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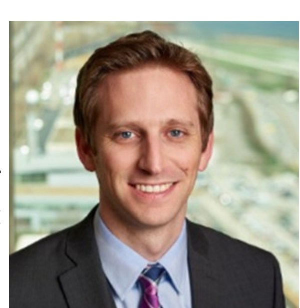

I'm thrilled to announce that, on May 15 at the federal courthouse in Cleveland, our Chapter will host the **Inaugural N.D. Ohio Bench-Bar Conference**. The stars of the show will be our illustrious federal judges, including a dozen magistrate, district court, and Sixth Circuit judges. They will share their insights and offer practical tips for both civil and criminal practitioners on a range of topics—discovery, case management conferences, motion practice, brief writing, oral advocacy, and trial. The event will take place in the naturalization room starting at 1 p.m. The formal program will end around 4 p.m. and will be followed by a cocktail reception with the judges.

I'm impressed by the outpouring of support and interest and the significant law firm sponsorships we've already received. Because space is limited, I urge you to register sooner than later at this link: https://fba-ndohio.wildapricot.org/event-6092194

If your firm is interested in sponsoring, please reach out to me at jtor@spanglaw.com. There are three tiers of sponsorship (Platinum, Gold, and Silver), and each one includes a certain number of free seats at the event.

Like everything great this Chapter does, this event is the result of teamwork. Special thanks to our longstanding Board member Aaron Bulloff, who deserves credit for initially proposing the idea. Thanks also to the Board members who've been helping organize the event: Fritz Berckmueller; Jackie Johnson; and Sam Lioi. And thanks to P.J. Sullivan for putting together the CLE application; attendees will get 3 hours of CLE credit.

I hope to see many of you there, and I hope this event becomes an annual tradition!

JUDGE SOLOMON OLIVER, JR.'S 30TH ANNIVERSARY AND LAW CLERK REUNION

Bettye J. Rhinehart*

On October 4 and 5, 2024, Judge Solomon Oliver, Jr. held a 30th-year anniversary and law clerk reunion. Thirty-five of his former law clerks returned to Cleveland to join in the celebration. On Friday night, a reception was held with the clerks and their families at the Carl B. Stokes U.S. Courthouse. As always, the food, prepared by the Judge's Judicial Assistant, Bettye Rhinehart, his Courtroom Deputy, Sharon Romito, and current law clerks was great. There were two highlights of the evening: a skit which poked polite fun at the Judge, staff and a few of the clerks, and a private portrait unveiling for our reunion group. We all had a further opportunity on Saturday night to catch up over a delectable dinner at a local restaurant, Acqua Di Dea. During dinner, Judge Oliver took the opportunity to express his appreciation to the clerks and staff for being such wonderful people– people who devote much of their lives to making the world a better place in which to live. The Judge also thanked them for the very generous contribution that they had made to the endowed scholarship fund at the College of Wooster named in honor of his parents, Reverend Solomon and Mrs. Willie Lee Oliver. The evening concluded with excitement about getting together again five years from now, as usual, and commitment to keep up as best we can in the interim.

* Bettye J. Rhinehart is Judge Oliver's Judicial Assistant

Judge Oliver's Law Clerks at 30th Reunion

PORTRAIT UNVEILING CEREMONY FOR THE HONORABLE SOLOMON OLIVER, JR.

Bettye J. Rhinehart*

Bettye Rhinehart, Louisa Oliver, and Judge Oliver

On October 18, 2024, the Honorable Solomon Oliver, Jr. held a portrait unveiling ceremony at the Carl B. Stokes United States Courthouse. Judge Oliver was appointed to the United States District Court for the Northern District of Ohio on May 9, 1994, by President William H. Clinton. He served as Chief Judge from 2010 to 2017, and now serves as a Senior Judge on the Court. Chief Judge Sara Lioi welcomed the packed courtroom to the ceremony and introduced Audrey Hudak, who sang the National Anthem. Mariama Whyte then sang the Black National Anthem. Both Ms. Hudak and Ms. Whyte are graduates of the College of Wooster, from which Judge Oliver also graduated. Reverend Dr. Otis Moss, Pastor Emeritus of the Olivet Institutional Baptist Church, where Judge Oliver has been a member since arriving in Cleveland in 1976, gave the Invocation.

Following the Invocation, retired U.S. Magistrate Judge for the Northern District of Ohio, Kenneth S. McHargh, whose friendship with Judge Oliver dates back to when they were students at the College of Wooster, spoke. They also served together in the United States Attorney's Office for the Northern District of Ohio and on the Court for a number of years. Judge McHargh recounted their work as college students during the 1960s on issues of racial, political and social equality. He indicated that Judge Oliver's leadership had not only been impactful as a student, but also in the United States Attorney's Office where Judge Oliver served as Chief of the Civil Division and Chief of the Appellate Litigation Division and on the Court, where he has served for more than 30 years.

Next, two of Judge Oliver's former law clerks, Judge Lindsay C. Jenkins, U.S. District Court for the Northern District of Illinois, who clerked with Judge Oliver from 2002-2004, and Judge Jessica G. L. Clarke, U.S. District Court for the Southern District of New York, who clerked for Judge Oliver from 2008-2010, spoke on behalf of his 48 former and current clerks. They highlighted the diversity of the clerks in terms of background and experience. Over half of his law clerks have been minorities, including 27 African-Americans and over half female. Twelve went on to do appellate clerkships. Four have gone into full-time teaching, including Angela Onwuachi-Willig, the current Dean of the Boston University School of Law. Five have become judicial officers, including Magistrate Judges Carmen Henderson and Jennifer Armstrong who serve on the United States District Court for the Northern District of Ohio. A number of clerks serve as associates and partners in law firms across the United States, as well as in-house corporate counsel positions. A relatively large number have gone into government service e.g., as Assistant U. S. Attorneys, Federal Public Defenders, and as attorneys in the Civil Rights Division of the United States Justice Department, the Internal Revenue Service, the Federal Trade Commission, as well as

with municipal and state governments. Others hold public interest positions, such as with the Bronx Defenders, the Southern Poverty Law Center, and the National Immigrant Justice Center.

Judges Jenkins and Clarke both spoke of the influence Judge Oliver had on the careers and lives of his clerks, including themselves. Judge Clarke said, “We all gained a mentor for life. Someone we have called upon to ask for career advice and who is our first call when we have news of career or life changes. Our clerkships were about listening, learning and watching. [Judge Oliver show[ed] us by example] how to treat the litigants, how to treat the lawyers, and how to show respect for the judicial system.” Judge Jenkins described Judge Oliver as a “towering figure. He is kind and thoughtful and humble and...an exceptionally skilled judge...” She stated that in the legal community, Judge Oliver is viewed as a “role model, a mentor [and as a] trailblazer,” and as being both “ inspirational and ... wise.”

