

Testimony of
Mr. Enrique Moreno

May 9, 2002

Good morning. I would like to thank the Committee for giving me the opportunity to appear before you. I greatly appreciate being given the opportunity to share my experiences and to express a few personal viewpoints concerning the nomination process. Although I have been asked to do so on a variety of occasions, this is the first time that I have agreed to speak publicly about my nomination experience. I do so today, at the invitation of the Committee, with the sincere hope, that, in some way, my experience will lead to a constructive dialogue that will improve the process for future nominees.

Let me talk briefly about my background. I was not born in this country. My family immigrated to this country from Mexico when I was a young child. My father, a carpenter, and my mother, a seamstress, came to this country with their children and their hope. Specifically, they hoped that their children could receive an education and succeed on their merits. My parents' hopes were realized. My Dad always joked that he had sent his dumbest son to Harvard. I have been privileged and fortunate to live the American dream.

I have practiced law in El Paso, Texas for 21 years. My practice has included a wide spectrum of litigation. I have practiced both civil and criminal law. In the civil area I have represented both plaintiffs and defendants. I have represented large business clients and also individuals advocating for their civil rights. My work has been recognized by my colleagues and by my community. In one survey of state judges, I was rated as one of the three top trial attorneys in El Paso. I am especially proud of that recognition, coming as it did from the State District Judges who are in a unique position to observe performance and professionalism. I am proud of my career, my legal and non-legal experience, and the tradition that my career represents.

I was nominated by President Clinton for a vacancy on the United States Court of Appeals for the Fifth Circuit on September 16, 1999. Even before my nomination, I went through a very thorough vetting process by the White House Counsel's Office, the Justice Department, the FBI, and the American Bar Association. I am proud to say that I received, unanimously, the highest rating given by the ABA to judicial nominees. I was the first person from El Paso, Texas, to be nominated to the Fifth Circuit. No one from El Paso has ever served on this important court.

My nomination was received with great excitement. Certainly, my family and I felt that excitement. Certainly, my community felt that excitement. Perhaps because of my background, I came to realize that a lot of people identified with my nomination. I will always remember being stopped on a street by an elderly woman whom I had never met. I will never forget her telling me in Spanish that she had heard about my nomination and that she was praying for me and lighting candles on my behalf.

I was overwhelmed by the outpouring of support that I received from her and so many others. I received the support from friends and colleagues, but also from strangers and non-lawyers. I received the support from Democrats and from Republicans. This support came from my community, from my home State of Texas, and throughout the nation. For those that I have not thanked personally, I would like to take this opportunity to express my gratitude for the support and encouragement.

I was a nominee for fourteen months. I was nominated again by President Clinton on January 3, 2001 and I became a nominee for another three months. In these fourteen or seventeen months, I waited and waited. I was never offered a hearing before this Committee. I would have welcomed the opportunity to appear, to answer questions, to address your concerns, to submit my qualifications and experience to open and candid debate. I was never offered that opportunity.

That I am aware, there was no public opposition to my nomination. I was never publicly criticized for a specific position or a specific matter about my background. I don't recall being called "controversial." If there were specific concerns about me, they were never publicly debated.

Six months into my nomination, I was invited by my State's Senators to interview with an advisory group. This was a private interview, the specific results of which are not known even to members of the advisory group. I was later advised that of the thirty-one members of this advisory group, ten members recommended against my confirmation, five recommended in favor of my confirmation, and sixteen either abstained or did not express an opinion. The Senators from my State wrote a letter stating that because of this vote they would not support my confirmation. The only stated basis for the opposition was the apparent view of ten members of the Advisory Group that I "had not achieved the level of experience necessary to be fully engaged and effective" on the Fifth Circuit. I do not think it's constructive for me to editorialize on that conclusion or that process. I do think it is fair to observe, however, that an advisory group should not substitute for the United States Senate. I also think it's fair to observe that private deliberations are not a substitute for public debate. There is nothing about my background or experience that I would shield from public debate.

I respect the Senate, its traditions and its customs. I continue to respect the nomination process. With all due respect, I have a simple and unoriginal observation about the nomination process. Nominees should get a hearing, hopefully a timely hearing. A nominee should receive an open public debate about the merits of his or her nomination.

Let me close by anticipating a question. I am often asked if I am personally disappointed or bitter about my experience. Let me say that I am not. You see, I have received so much encouragement, support, good will, and kindness from so many sources. It would be an act of selfishness for anyone who has experienced what I have experienced to say that they have a right to be personally disappointed. I am not personally disappointed. I am disappointed for my community, for the many people that supported my nomination, and for the many people that identified with my nomination. With all due respect, I believe that they deserved better.

Being nominated by the President of the United States for an important position is a source of great pride. Being recognized by my colleagues as well qualified for that position is also a source

of great pride. Finally, appearing before this Committee is a source of great pride. While I would have preferred to appear before you earlier and under different circumstances, I hope that my comments and my experience can be used constructively.

Thank you again for this opportunity.

Enrique Moreno
Senate Judiciary Committee
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