TRANSITION FROM POLICYMAKER TO JUDGE — A MATTER OF DEFERENCE

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It is a pleasure to be here today. My involvement with Creighton Law School begins with my wife, Virginia, who is a 1983 graduate. I sincerely appreciate the role that this institution played in her education and development. And she has spoken fondly of those who taught her here. Though some may say that I am biased, my unbiased and objective view is that she well represents this institution and her fellow graduates.

In considering topics for this lecture, prudence played a significant role in my choice. One is often tempted to be far more ambitious than time or resources allow. And, there are wonderful topics that have been the focus of my personal musings and the subject of many discussions with my clerks. Most of these topics are fascinating to me but, as I have so often learned, what is fascinating to me is no measure of the interest of others. There is also the temptation to attempt to show just how brilliant one is, by rhetorically charting a course at the limits of abstraction and obscurity — and most certainly at or beyond the limits of one’s intellect. At least for today, you will not be subjected either to my musings or ego-inflating demonstrations. Rather, I will reflect on what I have spent the last decade do-

† Associate Justice of the United States Supreme Court. Justice Thomas was sworn in on October 23, 1991.

1. Prior to his appointment to the Supreme Court, Justice Thomas served on the United States Court of Appeals for the District of Columbia Circuit. Justice Thomas also served as Chairman of the U.S. Equal Employment Opportunity Commission from May, 1982, to March, 1990. Prior to becoming Chairman of the EEOC, Justice Thomas was Assistant Secretary for Civil Rights at the U.S. Department of Education.

Justice Thomas gave this speech at the annual TePoel Lecture at Creighton University School of Law in Omaha, Nebraska, on February 14, 1991. This speech does not include the introductory remarks given by Justice Thomas at the lecture, nor does this version reflect Mr. Justice Thomas’s speech verbatim.

The TePoel Lecture Series is named in honor of Dean Louis TePoel, teacher, scholar, and academic administrator, who served on the Creighton Law School faculty from 1907 to 1947 and as Dean from 1920 to 1947.

Inaugurated in 1975 with a lecture given by Professor Harold J. Berman of the Harvard Law School, the Series has featured many legal scholars of national and international reputation. Included among these are Professor Laurence Tribe, also of Harvard; Professors Joseph L. Sax and Yale Kamisar from the University of Michigan School of Law; Professor George P. Fletcher of the University of California School of Law; United States District Court Judge Jack B. Weinstein of the Eastern District of New York; Professor Neil MacCormick of the University of Edinburgh, Scotland; Professor Stanley M. Johanson of the University of Texas School of Law; and Sir Joseph Gold, Senior Consultant of the International Monetary Fund.
ing as a senior member of the executive branch of our national
government, the process of moving to the judicial branch, and the
eleven months that I have spent as an appellate court judge. Fear
not, I won't attempt to relate or defend every policy decision or fight
old battles. I note, however, that since I was invited to deliver this
lecture before I had furniture in my chambers, before my investiture,
and before I had written a single opinion, it is clear to me that this
law school has a daring, bold, entrepreneurial spirit, and is not risk
averse. Hence, from my standpoint, I have been granted a very broad
license to roam unencumbered by expectations and unfettered by
personal precedent. In the end, you may well think that I have to-
tally exhausted this license. I assure you all, however, that my cur-
rent position greatly channels, constrains, and informs what I say.

In fact, immediately upon becoming a judge, I told my brother
that I had to be much more restrained in offering unsolicited opin-
ions. His response was that by putting me on the bench, someone has
finally found a way to shut me up. However, in telling my clerks
that I have very little to say these days, one of them responded that
she would pay to see the day that I had nothing to say.

Notwithstanding the restrictions, there are many advantages to
being a new judge. One of these is the privilege of being the first to
discuss and vote on cases after oral argument. For those who are not
familiar with the way we decide cases at the court, a three judge
panel usually hears oral arguments in three or four cases per sitting.
Immediately after oral arguments, we hold a conference to decide the
cases that have just been argued. The least senior judge, (or, if you
prefer, the most junior judge) is the first to express his or her deci-
sion in each case, and the reasons for that decision. I am told that
allowing the junior judge to vote first is a custom of long standing,
and that it is designed to afford the junior judge an opportunity to
express his or her views on the case before the more senior and,
hence, more experienced judges say all that need be said about a par-
ticular case. I choose to accept, as an article of faith that speaking
first is, indeed, an advantage. But, somehow one can't help but sense
that the other judges may see some humor in this whole affair.

