeting

Opening Statement

On today's agenda, we have a group of nominees carried over from last week, plus a number of bills on which I am hopeful we can make significant progress.

With regard to nominations, in addition to Judge Saad, whom we will continue to carry over on the agenda, we have one circuit nominee and three district judge nominees who are ready to be reported. These nominees are exceptional individuals and will make outstanding judges.

The nominee to the Eight Circuit Court of Appeals, William D. Benton, is well prepared to join the federal bench, presently serving as a Judge on the Supreme Court of Missouri. With an excellent academic record, he holds four degrees: a B.A. and an L.L.M. from the University of Virginia School of Law; a J.D. from Yale Law School; an MBA from Memphis University; and his BA from Northwestern University. After graduating from law school, Judge Benton served in the United States Navy. He has an exceptional record of private and public service. He has received a unanimous rating of Well Qualified from the American Bar Association.

Robert Bryan Harwell, who has been nominated to the District of South Carolina, has exceptional qualifications for the federal bench. Upon graduation from the University of South Carolina School of Law, Mr. Harwell clerked for state Circuit Judge Rodney A. Peebles and then for U.S. District Judge G. Ross Anderson Jr. After his clerkships, Mr. Harwell began his private practice, which he continues today. He has a unanimous ABA rating of Qualified.

George P. Schiavelli, the nominee to the Central District of California, has an admirable record and is a great choice for the federal bench. After graduating from U.C.L.A. Law School in 1974, Mr. Schiavelli spent the next twenty years in private practice with distinguished law firms in the Los Angeles area. From 1994 until 2000, Mr. Schiavelli served as a Los Angeles Superior Court Judge. Since 2000, Mr. Schiavelli has practiced principally in the area of alternative dispute resolution and has been Of Counsel to the Appellate Group of Reed Smith L.L.P. He has a unanimous ABA rating of Well Qualified.

Our final nominee, Curtis V. Gomez, has been nominated to be Judge for the District Court of the Virgin Islands. This position is for a term of ten years. A native of St. Croix, Mr. Gomez graduated from George Washington University and Harvard University Law School. He has practiced law in both the private and public sectors. He presently serves as an Assistant United States Attorney in the United States Attorney's Office for the District of the Virgin Islands and previously served as an Assistant U.S. Attorney in the Eastern District of Virginia. The ABA has rated him Qualified for this position.

This is a strong group of nominees and I look forward to the committee taking action on them today.

Let me just say that I continue to have concerns about the inactivity on judges and nominees on the Executive calendar. I am for moving all 29 judges on the calendar onto the floor for the up-or-down vote the Constitution requires. If the current rules are continued to be used in this unjustified and unprecedented manner, the Senate should change the rules to ensure the simple majority vote contemplated in Article II, Section II, Clause II.

One interpretation is that all of the improper and ill-advised filibustering over the last two years amounts to nothing less than a surreptitious attempt to re-write the Constitution to require 60 votes to confirm the next Supreme Court nominee.

Frankly, I do not understand those who contend that recess appointments necessitated by the denial of up-or-down floor votes somehow justifies freezing the executive calendar.

On the matter of bi-partisan boards and commissions, I believe that an accommodation can and will be reached. In the interest of playing a constructive role in this process, I will again restate my willingness to work with the White House and my colleagues across the aisle.

For example, I am aware that my colleagues across the aisle are supportive of Ron Weich, a former member of Senator Kennedy's staff, to serve on the Sentencing Commission. I have encouraged the White House to meet with Ron and consider nominating him to this important Commission.

Likewise, I support one of Senator Kohl's former staffer's - Jon Leibowitz - for service on the Federal Trade Commission.

I have always taken pride in promoting qualified staffers --- Republicans and Democrats alike -- of this Committee, and other Senate and House staff members, for positions of responsibility in the government.

While I remain hopeful that there will be some movement of both judicial and executive branch nominees in the near future, the time for quiet diplomacy can last only so much longer.

Once we act on the nominees, we will take up the Gang Bill, S. 1735. Let me thank Senators Grassley, Cornyn, Graham, and Chambliss for their hard work and continued support in working with me on this very important bill. I also want to express my appreciation to Senators Feinstein and Schumer and their staff who have done a tremendous amount to ensure that this bill has bi-partisan support.

We circulated a substitute amendment last night for our consideration today. I am pleased to report that due to discussions that resulted in the substitute, I understand that both Senator Biden and Senator Kohl will now support this important piece of legislation.

S. 1735 is a comprehensive, bipartisan bill to increase gang prosecution and prevention efforts. It authorizes approximately \$650 million over the next five years to support law enforcement and prevention efforts. Of the \$650 million, \$450 million will be used to support Federal, State and local law enforcement efforts against violent gangs, and \$200 million will be used for intervention and prevention programs for at-risk youth. The bill also provides needed funding for the Federal prosecutors and FBI agents to conduct coordinated enforcement efforts against violent gangs.

This bill creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs, enacts violent crime reforms needed to prosecute effectively gang members, and implements a limited reform of the juvenile justice system to facilitate federal prosecution of 16 and 17 year old gang members who commit serious violent felonies.

The problem of gang violence in America is not a new one. Nor is it a problem that is limited to major urban areas. For example, according to the Salt Lake Area Gang Project, a multi-jurisdictional task force created in 1989 to fight gang crime in the Salt Lake area, there are at least 250 identified gangs in our region with over 3,500 members. What is perhaps most troubling, the juvenile gang members in Utah account for over one-third of the total gang membership.