Judges Jenkins and Clarke also shared reflections from some of Judge Oliver’s other clerks on the value of clerking, and in particular with Judge Oliver. Jeffrey Carr stated, “Serving as one of Judge Oliver’s law clerks is and always will be the highlight of my professional career. As a law clerk, I quickly noticed how the Judge focused on making sure that everyone who comes before the court is treated fairly and with respect.” He further stated, “Judge Oliver is the epitome of fairness, and I know I would not be where I am today if I did not have the opportunity to spend two years with him.” Jennifer Cupar stated, “Judge Oliver showed me that true mentorship means valuing every voice, empowering others with the tools to reach their fullest potential, and fostering meaningful connections. These invaluable lessons continue to shape the way I teach today.” Tanya Miller said, “The fact that I was an African-American female made my chances of obtaining the fiercely coveted position of a judicial clerk a near statistical impossibility. Yet, with the odds heavily against me, Judge Oliver changed the course of my professional career with one stroke of the pen. He hired me, and in doing so gave me admission to one of the most elite and respected categories of lawyers in our profession.” Von Dubose stated, “Judge Oliver’s titles are many and varied: jurist, lawyer, father, mentor, professor, public servant. Of the folks who have influenced my life, Judge Oliver has been the standard bearer for all of these things. It is rare that one encounters a single person with all of the traits so critical to a meaningful professional and personal life.” Magistrate Judge Jennifer Armstrong stated, “I have no doubt that I would not be where I am today if not for him. I ... Strive to model as best I can his judicial humility and the way he always treats everyone that appears before him with dignity and respect.” Margaux Day also spoke of how the Judge treats everyone with dignity and respect. She stated, “That might sound simple, but in practice it was profound and has inspired me every day since.” Several of Judge Oliver’s law clerks were in attendance.

Crowded Courtroom

Judge Oliver thanked everyone for coming and acknowledged his nervousness at being the center of attention in front of his family and judicial colleagues. He then introduced his relatives who filled the jury box. All of his brothers and sisters were present, except his recently deceased brother, Leroy, and his sister Eunice, who was caring for her ill son. Also present were his sons, daughter-in-law, grandchildren, sisters-in-law and

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Judge Oliver's Family

nieces and nephews. Judge Oliver paid special tribute to his wife, Louisa, to whom he has been married for more than 53 years. He described growing up in Bessemer Alabama, which was segregated from top to bottom. Though the town was majority African American, there were no African-American firefighters, policemen or governmental officials. Judge Oliver indicated that there was no job that he could have had if a white person wanted it. He credits his parents for teaching him and his brothers and sisters to believe in themselves despite this environment. They had hope that things would change for them and worked to make it happen. They were led to believe that no race, sex, religion, or nationality had a monopoly on talent, neither should they have a monopoly on opportunities. Judge Oliver also expressed his gratitude for those involved in the civil rights movement and to the lawyers at the NAACP and other lawyers who formulated and carried out the strategy that led to *Brown v. Board of Education*, the seminal case that led to the dismantling of legal segregation in America. Without them, his becoming a federal judge would have been out of reach. He also highlighted the importance of the clerkship he had with Judge William H. Hastie, the first African-American Article III judge who was also involved as a lawyer with the strategy that led to *Brown*, as the foundation for everything he has been able to achieve in the profession.

The celebration ended with the introduction of the artist, Mr. Thomas Hudson, who briefly spoke about the process and experience of painting the Judge's portrait. Afterwards, Judge Oliver's wife, Louisa, his three grandchildren, Zora, Julian, and Marcus, and his Judicial Assistant of more than 30 years, Bettye Rhinehart, unveiled the Judge's portrait. Thereafter, a reception, sponsored by the Federal Bar Association, the Cleveland Metropolitan Bar Association, and the Norman S. Minor Bar Association was held.

*Bettye J. Rhinehart has been Judge Oliver's Judicial Assistant for more than 30 years. She wishes to thank his Courtroom Deputy, Sharon Romito, and his two current law clerks, Dana Bye and Ashley Williams, for their help and support.

Judge Lindsay Jenkins and Judge Jessica Clarke

Magistrate Judge Darrell Clay, Retired Magistrate Judges Verne Armstrong and Kathleen Burke, and Chief Judge

Second from left at Table 2: Two of Judge Oliver's former clerks: Chaka Patterson (Chicago) and David Cohen

Introduction to Federal Practice Seminar

January 6, 2025

Sixteen lawyers attended the January 6 Introduction to Federal Practice Seminar, and they were all sworn in to practice in the NDOH at the conclusion of the CLE. Opening remarks were given by Judge Oliver. Attendees then were provided an overview of the role of federal magistrate judges by Magistrate Judge Sheperd. Attendees also received training from the Clerk's office on court programs and electronic filing. They were also provided an overview of the local rules and technology available in the federal courthouses in the Northern District.

Bringing the Classroom to the Courtroom: Civics Education Takes Center Stage in the Northern District of Ohio

Judge Jack Zouhary
Ben Syroka

Nearly two-hundred years ago, Alexis de Tocqueville noted: "America is the only country in the history of the world that is bound only by ideas. They have no common religion, no common caste or class; they are devoted to no bloodline, or to any ancestral achievement."[1] Rather, Americans "are bound only by the ideas of the enlightenment, and if these ideas are not taught to every separate generation, they are not bound."[2]

Judge Jack Zouhary, a first-generation American, holds this principle close to his heart. As part of his judicial duties, Judge Z has long enjoyed the opportunity to talk to students about our country's founding and common national ideals, whether at the courthouse or out in the community. For instance, after coming to the federal bench, Judge Z took the opportunity to have Naturalization ceremonies take place not just at the courthouse, but at various venues around the Northern District of Ohio, including middle and high schools. Understanding how important it was for the public to see the swearing-in process, Judge Z helped change these formerly "in and out" events to symbolic ceremonies, allowing existing citizens and students to participate in the program.

More recently, Judge Z began using these ceremonies as an opportunity to teach the audience about civics. But he realized he couldn't do it on his own: "I felt I needed to bring together those in our community who are teaching civics to share with each other what we are doing and how we can reach more students." According to the National Assessment for Education Progress, less than a quarter of students were proficient in civics in 2022—far below the proficiency demonstrated by new citizens on the standardized citizenship test. This is not merely a troubling statistic—it is a warning. Judge Z believes, "If we don't change our approach to teaching civics, young Americans, born with the gift of citizenship, will grow up without knowledge of how America has survived over 250 years."

