

cuit, a very distinguished jurist who knew Judge Thomas for many years, or they sat on the board of Holy Cross and had some detailed of the individual and his legal qualifications, read all of his opinions before coming to testify. And you had Professor Drew Days of the Yale Law School who, although he opposed Judge Thomas, thought he was educationally and intellectually qualified. And then you had Dean Calabrese of the Yale Law School who was at Yale in the teaching field, although he did not have Clarence Thomas as a student when he was at Yale, and all of those individuals give him pretty high marks in terms of base qualifications.

Why should we not accept their approach, Mr. Chambers, as opposed to your analysis?

Mr. CHAMBERS. Well, first of all, Senator Specter, I listened to some of that testimony and I am not certain how high a mark they gave him, but let's make that assumption. But I ask you to look at the Justices we have listed here in this exhibit, at the litigation experience or practice of law experience, at the teaching experience, at the judicial experience they have had, at the status they had obtained in the legal field, and make a comparison with Judge Thomas.

I think if one wants to look at the Constitution and talk about what the standard is as what we have developed to judge candidates for the bench for, and in that instance I think the ABA said that Judge Thomas was qualified.

But, if we are trying to develop a Court, or preserve a Court that has been responsive to the issues that have been brought before it, that had people who were really exceptional as we collect here in this exhibit, Judge Thomas doesn't measure up, and that is what we are presenting with this exhibit.

Senator SPECTER. Well, you would disagree with Dean Calabrese who said that he at least may not measure up to the Cardozo-Holmes standard, but Dean Calabrese insisted that he at least measured up, if not better than, the other recent appointees.

But you would disagree with that as well?

Mr. CHAMBERS. Again, I would call your attention to this exhibit, and according to this exhibit and looking at the objective standards we are trying to use in the exhibit, the answer is no.

Senator SPECTER. Well, your exhibit picks seven standards, but you might pick some others. You might pick a totality. But I would be interested in the answer to that question as to your agreement or disagreement with what Dean Calabrese said, that Judge Thomas is at least as good as the recent appointees.

Mr. CHAMBERS. As the recent?

Senator SPECTER. Appointees to the Supreme Court of the United States.

Mr. CHAMBERS. If that is what Dean Calabrese said, I would think that that is not the way I would evaluate Judge Thomas' qualifications.

Senator SPECTER. I would like to discuss a number of the areas with you, but the yellow light is on, so let me instead turn to Mr. Lucy on one question.

Mr. Lucy went to the Yale article which Judge Thomas wrote, the Yale Law and Policy Review, and picked out his writings on Judge Thomas' disagreement on affirmative action. I note there

that Judge Thomas has opposed affirmative action most of the time, except to a very limited extent on preferences in education, and he has opposed the class preferences because he says that for the minorities whom they benefit—and this is what you had read—they foster the view of disability or being in need of handouts, and for the individuals who are being replaced they promote a feeling of being replaced by someone who doesn't have as high test scores. And then he emphasizes the point of increase on racial divisiveness. Those are in the context of footnote 3 that you cited.

Now, whether or not you agree with his conclusion that affirmative action is undesirable, when you take his reasons for being opposed to that, would you not say that there was at least a reasonable basis for his conclusion?

Mr. LUCY. I think, Senator, if you look at what the serious problems are that caused the establishment of EEOC itself and some of the provisions of the law, the question of whether affirmative action is designed to bring about remedies or designed to prevent others from being injured, Mr. Thomas placed more emphasis on the issue of reverse discrimination than on carrying out the mandate of his agency. And whether or not he had a reasonable basis for that judgment may well be true. I can't say what was the basis of his concern.

But the basis of my concern, and for millions of other workers, is that there be some process by which fairness can be brought to those who have been disadvantaged by systematic discrimination, and the charge of EEOC it would seem to me is not only to promote affirmative action as a remedy for past discrimination, but also to be fair in providing remedies where it has been established that there has been injury to groups.

My reading of Mr. Thomas is that it was defensive of (a) the individual injury to individuals, and a defense against reverse discrimination.

Senator SPECTER. If I just might make one comment in closing, because my time is up. Not saying that I agree with Judge Thomas, but I think he does more than focus on reverse discrimination. He focuses very hard on discrimination. He has said some very powerful things about believing that discrimination was as bad in 1987 when he made his speech as it was when Chief Justice Taney decided *Dred Scott*, but he deals with discrimination on an individual basis. And when he comes to the group action he finds as a policy decision these factors which lead him to a contrary conclusion.

Mr. LUCY. Well, Senator, I would only say that these provisions were not put into the law just sort of willy-nilly. There was a great deal of discussion, debate, and I am sure thought by those in the Congress who, in fact, enacted the legislation, and I am sure they concerned themselves with the possibilities of others being injured as a result of, not preferential treatment, but really affirmative action to correct past wrongs.

Again, I think this is much more of an instance of Mr. Thomas assuming and asserting his judgment as opposed to the intent of the law to start.

Senator SPECTER. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Simon.