In all seriousness, my colleagues have been flawless in their
treatment of me, and generous to a fault with their time and assist-
ance during my transition to the judiciary. There is a stark contrast
between the storm of confirmation and the serenity of actually being
an appellate court judge. It is indeed a life of solitude, with the only
occasional, scheduled contact with the outside world occurring at oral
arguments. Though the work is intense and endless, a judge has the
opportunity to think things through — to reflect — to get things
right. Certainly the frenetic pace of the executive branch, the spirited and often difficult interaction with the legislative branch, and constant media exposure became a way of life as an agency head and allowed little if any opportunity to contemplate or the luxury of focusing intently on a single problem. It doesn't seem so long ago that I was pilfering time at the beginning and end of each day to think beyond the assortment of mundane problems that routinely filled my workdays.

I am the only judge on our circuit to come to the court directly from heading an administrative agency. This is particularly interesting, at least for me, since so much of our work on the D.C. Circuit involves agencies and administrative law. Having spent almost eight years as the head of an administrative agency and moving directly to an appellate court also gives me a more poignant (and personal) view of the contrasts between the role of an agency and that of a reviewing court. I note, parenthetically, however, that there is an experiential disproportion, at least temporally, between my former position of agency head and my current position of a judge. (I think this job of judging is already beginning to affect my speech patterns. "Experiential disproportion..."?) What I mean is that while I spent almost eight years at EEOC, my tenure on the bench is just shy of one year — or slightly less than it took me to get nominated and confirmed.

Let me first address my role as Chairman of EEOC. When I became Chairman of EEOC in May of 1982, I quickly became aware of the very broad and very significant authority vested in independent regulatory agencies. (For the purist, EEOC is not technically an independent agency though it has all the characteristics of one — except the most important — independence.) One of my early efforts was to determine with as much precision as possible just what the "raison d'etre" of the Commission was. I guess to some extent the top managers of the agency must have thought that here comes this brat with some bright idea about developing a pie-in-the-sky mission statement which we will never use or refer to. The truth of the matter, however, was that I was unaware of the broad and mixed expanse of the agency's authority. And, as we worked to develop a concise mission statement, it became clear that even longtime managers of the agency could not initially reach a consensus view of the agency's mission. There were at least as many opinions as there were participants in those early meetings.

It would certainly be fair to inquire why something that sounds as amorphous as a mission statement was so important. To relate the detailed litany of reasons for such a statement would consume far more time than we have. But one must remember the chaotic condi-
tion of the agency when I arrived. Although, at this point in my life, I am more than willing not to assign blame for this condition to any particular person, since that would serve no useful purpose, I am unwilling to revise history to ignore the seemingly insurmountable problems which confronted me when I arrived at the agency. Rather than even attempting to convey the complete nature of the problems, suffice it to say that they were so extensive and so grave that I feared that the agency would literally collapse of its own weight before we could take corrective actions.

I will share a few anecdotes of events that occurred during my first week or so at EEOC and in the context of my total amazement at the condition of the agency and fear of an impending collapse. The first involved an incident in which I was handed a check for a thousand dollars drawn on the agency’s account. I was puzzled. Upon asking why I was receiving this money, I was informed that it was customary for those who would be travelling to be given this sum to keep in their bank accounts in order to pay for future travel, since the agency was incapable of reimbursing them in a reasonable amount of time after they travelled. It certainly became clear to me at that point why Senator Hatch had demanded during my confirmation hearing that I do something immediately about the more than one million dollars of travel funds owed the agency by its then current and former employees.

Another incident involved a General Accounting Office (“GAO”) report which was issued the same day that I arrived at EEOC. I reluctantly cite GAO, since, at a later point during my tenure I referred to it as the “lapdog of Congress.” The report, though quite timid, pointed out the obvious — that the deficiencies in the agency’s financial management systems could “have a devastating effect on the agency’s operations in future years, especially when fund availability becomes an issue.” In issuing the report, however, GAO recounted an incident that was a frightening indication of the agency’s overall condition.