Why is this such a problem? In his recent book, *One Thought Scares Me . . .*, Richard Dreyfus notes: "[W]e no longer teach our children the Bill of Rights or Constitution . . . we've stopped teaching civics, and now we can't have a civil political discussion. The American experiment may fail if we don't act." This book along with David McCullough's *The American Spirit: Who We Are and What we Stand For* inspired Judge Z to create a "civics army." But how?

In recent years, Judge Z instituted a symposium to share various resources available to teachers, including outreach through the federal court, local and state bar initiatives, and non-profit programs such as Ohio Center for Law-Related Education. Another resource is iCivics' forward by Justice Sandra Day O'Connor. This tool allows teachers to use ready-made lesson plans covering many topics.

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[1] Alexis de Tocqueville, DEMOCRACY IN AMERICA (1st ed. 1837)
[2] *Id.*
NAEP Report Card: 2022 NAEP Civics Assessment, THE NATION'S REPORT CARD, https://www.nationsreportcard.gov/highlights/civics/2022/ (last visited Mar. 12, 2025).
About Us: Inspiring a Passion for Civic Life and Learning, ICIVICS, https://vision.icivics.org/about/ (last visited Mar. 12, 2025).

The symposium is a collaborative event, and the teachers are encouraged to share successful strategies and programs they have utilized in their classrooms. Last fall, the Toledo Federal courtroom was buzzing, and the jury box and gallery were full, but not with jurors and lawyers. The room was full of local educators, in attendance for the Third Annual Civics and Civility Symposium. The program began with a new twist—a mock trial to demonstrate how a jury trial works. The civil trial, inspired by the movie "My Cousin Vinny," involved two high school students accused of knocking over a mailbox. Several judicial law clerks and externs from the courthouse took part. Judge Z even served as courtroom deputy, while his real-life courtroom deputy kept a watchful eye as the presiding judge.

After, the student jury delivered its verdict, Kevin Lynch of the National Constitution Center[3] in Philadelphia, Pennsylvania took the stage. The NCC is a bipartisan non-profit dedicated to the study of the Constitution that provides teachers with numerous free resources, including instructional materials by topic, video course modules, and even virtual museum field trips. The NCC also hosts frequent "scholar exchanges," in which "experts" "Zoom" into teachers' classrooms to instruct students on topics such as the Bill of Rights, the First Amendment, Landmark Supreme Court Cases, and Article III.[4] Judge Z has connected the NCC with the American College of Trial Lawyers and, more recently, with the Ohio State Bar Association, so that lawyers can serve as the Zoom experts reaching students from coast to coast.

The Symposium includes a resource-sharing segment. Teachers Dominic Helmstetter, Ron DeGregorio, and Josh Spiegel, from Perrysburg High School, presented on strategies to stimulate engagement and student discussions. Some examples include Street Law classroom deliberations, which "allow teachers to help students cooperatively discuss contested political issues by carefully considering multiple perspectives and searching for consensus."[5] They also outlined the American Legion Department of Ohio's Americanism program—a civics test that offers students a chance to compete for a trip to Washington D.C. to learn more about our nation's founding and history.[6] The panel closed with a presentation on the use of artificial intelligence to create lesson plans and assignments more efficiently.

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[3] *The National Constitution Center*, https://constitutioncenter.org/ (last visited Sept. 8, 2023).
[4] *Scholar Exchanges*, NAT. CONST. CTR., https://constitutioncenter.org/education/live-online-events/peer-to-peer-exchanges (last visited April 22, 2024).
[5] *Classroom Deliberations: A Model for Structured Discussion of Contested Political Topics*, STREET LAW INC. (2023), https://streetlaw.org/about-deliberations/.
[6] *Americanism*, AM. LEGION DEP'T OF OHIO, https://www.ohiolegion.com/americanism/#:~:text=An%20objective%20of%20the%20Ohio,the%20Ohio%20American%20Legion%20and (last visited April 22, 2024).

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Benjamin Franklin once said "A Republic, if you can keep it," which is also the title of Justice Neil Gorsuch's recent book. Justice Gorsuch reflects "about the responsibilities each of us shares to sustain our distinctive republic of, by, and for 'we the people.'" Civics education is not just a subject; it's a lifeline of democracy in America. It empowers citizens with the knowledge and skills to participate effectively in our democratic society. It fosters understanding, tolerance, and a shared sense of responsibility.

During a period in which our nation seems more divided than ever—civics can function as a bridge to unite and guide our young people toward a more perfect union.

Judge Z is on a mission to "improve the grade card of our young people," and he has no intention of slowing down. He recently chaired a Northern District of Ohio judicial committee, in collaboration with the FBA, to create an online repository of civics resources. Additionally, Judge Zouhary chairs the Toledo Bar Association's Civics Outreach Committee, currently in the process of implementing the Cleveland Metropolitan Bar Association's "3R's" civics program in Toledo schools.

Articles

Do The Right Thing

James Walsh, Benesch

My four-year-old son heard me talking about the law recently, prompting him to ask a natural question: "Dad, what is the law?" The answer isn't as simple as it might seem. Four-year-olds have a way of identifying philosophical vanishing points with uncanny efficiency. (*See, e.g.*, "Dad, if G-d made everything, then who made G-d?")

The fact of the matter is that the law—the thing which forms the basis of all our professional lives—is not so neatly circumscribed. The law is more than just rules or guidelines. It is different than morals or ethics. It is distinct from duties or obligations. It is all of those things, in a sense, but the whole is greater than the sum of its parts.

Aristotle famously said, "the law is reason, free from passion." Try telling that to a four-year-old. Unless one is prepared to answer the follow-up questions: "what is reason?" and "what is passion?" one must provide a simpler response.

Black's Law Dictionary fares no better. Black's states that the law is "the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society."[1] This erudite definition stretches its wings, but it also presupposes an understanding of "regime," "systematic application of force," and "politically organized society." No, for a four-year-old, that won't do either.

The four-year-old mind, free of abstraction and pretension, demands clarity. Luckily for me, I recently read a book that explores the ancient Hebrew concept of *sedeq*, which loosely translates to "justice" or "righteousness."[2] Childlike in its simplicity, *sedeq* essentially means "the right thing." Surely, the law is the right thing, because if it isn't the right thing, then it shouldn't be the law.

Settling on "the right thing" as a working definition, I explained to my son that in litigation we seek to right wrongs. We pursue *sedeq*. Obviously, in practice, this is complicated and nuanced, as the right thing is often subject to competing viewpoints and evolving standards of conduct. But four-year-olds understand that when they take a toy away from their younger brother the right thing to do is to give it back and apologize. Often, the right thing is, at once, simple to identify but excruciating to implement.

As we embark on 2025, I encourage all my colleagues to ponder the simplicity of what this profession demands of us. And the next time my son asks me "Dad, what do lawyers do?"—four-year-olds, like law professors, are known for repeating the same questions over and over again with slight variations— I will proudly look him in the eye and say, "buddy, we do the right thing."

