

2009

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CELEBRATION

American University

Washington College of Law

Is Chevron Out of Gas? The State of Judicial Review 25 years After *Chevron U.S.A., Inc. v. Natural Resources Defense Council*

Presented by the Administrative Law Review

April 24, 2009

2:30 pm – 5:30 pm

American University Washington College of Law

4801 Massachusetts Avenue, NW, Room 603, Washington, DC

2:00 pm

Registration

2:30 pm

Welcome / Introduction by *Claudio Grossman*, Dean, Washington College of Law and *Daniel Marcus*, Fellow in Law and Government, Washington College of Law

2:45 pm

Keynote Address by *The Honorable Antonin Scalia*, Associate Justice, United States Supreme Court

3:45 pm

Panel Discussion

Moderator: *Mark Niles*, Professor and Associate Dean for Faculty and Academic Affairs, Washington College of Law

Speakers: *J. Peter Coll*, Partner, Orrick, Herrington, Sutcliffe, LLP (Counsel for Mead Corp.)

David Frederick, Partner, Kellogg, Huber, Hansen, Todd, Evans, & Figel, PLLC

Ron Levin, Professor, Washington University (St. Louis) School of Law

Richard Murphy, Professor, William Mitchell College of Law

5:00 pm

Adjourn

On June 25, 1984, the Supreme Court's landmark decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council* created a two-part inquiry to guide judicial review of a federal agency's interpretation of its own statute. Where a statute is ambiguous, the *Chevron* test calls for deference by the reviewing court to the agency's interpretation. In 2001, the Court attempted to clarify the reach of the *Chevron* test in *United States v. Mead Corporation*, which explained that *Chevron* deference would normally apply to agency interpretations made in notice-and-comment rulemakings or in formal adjudications, but would apply to other agency interpretations only where Congress intended such interpretations to "carry the force of law." Where *Chevron* deference did not apply, the *Mead* Court indicated, the agency interpretation would only receive the usual "respect" accorded to it under the Court's 1944 decision in *Skidmore v. Swift*.

Justice Scalia dissented strongly in *Mead*, calling it "an avulsive change in judicial review," and stating, "We will be sorting out the consequences of the *Mead* doctrine, which has today replaced the *Chevron* doctrine . . . for years to come." In the aftermath of *Mead*, debate has grown over the clarity of the *Chevron/Skidmore* dividing line drawn in *Mead*, how much difference it makes in practice, whether the amount of judicial ink spilled on this issue is worth the trouble, and how the doctrine might affect the actions of federal agencies. We mark the silver anniversary of *Chevron* by asking: What is the state of *Chevron* law today? Has *Mead* provided more or less clarity to the courts and affected parties? And where will judicial review go from here?

General Registration – no charge

To register, please go to www.wcl.american.edu/secl/registration. For further information, please contact: Office of Special Events & Continuing Legal Education, 202.274.4075 or secl@wcl.american.edu