These gangs now resemble organized crime syndicates who readily engage in gun violence, illegal gun trafficking, illegal drug trafficking and other serious crimes. I know all of us have read--time and again--news stories about innocent bystanders caught in the crossfire of gang shootings.

Recent studies confirm that gang violence is an increasing problem in all of our communities. Based on the latest available National Youth Gang Survey, it is now estimated that there are more than 25,000 gangs, and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. The most recent reports indicate that in 2002 alone, after five years of decline, gang membership has spiked nationwide.

We have made several changes in this substitute version in response to concerns raised by my colleagues and others which I can discuss more fully later.

Also on the agenda is the DeWine-Leahy Mental Health Courts Re-authorization bill. I am aware of no opposition to this bill and expect it to be reported out today.

There are also five intellectual property bills on the agenda today, four of which I hope we can report. I will hold the Hatch-Feinstein ENFORCE Act for an additional week as I understand that we will be able to achieve more consensus among stakeholders.

I believe we can move the Hatch-Leahy CREATE Act; the Leahy-Hatch PIRATE Act; the Cornyn-Feinstein ART Act; and last, but not certainly least, H.R. 1561, the United States Patent and Trademark Fee Modernization Act of 2003.

I will review these other bills when we reach them on the agenda but let me say that H.R. 1561 has already passed the House. Senator Leahy and I are considering the best way to see how we can pass the this bill and our other four IP bills. We may end up merging some or all of these bills at some point.

Let me just say that I have long been an opponent of patent fee diversion and think that this language will be of great benefit to our nation's inventors. I am mindful, however, that appropriators such as my friend from Vermont are under great pressure to keep appropriations bills' within allocations. I think that we as authorizers of intellectual property law and protectors of the interests of our Nation's inventors should stand together and work to see that the House compromise language reaches the President's desk.

Without objection, I will include in the record, a copy of a letter from the over 100 firms and 30 associations that comprise the membership of the 21st Century Intellectual Property Coalition supporting this bill.

I understand that Acting Patent Commissioner Jon Dudas or his staff may be here this morning to help answer any questions that may arise about this bill. It is my hope to schedule Mr. Dudas' nomination hearing for PTO Commissioner for next Thursday afternoon.

I also hope to schedule a hearing in the next few weeks on the new National Academy of Sciences study of the function and importance of patents.

So there is much going on in the area of intellectual property.

Finally, I also hope to move a Fitzgerald-Feinstein commemorative resolution today designating May as National Electrical Safety Month and to hold over three immigration bills for action next week.

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On

"Gang Prevention and Effective Deterrence Act of 2004"

We now turn to the Gang Prevention and Effective Deterrence Act of 2004, S. 1735. At the outset, let me thank Senators Grassley, Cornyn, Graham, and Chambliss for their hard work and continued support in working with me on this very important bill. I also want to express my appreciation to Senators Feinstein and Schumer and their staff who have done a tremendous amount to ensure that this bill has bi-partisan support. We circulated a substitute amendment last night for our consideration today.

S. 1735 is a comprehensive, bipartisan bill to increase gang prosecution and prevention efforts. It authorizes approximately \$650 million over the next five years to support law enforcement and prevention efforts. Of the \$650 million, \$450 million would be used to support Federal, State and local law enforcement efforts against violent gangs, and \$200 million would be used for intervention and prevention programs for at-risk youth. The bill also provides needed funding for the Federal prosecutors and FBI agents to conduct coordinated enforcement efforts against violent gangs.

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The problem of gang violence in America is not a new one. Nor is it a problem that is limited to major urban areas. For example, according to the Salt Lake Area Gang Project, a multi-jurisdictional task force created in 1989 to fight gang crime in the Salt Lake area, there are at least 250 identified gangs in our region with over 3,500 members. What is perhaps most troubling, the juvenile gang members in Utah account for over one-third of the total gang membership.

These gangs now resemble organized crime syndicates who readily engage in gun violence, illegal gun trafficking, illegal drug trafficking and other serious crimes. I know all of us have read--time and again--news stories about innocent bystanders caught in the crossfire of gang shootings and family members crying out in grief as they lose loved ones to the gang wars plaguing our communities.

Recent studies confirm that gang violence is an increasing problem in all of our communities. Based on the latest available National Youth Gang Survey, it is now estimated that there are more than 25,000 gangs, and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. The most recent reports indicate that in 2002 alone, after five years of decline, gang membership has spiked nationwide.

We have made several changes in this substitute version in response to concerns raised by my colleagues and others. For instance, the substitute eliminates a mandatory minimum penalty and requires that one of the predicate crimes be a crime of violence or a drug crime. It adds maiming, assault with a dangerous weapon, and assault resulting in serious bodily injury as predicate gang crimes. It eliminates a change to the conspiracy statute that would have changed the penalties on a host of crimes. It adds the Department of Homeland Security, the IRS and the Postal Inspection Service as agencies to be included in the gang task force, permits local law enforcement to directly seek grant money, and designated that 60% of the grant money is to be used for witness protection. The substitute also provides for judicial oversight in the decision to try a juvenile in federal district court in response to criticisms directed at this provision. We also made technical changes to the directive to the U.S. Sentencing Commission.

I believe these revisions have significantly strengthened the bill and I urge my colleagues to vote this bill out of Committee.

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