The philosopher pondering the mysteries of the ocean.

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[1] Black's Law Dictionary (12th ed. 2024).

[2] J.P.M. Walsh, The Mighty from Their Thrones: Power in the Biblical Tradition 35 (2004) (no relation between this author and the author of this article).

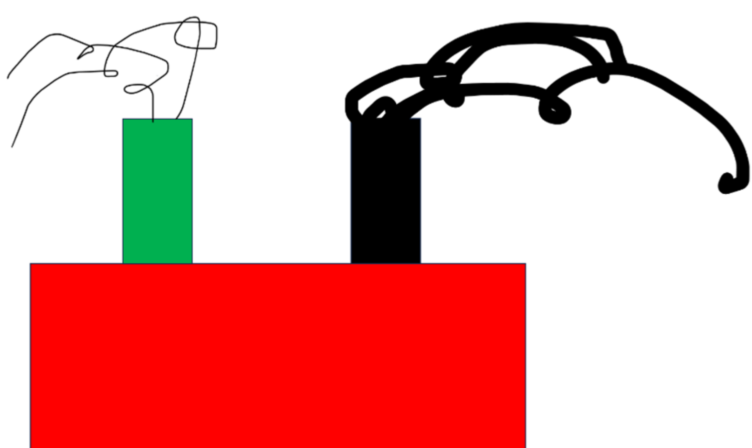
JUDICIAL REVIEW OF AGENCY LEGAL INTERPRETATIONS AFTER *LOPER BRIGHT*

Jonathan L. Entin[*]

The highest-profile administrative law case in many years was last June's *Loper Bright Enterprises v. Raimondo*,[1] which overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*,[2] a landmark 1984 decision that lower federal courts had relied on in thousands of cases over the past 40 years. *Chevron* required reviewing courts to defer to reasonable agency interpretations of ambiguous statutes they administer, but *Loper Bright* concluded that such deference was not appropriate. *Loper Bright* suggested instead that reviewing courts should accord "due respect" to agency views but not defer to those views.[3] Exactly what that means is far from clear. This article offers an overview of the deference debate, considers how courts might react to *Loper Bright*, and puts the deference debate into the broader context of judicial review of agency legal and policy decisions.[4]

I. An Overview of *Chevron*

The diagram below illustrates *Chevron*, in vastly oversimplified form: The Clean Air Act says that the EPA should set standards for emissions from a "stationary source," which the statute defined as "any building, structure, facility, or installation which emits or may emit any air pollutant."[5]



[*] David L. Brennan Professor Emeritus of Law, Case Western Reserve University. This article is based on presentations at the Cleveland Tax Institute, the William K. Thomas Inn of Court, and Kendal at Oberlin. Thanks to participants in those programs for helpful comments and suggestions.

[1] 603 U.S. 369 (2024).

[2] 467 U.S. 837 (1984).

[3] *Loper Bright*, 603 U.S. at 403.

[4] This article does not address judicial review of agency fact-finding, which was not at issue in *Loper Bright*. There is a large body of law relating to judicial review of agency fact-finding in formal adjudication, which is governed by the substantial-evidence standard. *See* 5 U.S.C. § 706(2)(E). The Supreme Court decided two other potentially significant administrative law cases last term. One of those, *SEC v. Jarkesy*, 603 U.S. 109 (2024), could have major implications for the future of agency adjudication. The other, *Corner Post, Inc. v. Bd. of Governors*, 603 U.S. 799 (2024), addressed the statute of limitations for challenging the validity of agency rules. This article does not address those subjects, either.

[5] 42 U.S.C. § 7411(a)(3).

Imagine a factory—the red rectangle— with two smokestacks, one of which puts out relatively little air pollution—the green stack—and the other of which puts out more air pollution—the black stack. The green stack complies with the emission standard, but the black one doesn't. Taken together, though, the combined emissions from both stacks do comply with the emission standard.

The statutory definition doesn't clearly resolve whether the stationary source is the entire factory—both smokestacks combined—or each individual smokestack. The EPA defined a stationary source as the entire plant—both smokestacks combined—rather than each stack individually. The Supreme Court -upheld the EPA's definition.

In doing so, the Court used what was called the *Chevron* Two-Step:

Step 1. Has Congress answered "the precise question at issue"? If so, the congressional answer controls, and the agency must follow what Congress has said.

Step 2. If, however, the statute is "silent or ambiguous" about the precise question at issue, a reviewing court should defer to an agency's "permissible" construction of the statute.[6]

Applying this test, the Court concluded:

1. Congress had not answered "the precise question at issue": whether each individual smokestack was a stationary source or whether both smokestacks combined were a stationary source; and

2. EPA's decision to focus on both smokestacks combined was a permissible reading of the statute.[7]

The Court offered an institutional defense of deference. Congress often leaves gaps in statutes. Maybe legislators didn't anticipate a possibility so never addressed it when enacting the law. Or maybe legislators realized that there was a problem but couldn't agree on how to resolve it. Or maybe they realized that the problem existed but lacked the expertise to solve it so wanted the agency, which has more institutional knowledge than a generalist legislature, to address the problem. Whatever the explanation, courts should defer when the agency offers a defensible interpretation of a statutory ambiguity.[8]

Why? Because judicial deference recognizes the limitations of the judiciary compared with the function of the political branches. Agencies might not be directly accountable to the people, but they are indirectly accountable because agencies are accountable to the president and to Congress.[9]

Note several features of the *Chevron* Two-Step. First, the court decides on what is "the precise question at issue." Second, the court decides whether Congress has clearly answered that question. Third, the court decides whether the agency's interpretation of the statute is "permissible." Fourth, *Chevron* deference applies only when an agency interprets an ambiguous statute that it administers—for example, the EPA might get deference when interpreting an ambiguous provision of the Clean Air Act, but not when interpreting a general statute such as the Administrative Procedure Act or the Freedom of Information Act.

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[6] *Chevron*, 467 U.S. at 842–43.
[7] *Id.* at 845.
[8] *Id.* at 865.
[9] *Id.* at 865–66.

Subsequent decisions established thresholds for applying *Chevron*. For example, in *United States v. Mead Corp.*,[10] a case involving what tariff applied to imported day planners where an agency field office made the call in a ruling letter, the Court said that *Chevron* doesn't come into play unless the agency action was taken at a sufficiently high level—a field office is too low on the organization chart. Also, the agency interpretation must have been given in a sufficiently formal setting—such as notice-and-comment rulemaking, but not a ruling letter.[11]

A separate doctrine, called major questions, deemed *Chevron* inapplicable when the subject of an agency interpretation involves the assertion of broad authority over an economically and politically significant matter. When a major question is involved, Congress must have clearly authorized the agency to act. The Court first articulated the major questions doctrine as an alternative basis for decision in *FDA v. Brown and Williamson Tobacco Corp.*,[12] which held that the FDA lacked authority to regulate tobacco products. The Court also invoked the doctrine in *King v. Burwell*,[13] where it upheld a complex provision relating to tax credits under the Affordable Care Act but did so on the basis of its own interpretation of the statute rather than by deferring to the agency's interpretation. And it relied on the major questions doctrine in *West Virginia v. EPA*[14] to invalidate the agency's Clean Power Plan.