An employee... improperly received $4,000 in overtime pay by personally falsifying her own time and attendance records. The Justice Department declined to prosecute because the agency asked to deal with the case administratively. Management suspended the employee for 30 days and arranged a schedule of payroll deductions to pay the money back. One year later this same employee was not only promoted, but given a cash award for producing the agency’s telephone directory. Putting together the telephone directory was considered such a remarkable achievement because, according to the award recommendation, it was the first time
in two years that anyone had been able to get the agency's various offices to cooperate in providing their telephone numbers.

Management's explanation for not firing this person was that the employee was a good performer, and good workers are hard to find. But what was the signal management sent in the way it dealt with this situation? — That this behavior can be rewarded by a promotion and a cash award. The message has not been lost on the employees.

Finally, the award recommendation says a lot about the lack of cooperation within headquarters on such a simple matter as providing telephone numbers; management's unembarrassed justification for the awards says a lot about management's values and good sense.

My concerns did not stem so much from these isolated occurrences as from the informed realization that they were neither isolated nor the worst. It was inconceivable that an agency could fail to perform such elementary tasks, yet be expected to process properly over 60,000 charges annually and routinely develop complex pattern and practice cases. We certainly could not have expected to correct these self-evident problems without developing a consensus view of the agency's mission, if for no other reason than to have a distant beacon to guide us through what proved to be a whirlwind of confusion.

After considerable debate, we finally did arrive at a consensus mission statement. It reads (or at least, read) as follows:

To ensure equality of opportunity by vigorously enforcing the federal legislation prohibiting discrimination in employment through investigation, conciliation, litigation, coordination, regulation in the federal sector, and through education, policy research and provision of technical assistance.2

Now that is quite a mouthful. But in thirty-five words it captures the statutory mandate to the agency and to the members of the Commission. Even though the mission statement did give the agency a sense of direction, there continued to be numerous options for developing and implementing the necessarily specific policies to carry out this statutory mandate. And, our discretion to choose among these options was correspondingly broad. Certainly, we began with the statute and the case law, to the extent that there was case law. But, in many instances, there was no case law or the courts were all over the map. Moreover, there were policy approaches that had been

adopted by a prior group of commissioners with which we simply disagreed.

An example of this was the manner in which EEOC investigated charges of discrimination. Title VII of the Civil Rights Act of 1964 provides that the EEOC "shall make an investigation" of charges of discrimination. The prior Commission, faced with a very large backlog and intense political pressure decided that this mandate could best be fulfilled by means of what was called a "rapid charge" system that facilitated a quicker disposition of charges and thus aided in reducing the backlog which, incidently, exceeded 100,000 charges. Again, for the purist, backlog was defined as all charges filed by January 1979. As I found out, the growing inventory of charges filed after that date was called a "frontlog." A hallmark of the rapid charge system was that it eliminated the requirement for an investigation, which was both time consuming and resource intensive. It simply required that the disgruntled employee and the employer charged with discrimination be brought together and pressed to reach a no fault settlement — with no finding or admission of discrimination and no investigation.

To my knowledge, there were no legal challenges to this approach. To some extent, the absence of legal challenge must have resulted, at least in part, from the perception that the members of the Commission, which adopted this approach, were pro-civil rights and thus would do nothing to intentionally harm the effort to enforce the employment discrimination laws. I am certain, however, that if such a system had been so much as proposed during my tenure, it would have been challenged in the courts and Congress, and that we would have been excoriated in the media. I am equally certain that had we continued the policy of rapid charge, we would have been attacked for failing to change it — at least as much as we were for actually changing it.

We decided early in my tenure at EEOC, that the statute's mandate that we investigate charges meant that we investigate. At a bare minimum, it meant that we not devise a system that, by design, avoided investigation. Our policy decision to at least attempt to investigate all charges was just that, a policy decision, which we believed was more consistent with our statutory mandate. But just as there were flaws in our predecessors' rapid charge system, there were drawbacks in ours. Each system also had its advantages. The rapid charge system had the advantage of being quick and cheap, but disposed of charges without investigation. By contrast, our full inves-

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tigation policy, as we called it, took longer and was more costly. But it had the advantage of being more consistent with the statute, and had as its core feature the goal of actually making an administrative determination on the merits of the charge of discrimination.

