Most administrative lawyers assume that a court case is over when a court declares that a regulation is illegal. But Ronald Levin, the Henry Hitchcock Professor of Law, sees things differently. He recently completed a study of the choices that courts face after they have decided that an administrative agency’s rule or order is unlawful.

“The traditional practice is for the court to vacate the unlawful action while the agency considers its next move,” says Levin. “In a growing minority of cases, however, a court allows an illegal rule to remain in place during this period. I argue that this device, called remand without vacation, is permissible and, in some situations, essential.”

Levin spelled out his theories in a Duke Law Journal article titled “Vacation at Sea: Judicial Remedies and Equitable Discretion in Administrative Law.”

Vacating an illegal administrative action promotes the rule of law, but it can also cause great social disruption, Levin says. As an early example, he cites a case in which the United States Department of Agriculture illegally issued a food stamp regulation without having solicited necessary public comment. However, the regulation couldn’t be vacated without putting the entire food stamp program on hold until a new rule could be developed, vetted, and instituted. Levin approves of the court’s willingness to let the rule remain in effect until a replacement was adopted.

“The legality of remand without vacation is still up for grabs,” he says. “My article finds support for the technique in a wide range of similar situations. For example, when a court finds that a statute or regulation is unlawful, it can use discretion to strike down part, rather than all, of the provision. I favor giving the courts a wide range of options.”

Levin’s work in this area is among his best, according to Michael Asimow, University of California at Los Angeles professor of law emeritus: “Like all of
Ron’s work that preceded it, it has an original point of view and is a very important contribution to scholarship. Ron can certainly be ranked among the top handful of American administrative law scholars—particularly in dealing with the scope of judicial power in reviewing agency actions and the question of what agency action is reviewable.

Levin’s article is an outgrowth of a report he wrote for the Section of Administrative Law and Regulatory Practice of the American Bar Association. Levin has worked with the section for 25 years, and in 2000–01 he served as the section chair—the first Washington University professor to chair a national ABA section.

Under his leadership the section adopted a bipartisan report containing administrative law recommendations for the incoming Bush administration. It also completed work on a set of “blackletter principles” that summarized administrative law in several key areas governed by the Administrative Procedure Act. More than 20 reporters participated in the project, but Levin, as the section chair, played an influential coordinating role.

Levin continues to serve ABA as a member of the association’s Standing Committee on Amicus Curiae Briefs. The five-member committee reviews, edits, and approves all amicus curiae briefs that the ABA files in the Supreme Court of the United States and other courts. Midway through his three-year term, he has worked to polish ABA briefs on a variety of subjects, ranging from affirmative action in education to detention of enemy combatants.

His contributions as an authority on judicial review in administrative law took on an international dimension when he traveled to Jakarta in 2002 as a consultant to the Indonesian Supreme Court. He and his co-consultant, Professor Robert Anthony of George Mason University, met with officials of the court and the Indonesian Competition Commission. They then made recommendations for the design of a judicial review procedure for the Competition Commission, which had recently been created following an American model.

Another cornerstone of Levin’s career is teaching. At Washington University, where he has been a faculty member since 1979, he teaches classes on administrative law, legislation, and civil procedure. Noting that all of these are procedure courses, he says, “A recurrent theme in each is the difficulty, but also the importance, of designing government processes that will be efficient, fair, and balanced.”

H is teaching contributions extend beyond the School of Law through two books: State and Federal Administrative Law, a casebook he co-authored with Asimow and Arthur Bonfield, and Administrative Law and Practice in a Nutshell, a textbook he co-authored with Ernest Gellhorn. The textbook, used by countless law students nationwide, has also been translated into Japanese and Chinese. Levin is in the process of preparing the book’s fifth edition.

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Michael Asimow

Aware that administrative law is sometimes seen as a dry, abstract subject, Levin thinks that a few notes of levity help make his presentations accessible. The wordplay in the title of the Duke Law Journal article—“‘Vacation’ at Sea”—is characteristic of his style. And law students have seen him use the same technique in the classroom for years.

A similar element of whimsy found its way into a column that Levin wrote for the Administrative Law Section’s newsletter just after he became the section chair. Titled “No Longer Young, But Not Yet Gray,” the opening lines of the column explained: “When I realized that I would be serving as section chair just after Jack Young and just before Boyden Gray, the title for my inaugural column practically wrote itself.”

But Levin used this quip to make a serious point. After decades of turmoil—with a plethora of new regulatory statutes in areas such as environmental protection, health, and safety—the field of administrative law had reached a degree of doctrinal stability and maturity. It was, therefore, “no longer young.” But it had not yet turned “gray”; it was still growing in response to new congressional mandates, numerous executive orders, Supreme Court decisions, and changing technology.