Chevron was always controversial, but the source of the criticism has changed over the years. The original decision upheld a Republican administration's policy that allowed for less regulation, so liberals condemned the doctrine as putting a judicial thumb on the scale in favor of *deregulation*.[15] Later, when Democratic administrations pursued more vigorous policies, conservatives condemned the doctrine for putting a judicial thumb on the scale in favor of *regulation*.[16] Wherever they were coming from, the critics essentially argued that deference undermined the role of the courts, as Chief Justice Marshall put it, "to say what the law is."[17] At the same time, when it served their political or rhetorical purposes, conservatives and liberals each invoked the institutional defenses of deference that the *Chevron* opinion offered.[18]

II. The Implications of *Loper Bright*

This brings us back to *Loper Bright*. At issue was the validity of a National Marine Fisheries Service rule that required owners of boats working in the Atlantic herring fishery to pay the costs of federal observers who monitor compliance with fishing rules at sea. The relevant statute provided for the onboard observers but said nothing about who should pay for carrying them, although the statute explicitly required that the owner or operator of vessels operating in other fisheries pay those costs.[19] The D.C. Circuit upheld the rule under *Chevron*.[20] The Supreme Court did not address the validity of the rule, holding only that the rule must be reviewed without deference to the agency.[21]

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[10] 533 U.S. 218 (2001).
[11] *See id.* at 229–34.
[12] 529 U.S. 120, 159–61 (2000).
[13] 576 U.S. 473, 485–86 (2015).
[14] 597 U.S. 697, 720–35 (2022).
[15] *See, e.g.,* THOMAS W. MERRILL, THE *CHEVRON* DOCTRINE: ITS RISE AND FALL, AND THE FUTURE OF THE ADMINISTRATIVE STATE 6 (2022); Cynthia R. Farina, *Statutory Interpretation and the Balance of Power in the Administrative State*, 89 COLUM. L. REV. 452 (1989).
[16] *See, e.g.,* MERRILL, *supra* note 15, at 6–7; Philip Hamburger, Chevron *Bias*, 84 GEO. WASH. L. REV. 1187 (2016).
[17] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).
[18] *See generally* Gregory A. Elinson & Jonathan S. Gould, *The Politics of Deference*, 75 VAND. L. REV. 475 (2022).
[19] *Loper Bright*, 603 U.S. at 381.
[20] 45 F.4th 359 (D.C. Cir. 2022). *Loper Bright* was consolidated with another case in which the First Circuit also upheld the agency's position using *Chevron* deference. *See* Relentless, Inc. v. U.S. Dep't of Commerce, 62 F.4th 621 (1st Cir. 2023). The Court probably consolidated the cases because Justice Ketanji Brown Jackson recused herself in *Loper Bright*, which was heard in the D.C. Circuit while she was a member of that court. *See Loper Bright*, 603 U.S. at 376 (explaining that Justice Jackson participated only in *Relentless*).
[21] *Loper Bright*, 603 U.S. at 413.

Chief Justice Roberts explained that *Chevron* must be overruled because its deference doctrine was incompatible with the judicial review provision of the Administrative Procedure Act, which says that reviewing courts "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."[22] For the majority, this means that courts must resolve legal questions without deferring to agencies. After all, "agencies have no special competence in resolving statutory ambiguities. Courts do."[23]

Where does that leave us? The Court left intact previous decisions that were based on *Chevron* despite *Loper Bright*'s rejection of that precedent. Decisions based on *Chevron* deference involved statutory interpretation, and statutory precedents receive a strong form of *stare decisis* protection because Congress can overturn such rulings.[24]

Beyond that, Chief Justice Roberts invoked *Skidmore v. Swift & Co.*,[25] a 1944 case that said that agency decisions "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance."[26] The weight accorded to the agency's view depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[27] This approach is consistent with *Mead*, where the Court held that *Skidmore* applied even though *Chevron* deference did not because the agency's action was not made at a sufficiently high level or in a sufficiently formal proceeding.[28] Indeed, in that case the lower court on remand applied *Skidmore* and found the agency's position to be legally unsound.[29]

How exactly a regime of "respect" based on *Skidmore* will work is hard to say. Justices of divergent views have expressed deep skepticism about the workability of such a system.[30]

Whatever the merits of *Skidmore* in the wake of *Loper Bright*, the evidence so far suggests that lower courts are not taking that approach. For example, the Sixth Circuit did not mention *Skidmore* in its high-profile ruling that struck down the Federal Communications Commission's net-neutrality rules for Internet service providers.[31] That is hardly an isolated example. In the months since *Loper Bright* came down, the federal courts of appeals have referred to *Skidmore* in fewer than one-fifth of the cases that have invoked *Loper Bright* itself.[32]

Perhaps the post-*Loper Bright* world will reflect the views of the judges who get to decide challenges to agency legal and policy interpretations. Think about the propensity of conservative opponents of Democratic presidents' policies to file suits in particular courts or for liberal opponents of Re-publican presidents' policies to file their suits in other particular courts. This prospect might be exacerbated by Justice Gorsuch's lengthy concurring opinion that strongly criticized *Chevron* deference as incompatible with the judicial role as historically understood and Justice Thomas's brief concurring opinion suggesting that judicial deference to agencies might be unconstitutional.[33]

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[22] 5 U.S.C. § 706.
[23] *Loper Bright*, 603 U.S. at 400–01.
[24] *See id.* at 412.
[25] 323 U.S. 134 (1944).
[26] *Id.* at 140.
[27] *Id.*
[28] United States v. Mead Corp., 533 U.S. 218, 235–38 (2001).
[29] Mead Corp. v. United States, 283 F.3d 1342 (Fed. Cir. 2002).
[30] *See Loper Bright*, 603 U.S. at 476 (Kagan, J., dissenting) ("If the majority thinks that the same judges who argue today about where "ambiguity" resides are not going to argue tomorrow about what "respect" requires, I fear it will be gravely disappointed."); *Mead*, 533 U.S. at 250 (Scalia, J., dissenting) (describing *Skidmore* as an "anachronism" that embodies "an empty truism and a trifling statement of the obvious").
[31] *See In re* MCP No. 185, 124 F.4th 993 (6th Cir. 2025).
[32] A Westlaw search on February, 2025, found 137 court of appeals cases that cited *Loper Bright*, only 27 of which mentioned *Skidmore*.
[33] *See Loper Bright*, 603 U.S. at 416–48 (Gorsuch, J., concurring); *id.* at 413–16 (Thomas, J., concurring).