I was astounded when we were criticized for adopting a policy that was based on the explicit language of the statute and focused on actual investigation of charges of discrimination. In light of the lack of criticism of the "rapid charge" approach, I was even more astounded at the success with which we were attacked for not perfectly implementing the full investigation policy. That is, we were attacked for not accomplishing immediately what was not even attempted by the prior regime, which, in turn, was itself not criticized, at least not in the devastatingly successful manner in which we were criticized.

I was not surprised, however, by the major infrastructure changes that the change in policy required us to make. The implications were enormous, requiring that we change virtually everything in the agency. We were also required to deploy our finite resources more effectively—maintaining the quantitative productivity levels, but with much higher substantive and qualitative input. Thus, politically we could not afford to process fewer cases, after investigation, than had been processed, without investigation, under the rapid charge system.

Just as it should be clear that our predecessors could legitimately initiate a policy that eliminated investigations, it should be equally clear that we were acting well within our discretionary authority as a commission to adopt and implement a full investigation policy that tracked the statutory language, but which, in its implementation, had short term consequences. These short term consequences were exploited in extra-judicial forums as examples of the commission failing to carry out its statutory duties. The irony of this should escape no one.

In a 1989 speech at Duke Law School, Associate Justice Scalia argued, correctly in my view, that an agency should be free to change its mind. He cited "political accountability . . . through direct political pressures upon the Executive and through the indirect pressure of congressional oversight as a check on such a change of mind." He could have gone further and stated that the changes could actually be foisted on the agency through those very same political pressures. But be that as it may, any change in the area of civil rights during the Reagan Administration was inherently suspect, (if not presumptively sinister), and thus subjected to intense scrutiny by Congress.

and the interest groups. Hence, the mere fact that we had the discretion to adopt and implement this policy change in no way insulated that change from political or public challenges. And, having been involved, one way of another, in more than sixty hearings during my tenure at EEOC, I can assure you that there were intense and constant political and public challenges to virtually every policy initiative.

Though it was not the case for the full investigation policy, there were instances when, even after full compliance with the Administrative Procedure Act, the Government in the Sunshine Act, and after surviving legal challenges, indirect political pressures (as Justice Scalia chooses to call it) trumped the administrative and judicial processes. This was accomplished by simply placing language in the agency's appropriations, which prohibited us from spending funds to implement the objectionable policy.

It should be understood that the initial battleground for policy makers — who admittedly have broad discretion — exists within that zone of discretion. That is, for an agency, the arguments against a policy, are normally related to the pros and cons of exercising that discretion in a particular way. Hence, the credible arguments against the full investigation policy involved the assessment that the policy would increase the backlog and divert limited resources from other areas such as pattern and practice or systemic cases. The political rhetoric that encapsulated the legitimate criticism accused us of implementing a policy that would gut civil rights enforcement and that was nothing more than a ploy of the Reagan Administration to undermine EEOC. The credible arguments were legitimate concerns, while the widely publicized and effective rhetoric was nonsense. But considering the nature of the indirect political pressures, both the credible arguments and the rhetoric are considered legitimate and are to be expected. Indeed, that rhetoric was digested by the media and the public more often and retained far longer than the legitimate concerns. Though the adoption of the full investigation policy was not a rulemaking subject to the Administrative Procedure Act; had it been, the more credible arguments would have been entertained during the comment period while the rhetoric would not have been. The latter is solely for public and political consumption. It is imperative, however, to recognize that the rhetoric is, more often than not, far more persuasive to the general public, the media, and the legislature though it does not inform the decisionmaking process.

The dark cloud of bad publicity and criticism can have an impact on those who are properly exercising their discretion. It thus becomes not only a question of whether the discretion is exercised in a legitimate and reasonable way but also whether the decisionmakers can take the heat — fair or unfair — for having exercised that discretion.

One should not be surprised, then, if agencies have exercised their discretion, at least in some part, to avoid criticism. Nor should one be surprised that if an agency makes and stands by an unpopular exercise of discretion, the decision makers will pay a price. Just because the decision is a lawful or appropriate exercise of discretion does not necessarily end the matter — with one major exception — the courts.

