

Ronald M. Levin

*Mead and the Prospective Exercise of Discretion*

54 Admin. Law. Rev. 771 (2002)

Abstract by Dipal Shah

In his article, Professor Levin assesses the ramifications of the *Mead* test for deference to agency interpretations of administrative law. Levin asserts that *Mead* created a bifurcated method of deference to agency interpretation. After analysis of whether a case involves legislative or nonlegislative rules, courts will apply either *Chevron* deference, or the *Skidmore* test. Levin then claims that *Mead* exaggerated the distinction between the two types of cases, and incorrectly increased the role of *Skidmore* in agency lawmaking interpretation.

Levin argues that courts should generally use *Chevron* deference to review statutory interpretation. Furthermore, Levin contends courts should not base analysis on the procedural vehicle in which the interpretation appears. Levin maintains, contrary to *Mead*, that whether or not the agency has used its force of power to exercise authority should not be fundamental to decisions of granting deference. In conclusion, Levin maintains that the language of *Mead* is open and ambiguous, perhaps because the Court recognized the broadness of its decision and its potential need for future revision.