III. Other Contexts for Judicial Review

The deference controversy is hardly the only setting in which courts get to review agency legal and policy decisions. This final section briefly touches on other settings and compares the various approaches.

Let's return to the oversimplified model of the original *Chevron* dispute, the one about the factory with the two smokestacks. Recall that this dispute involved the definition of a stationary source and whether the source was each individual smokestack or both smokestacks at our hypothetical factory. But the ultimate question was whether the stationary source, however defined, complied with the applicable air pollution standard.

Think now about the standard itself. Another provision of the Clean Air Act directs the EPA to promulgate air pollution standards (referred to in the statute as national ambient air quality standards) that "are requisite to protect the public health." The statute says nothing about whether the agency must engage in cost-benefit analysis in promulgating its air pollution standards. But suppose that the EPA decides that the statute allows it to use cost-benefit analysis and sets the standard applicable to the stationary source on the basis that each life saved by the standard is worth $1.00.

Further suppose that an appropriate challenge to the EPA's decisions is filed in an appropriate court. We have two issues: (1) the lawfulness of the agency's use of cost-benefit analysis in setting its air pollution standard; and (2) the validity of the standard that values each life saved at $1.00. The reviewing court would approach those issues differently.

On cost-benefit analysis, the change from *Chevron* to *Loper Bright* matters. Under *Chevron*, we would see that the statute says nothing explicit about cost-benefit analysis. Therefore, the statute is silent or ambiguous at Step One. So the court would proceed to Step Two and ask whether the agency's decision to use cost-benefit analysis is permissible or reasonable. Under *Loper Bright*, the court would simply interpret the statute and determine the meaning of "requisite to protect the public health." The court, if it used *Skidmore*, would give appropriate respect to the agency's view but would not be required to endorse that view if it is not sufficiently persuasive.

But even if the reviewing court determined that the statute allows the agency to engage in cost-benefit analysis in setting air pollution standards, it would also have to determine the validity of the actual standard that the agency adopted. Any cost-benefit analysis that valued each life saved at only $1.00 seems dubious. Even under *Chevron*, let alone under *Loper Bright*, the reviewing court would not ask whether the standard itself was permissible or reasonable. Instead, the court would ask whether the standard was arbitrary and capricious. In other words, agencies might well have legal authority to act but exercise that authority inappropriately.

* * * * *

Loper Bright was a major development in administrative law that will have repercussions for years to come. But *Loper Bright* leaves many questions unanswered and does not even address a large aspect of judicial review of agency actions. We should recognize both its importance and its limitations.

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[34] 42 U.S.C. § 7409(b)(1).

[35] *Chevron* did not raise this question, but the following discussion is based loosely on the scenario in *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457 (2001). The $1.00 per life saved is admittedly unrealistic, but it was chosen for ease of exposition. The analysis would be the same regardless of the value the agency placed on each life saved.

[36] *See* 5 U.S.C. § 706(2)(A).

New Year, New Advances in Legal Artificial Intelligence

Brendan Mohan*

The year 2025 has already begun with significant developments in the field of Artificial Intelligence (AI). During his inauguration speech on January 20, incoming President Trump emphasized the importance of AI, outlining his plans to redefine the United States' stance on its development and use in the coming years. The very next day, the Stargate Project, a joint venture between OpenAI, SoftBank, and Oracle, was announced, unveiling a massive $500 billion investment over the next four years to build new AI infrastructure for OpenAI within the United States.[1] Just three days after his inauguration, President Trump signed an Executive Order updating the AI policies established by the Biden Administration. The Trump administration heralded these changes as critical to strengthening America's global dominance in AI.[2] However, the use of AI is not new to either the private sector or federal agencies. Big law firms were already incorporating AI into their operations as early as 2023,[3] while federal agencies steadily increased their adoption and use of AI throughout 2024.[4] As the beginning of 2025 unfolds, it's clear that AI will remain a central focus for both law firms and government priorities in the United States.

Big Law's Incorporation of AI

By early 2024, at least 41 of the United States' highest-grossing law firms confirmed they were using AI for legal work.[5] The firms reported using AI in a variety of different means across firms, including for legal tasks and business operations. On the legal side, lawyers employed generative AI for tasks such as researching legal matters, drafting documents, and generating transcripts.[6] On the business side, professionals used AI to save significant time by using it to create marketing materials and other content.[7] Today, the number of firms using AI in their operations is likely much higher. As AI has evolved, many firms have begun developing internal tools to ensure compliance with client confidentiality requirements. This rush to create in-house systems has sparked a talent war among the largest firms, all racing to perfect their own AI technologies.[8]

Yet, the surge is not surprising given the potential benefits that an in-house AI system could offer a law firm. AI offers firms the ability to cut down significant costs for clients, while maintaining complete confidentiality and the potential of having complete accuracy.[9] AI companies argue that in-house counsel and law firms should view AI as a highly capable associate with superhuman document review abilities. While there is always the potential for AI to make mistakes, AI companies argue that the same is true for human associates. Just as partners routinely review and edit the work of associates, they would also need to review AI-generated motions and documents. Under an AI model, however, drafting a motion that typically requires hours of an associate's time can now be completed and

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[1] *Announcing the Stargate Project*, OpenAI (Jan. 21, 2025), https://openai.com/index/announcing-the-stargate-project/.

[2] *Fact Sheet: President Donald J. Trump Takes Action to Enhance America's AI Leadership*, The White House (Jan. 23, 2025), https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-action-to-enhance-americas-ai-leadership/.

[3] Jack Womack, *Which Generative AI Products are UK Law Firms Using,* Law.com (Aug. 17, 2023), https://www.law.com/international-edition/2023/08/17/which-generative-ai-products-are-uk-law-firms-using/.

[4] *An Analysis of AI usage in Federal Agencies*, Stack Armor (May 17, 2024), https://stackarmor.com/an-analysis-of-ai-usage-in-federal-agencies.

[5] Dylan Jackson, *We Asked Every Am Law 100 Firm How They're Using Gen AI. Here's What We Learned*, The Am. Law. (Jan. 29, 2024), https://www.law.com/americanlawyer/2024/01/29/we-asked-every-am-law-100-firm-how-theyre-using-gen-ai-heres-what-we-learned/.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

double-checked in minutes by a partner using AI. This efficiency not only reduces billable hours for clients but may also decrease the need for firms to hire additional associates, ultimately saving the firm money and fundamentally reshaping the traditional law firm model.

