

Senator SPECTER. Judge, I hear you very close to my position. But what I believe I am hearing is that you are in favor of affirmative action preference, at least in that context.

Judge THOMAS. I think I have said that.

Senator SPECTER. Well, I haven't understood it from all your writings.

The CHAIRMAN. Would the Senator yield for 30 seconds, because I am confused.

Senator SPECTER. You are going to destroy a 5-minute train, Mr. Chairman, but go ahead.

The CHAIRMAN. Is that constitutional?

Judge THOMAS. Senator, I have not looked at it in that context. I assume that it was good policy to help to include others, and I have not looked at it in that context, Senator.

Senator SPECTER. Mr. Chairman, it will only take me 4 minutes to get back on my train of thought. [Laughter.]

If a preference there, Judge Thomas, if a preference there for the disadvantaged kid, as you put it, has come a long way, but he can't quite measure up at that moment, why not a preference in employment?

Judge THOMAS. I think, again, Senator, I have looked at education as a chance to become prepared. I have in my thinking personally—and I am talking totally from a policy standpoint—that education was that chance to be prepared to go on in life. It was an opportunity to gain opportunities.

For example, when we have our programs, even the ones that I established at EEOC, the effort was to give training, to bring kids in, to bring individuals in and give them an opportunity to prepare themselves, not in a way that I thought was offensive or in a way that was strictly based on race but rather, based on a number of criteria, a number of factors, including how far that person had come. I think that is important, and I think that you can measure a person by how far that person has come and by what that person has overcome to get there.

Senator SPECTER. Judge Thomas, that is fine for those of us who have gone to Yale, but what about the African-American youngster who doesn't have an educational background and is fighting for a job. You have a case like *Crawson v. Richmond*, which upset a minority set-aside. After that happened, the Philadelphia plan was one of the first in the country to move ahead with affirmative action. You should see the figures taking an immediate nosedive in African-American young people.

So, that if you have a Judge Thomas or a Professor Carter, who comes to Yale Law in that context, that is fine for their next step ahead. But if you have someone who is a 10th grade dropout and is struggling to get a job in a trade union in Philadelphia or in New York in the case we talked about, why not give that person a preference, because of the discrimination which has affected that person in his schooling. Where that person has the potential to be ultimately as good as, if not better than the white applicant who he displaces?

Judge THOMAS. Senator, of course, you do have the question that I have indicated, and I don't think that the cases necessarily break down that way. They don't make the distinction subjectively that