I might add that, even though I believed as an agency head that external pressures were a political reality, I did not believe that a decisionmaker should change or alter a decision made through the legitimate processes because of these external pressures. And, believe me I paid a heavy price. When an agency is granted broad discretion, the policymakers will have a correspondingly broad range of difficult decisions to make. One who has a deficit in courage or an appetite for popularity would be more apt to change a legitimate, sensible policy for no reason other than external pressures. To paraphrase an often used maxim, if you can't take the heat, stay out of the kitchen of policymaking — especially where there is broad discretion.

I continue to marvel at the foresight of our founding fathers in establishing a judiciary that is insulated from those external pressures — an insulation that is all the more important in difficult and perhaps unpopular cases, as is evidenced by the external pressures on policymakers. Before reaching the insulated judiciary, however, the confirmation process offers yet one more occasion — one more opportunity — for those who disagreed with that exercise of discretion to get one last shot. To accept the views of my critics, I had the unenviable choice of being either inherently evil or criminally stupid. But, to quote the words of Sir Winston Churchill, “Nothing in life is so exhilarating as to be shot at without result.” I say this not in a boastful way but rather with a genuine sense of relief — relief that my name and my life were not destroyed in the process of confirmation.

Since my confirmation, I have been asked frequently whether I was bitter about the difficulty of that process. The answer is no. I was, however, somewhat disappointed in the conduct of a few individ-

Moreover, I have no reason to be bitter — not only was I confirmed, I am a sitting federal judge who must now put all of those matters aside. The criticisms of me stemmed, for the most part, from a difference of opinion about how my fellow commissioners at EEOC and I should have exercised our legitimate discretion in enforcing the equal employment opportunity laws. Ironically, upon becoming an appellate court judge, not only have I forfeited that discretion, I must now actually defer to the discretion of district court judges and agency policymakers.

In contrast to my arrival at EEOC, where I was called upon to immediately develop plans for exercising the discretion vested in the agency, my arrival at the court involved learning a vocabulary replete with limiting instructions. For instance, in appeals from district courts, we have the generous authority to review questions of law de novo. On the other hand, a clearly erroneous standard is to be used to review factual determinations. And, we review many of the district court’s evidentiary rulings during trial for abuse of discretion. With respect to agencies, our world seems to revolve around Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., which in its essential form, holds that the courts will defer to an agency’s reasonable interpretation of an ambiguous statute that it administers. The buffer zone between our review authority and the agencies’ authority is arrayed with language such as reasonable, permissible, not arbitrary or capricious, or not manifestly contrary to the statute.

The application of Chevron enshrines the agencies’ legitimate exercise of discretion. In my brief tenure on the court, however, Chevron deference, as it is affectionately called, seems to equate ambiguity in the statute with a conveyance of discretion to the agency charged with administering or enforcing it.

Of course, in applying Chevron, the initial question is whether Congress has directly addressed “the precise question at issue.” If Congress has clearly addressed the issue, then “that is the end of the matter.” Where Congress has not spoken to the precise issue, Chevron step 2 is invoked. Associate Justice Stevens, writing for the Court, posits two instances when courts are to defer to the reasonable interpretation of the agency.

10. Id. at 842.
11. Id. at 844.
12. Id. at 842.
13. Id.
14. See id. at 843.
If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.\textsuperscript{15}

It would seem appropriate, as some commentators point out, that when there is no explicit delegation to the agency, it is incumbent upon the courts to make a determination that an "implicit delegation" in fact exists before it defers to the agency's interpretation of the admittedly ambiguous statutory language. That is, only after establishing that there is a delegation, does the court ask whether the interpretation is reasonable. However, these two seemingly separate steps are usually conflated, even though it seems apparent that deference to the agency's interpretation is dependent upon the finding or assumption that the agency, in fact, has been delegated the authority to make the selfsame interpretation. To the extent that this determination or assumption is invalid, deference to the agency's exercise of discretion would appear to be without basis and thus improper. By subsuming the determination of delegation in the finding of ambiguity, the mere presence of ambiguity serves the dual purpose of providing the occasion and the authority for exercising discretion. Hence, ambiguity and delegation of authority seem to achieve an odd equivalency. Indeed, it could be argued that, unless there is a separate determination of the delegation of authority, the ambiguity of the statute is the basis for the court's deference to the agency's determination, with the invocation of the delegation reduced to nothing more than a convenient fiction. Without finding such a delegation from Congress, one wonders whose intent the agency is really interpreting. Moreover, one wonders what is left of the role of a reviewing court in interpreting ambiguous statutes, when an agency's interpretation must be deferred to merely because it has interpreted the ambiguous statute, and the ambiguity itself confers the authority to do so as well as shields the interpretation from separate review by the courts. Associate Justice Scalia suggests that whenever there is ambiguity, delegation of authority to the agency might be assumed.