LexisNexis and Westlaw AI Tools

Law firms are not the only legal entities developing AI capabilities. Legal research database companies like LexisNexis[10] and Westlaw[11] have successfully marketed their own AI-powered legal tools.[12] These tools offer significant advantages to smaller firms, providing cost-effective and user-friendly alternatives to the robust systems developed by larger firms. While not as advanced as the in-house tools developed by many top firms, legal research database companies' tools offer a significantly lower cost and greater usability, making them ideal for firms with less demanding needs.

The advancements made by legal research companies still have a long way to go to match big law in-house gains in the AI field. Recent studies have highlighted shortcomings in these companies' models in a number of ways.[13] A study conducted by Stanford University's RegLab and its Human-Centered Artificial Intelligence initiative found that legal research companies' AI tools exhibited higher levels of hallucinations and inaccuracies than initially advertised. Researchers reviewed Westlaw and LexisNexis, identifying hallucination rates of 19% and 17%, respectively.[14] Hallucinations—instances where large language models (LLMs) produce content that deviates from actual legal facts, principles, or precedents—have become a significant concern.[15] This issue gained widespread attention following the case of a Manhattan attorney who submitted a brief largely generated by ChatGPT, which contained numerous fabricated legal citations.[16] The prevalence of hallucinations in LexisNexis and Westlaw's AI models poses potential challenges for attorneys seeking maximum efficiency or to avoid malpractice and sanction claims. Law firms and practitioners relying on these tools should exercise caution, make sure to verify the work, and even potentially double- or triple-check the accuracy of the AI-generated responses.

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[10] *LexisAI*, LexisNexis, https://law.lexisnexis.com/digital/PMAX/free-trial?keyword=&gad_source=1&gclid=CjwKCAiA-ty8BhA_EiwAkyoa39lKjpFf1jn9OgGfnDjg0tHR0Qs4phXMf-loLPggqRDbJNCSftfVvxoCn4AQAvD_BwE.
Westlaw Precision with CoCounsel, Westlaw https://legal.thomsonreuters.com/en/c/westlaw/westlaw-precision-generative-ai.
Bob Ambrogi, *Stanford Will Augment Its Study Finding that AI Legal Research Tools Hallucinate in 17% of Queries, As Some Raise Questions About the Results*, LawSites (May 28, 2024), https://www.lawnext.com/2024/05/stanford-will-augment-its-study-finding-that-ai-legal-research-tools-hallucinate-in-17-of-queries-as-some-raise-questions-about-the-results.html.
[13] *Id.*
[14] *Id.*
[15] Matthew Dahl, Varun Magesh, Mirac Suzgun & Daniel E. Ho, *Hallucinating Law: Legal Mistakes with Large Language Models are Pervasive*, Stanford University Human-Centered Artificial Intelligence (Jan. 11, 2024), https://hai.stanford.edu/news/hallucinating-law-legal-mistakes-large-language-models-are-pervasive.
[16] Mata v. Avianca, Inc., No. 22-cv-1461 (PKC), 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

With the recent emergence of DeepSeek, a Chinese AI model that operates as efficiently as American AI companies at a fraction of the cost, out-of-house AI models are likely to close the gap with in-house systems relatively quickly. DeepSeek is open-source, meaning its coding and operations are transparent and accessible for review.[17] This stands in stark contrast to in-house models, which are proprietary and secretive, with their coding and operational details kept confidential. As the field of AI continues to evolve, it will be interesting to see how the legal research companies' models are affected, especially in terms of the ongoing challenges these models face with hallucination issues.

Agency AI

Many federal agencies in the United States already use AI and are likely to expand their usage under the Trump administration.[18] Nearly half the federal agencies surveyed for a recent report commissioned by the Administrative Conference of the United States (ACUS) employ or have experimented with AI tools.[19] The agencies used AI tools across an array of governance tasks, including adjudication, enforcement, data collection and analysis, internal management, and public communications.[20] Agencies are increasingly turning to AI for the same reasons that firms have begun to develop inhouse models: AI tools promise improvements in the accuracy and efficiency of certain government functions ranging from regulatory enforcement to benefits adjudication.[21] With the Trump administration's focus on reducing agency costs, AI presents a cost-effective, if somewhat imperfect, solution for achieving this goal and cutting down on administrative agency staffing.

There are still very real shortcomings of relying on AI in place of humans, as highlighted by a recent ACUS study.[22] If used extensively and without care, AI tools could hollow out agencies' human expertise. One of the primary concerns is that agency personnel might grow too trusting of AI tools or defer too readily to the tools' determinations in fields that call for the exercise of human discretion.[23] Unlike law firms, which can more readily rely on AI's nonintuitive reasoning, administrative agencies' decisions require practical human judgment about how the world operates and the application of human reasoning. Eliminating the human aspect of agency decision making by relying to heavily on AI analysis could have a substantial impact on how the federal government functions.

Another issue with agencies relying on AI, as noted in the ACUS study, is opacity and accountability.[24] Given the complexity of AI tools, agencies may struggle to adequately explain how—and why—decisions are made.[25] One can imagine the frustration an individual might feel upon learning that a negative decision affecting them was made by AI, with the agency unable to provide a reasonable explanation for that decision. Furthermore, if such a decision is reviewed by a court, the agency would face significant challenges. Not only would it be difficult to explain to the court how the decision was reached, but the lack of transparency would also hinder accountability and the ability to prevent future errors. Given the outcome of previous federal decisions involving unexplainable AI usage, it is a foregone conclusion that such a shortcoming would undoubtedly and the agency in trouble.

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[17] Christan Doornhof, *DeepSeek: The open-source challenger and what it means for business*, DATALUMINA (Jan. 29, 2025), https://www.datalumina.com/insights/insight/deepseek-the-open-source-challenger-to-openai-and-what-it-means-for-business.
[18] *An Analysis of AI usage in Federal Agencies*, *supra* note 4.
[19] Mark Thomson & John Cooney, *Using Artificial Intelligence in Administrative Agencies*, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, https://www.acus.gov/newsroom/administrative-fix-blog/using-artificial-intelligence-administrative-agencies.
[20] *Id.*
[21] *Id.*
[22] ADMIN. CONF. OF THE U.S., *Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies* (Feb. 2020), https://www.acus.gov/sites/default/files/documents/Government%20by%20Algorithm.pdf.
[23] Mark Thomson & John Cooney, *supra* note 19.
[24] *Id.*
[25] *Id.*

While ACUS emphasized the need for agencies to carefully consider the risks involved, its statement provided no clear direction on how to weigh these risks against the benefits of improved efficiency and predictability.[26] The ACUS study does not offer specific guidance on how agencies should balance the risks of AI with considerations like efficiency and predictability in decision-making. Rather than recommending particular tools or methods, it suggests an agency-by-agency approach to AI deployment.[27] To ACUS's credit, it defended its decision by acknowledging that both AI tools and their applications within agencies are evolving rapidly, making any guidance short-lived and subject to future revision. Additionally, the wide variation in agency use of AI presents a significant challenge in formulating a one-size-fits-all approach for agencies to follow. Given these complexities, responsibility for effectively managing AI implementation in federal agencies—and addressing its potential shortcomings—will likely fall to the Trump administration.