I am not at all sure just how much fiction or circular reasoning is involved in such an assumption, but that sorting out will have to oc-

\textsuperscript{15} Id. at 844 (footnote omitted).
cur over time. I can, however, envision instances in which an agency simply is not sure what the statute means or what exactly is intended. If the agency has litigation enforcement authority, as EEOC does, there are at least two ways to attempt to clarify the statute’s meaning. If the agency chooses rulemaking and the rulemaking is challenged in the courts, it is reviewed, under *Chevron*, to determine whether the interpretation is a reasonable interpretation. On the other hand, the agency could decide to investigate and litigate a case based upon the same theory as the rulemaking but, without actually adopting a rule. I know of nothing in *Chevron* that would require deference in such an enforcement action, while deference would be required in the former case. This also raises the question of what agency actions, other than formal rulemaking, are to be deferred to. Be that as it may, *Chevron* recognizes and accommodates an agency’s exercise of discretion. And, we appellate judges not only defer to but adhere to Supreme Court precedents.

Shortly after I went to the court, I was asked whether it was difficult for me to move from EEOC to the court, in view of the fact that I was moving from a position of broad discretion to one that required deference to that discretion. My answer was no. To the extent that there was difficulty moving from EEOC to the court, it was not related to the fact that I must now defer to rather than exercise discretion. If anything, my tenure at EEOC prepared me very well for my tenure on the court.

I think that a word or two must be said about what is required of agencies, especially those with law enforcement and rulemaking functions which generate controversy no matter what they do or don’t do. There seemed to be a tacit suggestion in some quarters during my confirmation that serving as the Chairman of one of the largest independent regulatory agencies for almost eight years was not adequate preparation for an appellate court. Though I have wondered whether this same view would have been taken had I been chairman of the FTC or the SEC, I can say without equivocation that my years at EEOC were tremendous preparation for a seat on the U.S. Court of Appeals for the D.C. Circuit. I say this in retrospect with nothing to gain. To the extent that the concerns were based on the fact that the agency was EEOC rather than another agency, I believe that the quality of the agency and the people there as well as the difficulty of the work (always controversial at the margins) are grossly underestimated. I believe that being the head of an independent regulatory agency, such as EEOC, demands and hones the very skills and qualities necessary to be an appellate court judge.

Thus far, for example, it is clear to me that a judge must be disci-
plined when making decisions. It takes time, intellect, intellectual honesty, and hard work to decide cases properly and to get them right. That is precisely what is required to exercise discretion in an agency such as EEOC. One does not simply wake up one day and decide that a particular policy will be implemented. The statute, applicable case law, and legislative history must be reviewed to determine the intent of Congress. Then the agency must sort through a range of policy options, and consider the arguments in favor of and against each option. Finally, the agency must formulate, support, defend, and implement the policy.

Judging requires a similar discipline. In the first instance, it requires that a judge ask himself or herself what his or her appropriate role is in the case to be decided. Moreover, judging, as I have found during my short tenure on the bench, necessitates an enormous amount of discipline to work through each argument, not to mention each component or element of each argument. I find also that with the large volume of work, I must always be sufficiently vigilant and disciplined to remind myself that every case is the most important case. There is no such thing as an unimportant or routine case.

My previous position also required that even in the worst of circumstances all options be explored and that even when all else is in turmoil, decisions be made calmly and thoughtfully. Nor could any argument or position be casually or cavalierly dismissed. I can assure you that this was far more easily said than done. Certainly being Chairman of EEOC, during a period when feelings ran high in the area of civil rights, required that I learn to make very difficult decisions in the eye of a political and legal storm. Justice Brandeis once wrote that “to the exercise of good judgment, calmness is, in times of deep feeling and on subjects which excite passion, as essential as fearlessness and honesty.” I could not agree more.

Though my current environment on the court tends to be more monastic and isolated, the preparation that I received in the more public and tumultuous world of an often controversial administrative agency has, in large part, made my transition from Commission Chairman to Judge — simply a matter of deference.

Thank you.