Judicial Response to AI

As AI usage surged in 2023, so did federal court standing orders on the use and disclosure of AI in briefs. In response to early cases involving hallucinated case law, judges across the nation began requiring disclosure of any AI use—generative or not—and certification that citations in filings are "verified as accurate."[28] As a result, federal courts have been continuing to release AI-related standing orders, but no truly universal template has emerged.[29] After a tumultuous year of navigating AI's role in the legal system, the Supreme Court directly addressed the issue in its 2023 Year-End Report on the Federal Judiciary.[30] Chief Justice Roberts recognized AI's potential to improve access to key legal information for both lawyers and the public.[31] However, he also cautioned against its risks, including threats to privacy and the potential to dehumanize the legal process.[32] While affirming that machines cannot replace essential actors in the courtroom, he predicted with equal confidence that AI will significantly impact judicial work, particularly at the trial level.[33]

By the start of 2024, AI had advanced significantly in both capability and complexity. Yet, despite these advancements, several key issues remained unresolved. One of these main issues is passing uniform rules regarding AI use across the differing federal courts around the nation. As of February 2024, only 19 courts and judges had adopted orders or local rules requiring disclosure of AI use in legal filings.[34] These orders varied widely—some mandated disclosure of AI usage, others required certification, some imposed both requirements, while others had no AI-related mandates at all. [35] Notably, the Federal Bar Association's former president, the Honorable Michael Newman,

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[26] *Id*.
[27] *Id.*
[28] Jessiah Hulle, *AI Standing Orders Proliferate as Federal Courts Forge Own Paths*, Bloomberg Law (Nov. 8, 2023), https://news.bloomberglaw.com/us-law-week/ai-standing-orders-proliferate-as-federal-courts-forge-own-paths.
[29] *Id.*
[30] *2023 Year-End Report on the Federal Judiciary*, U.S. Sup. Ct. (Dec. 31, 2023), https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Amy Longo, Isaac Sommers & Emily Cobb, *Generating Buzz: Judicial Scrutiny of AI Use and Its Impact on the Future of Litigation*, Law.com (Feb. 02, 2024), https://www.law.com/newyorklawjournal/2024/02/02/generating-buzz-judicial-scrutiny-of-ai-use-and-its-impact-on-the-future-of-litigation/.
Practices;
Judge Michael J. Newman - Standing Orders, S. Dist. Ohio https://www.ohsd.uscourts.gov/FPNewman; *Tracking Federal Judge Orders On Artificial Intelligence*, Law 360, https://www.law360.com/pulse/ai-tracker.
[35] Charley Brown, Neal Walters, Casey Watkins & Erin Blasberg, *Standing Orders: Courts' Nascent Governance of AI Practices*, Ballard Spahr (Feb. 20, 2024), https://www.ballardspahr.com/insights/alerts-and-articles/2024/02/standing-orders-courts-nascent-governance-of-ai-practices.

implemented a complete ban on AI in legal briefs.[36] Across the country, judges issued differing requirements and decisions regarding AI, creating an inconsistent approach to its use in the legal system. By the end of 2024, the number of standing orders increased to 33, still stark in comparison to the more than 1,600 U.S. district and magistrate judges in the United States.[37] With the continued development of AI by major law firms, governmental agencies, and legal research companies, it will soon become vital for federal judges to adopt standing orders that promote both the safe use of AI and while also passing orders that remain consistent across jurisdictions.

Another issue that emerged at the end of 2024 and into 2025 was the growing concern over deepfakes. As the year came to a close, a federal judicial panel took a significant step toward regulating AI in discovery by agreeing to develop a rule governing the introduction of AI-generated evidence.[38] The panel also committed to exploring policies to help judges evaluate claims that audio or video evidence has been manipulated as a "deepfake."[39] One proposed rule under discussion would require computer-generated evidence to meet the same reliability standards as expert witnesses, which are governed by Rule 702 of the Federal Rules of Evidence.[40] Whatever direction the panel goes, the rule will be prepared for the committee to vote on whether to put it out for public comment at its May meeting.[41] While deepfakes are not yet a pressing issue for the judiciary, their rising prevalence in discovery disputes is likely to increase as AI technology continues to evolve.

Conclusion

The year 2025 marks a pivotal moment in the integration of AI into the legal landscape of the United States. With the Trump administration prioritizing AI as a cornerstone of national strategy, significant investments like The Stargate Project and updated federal policies underscore the growing importance of using AI in maintaining global competitiveness. The legal profession continues to adapt rapidly, with major law firms investing in AI to enhance efficiency, reduce costs, and maintain client confidentiality, while legal research companies like LexisNexis and Westlaw striving to make advancements with their AI tools to a broader range of use by legal audiences. However, challenges such as AI hallucinations, ethical concerns, and the need for transparency remain critical hurdles that must be addressed to ensure the responsible use of AI.

Looking ahead, the evolution of AI will undoubtedly continue to shape the legal profession, government operations, and judicial practices. The key to harnessing AI's potential lies in striking a balance between innovation and accountability, ensuring that it serves as a tool to enhance—not replace—human judgment and expertise. As the legal community continues to navigate these uncharted waters, collaboration among lawmakers, judges, legal professionals, and researchers will be essential to create a framework that promotes both the safe and effective use of AI while safeguarding the principles of justice and fairness in the legal system. The journey toward AI integration is just at its beginning, and its trajectory will define the future of law and governance in the United States.

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[36] *Judge Michael J. Newman - Standing Orders*, S. Dist. Ohio https://www.ohsd.uscourts.gov/FPNewman
[37] *Tracking Federal Judge Orders On Artificial Intelligence*, Law 360, https://www.law360.com/pulse/ai-tracker.
[38] Nate Raymond, *US judicial panel to develop rules to address AI-produced evidence*, Reuters (Nov. 8, 2024), https://www.reuters.com/legal/transactional/us-judicial-panel-develop-rules-address-ai-produced-evidence-2024-11-08/.
[39] *Id.*
[40] *Id.*
[41] *Id.*

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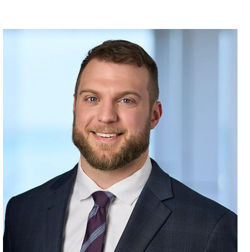

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