
CRS REPORT FOR CONGRESS

SYNOPOSES OF REPORTED DECISIONS OF THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT IN WHICH JUDGE ROBERT HERON BORK
AUTHORIZED A SIGNED OPINION OR OTHER STATEMENT
1982 - 1987



by
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August 13, 1987

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ABSTRACT

During the period he has served on the United States Court of Appeals for the District of Columbia Circuit, 1982 to the present, Judge Bork has authored a signed opinion or other statement in more than 160 cases. Those cases have been summarized to include the decision of the lower tribunal, the District of Columbia Circuit ruling and principal issues upon which the ruling was based.

SIGNED OPINIONS AUTHORED BY JUDGE BORK

CITATION	STYLE OF CASE	OPINION		LEGAL ISSUES INVOLVED IN CASE
		MAJ	DIS	
682 F.2d 1018 (1982)	<u>U.S. v. Harley</u>	x		Affirmance of conviction for distribution of a controlled substance. Absent a demonstrable need, location of police surveillance post may be withheld. Grand jury probable cause finding supported by evidence. Failure of trial judge to give jury instructions, not requested by defense, not plain error.
684 F.2d 130 (1982)	<u>Richey Manor, Inc. v. Schweiker</u>	x		Affirmance of district court decision disallowing medicare reimbursement for certain costs incurred in the purchase and operation of health care facility resulting in change of status of facility from for-profit to not-for-profit.
686 F.2d 989 (1982)	<u>Athens Community Hosp., Inc. v. Schweiker</u>	x		Reversal and remand of dist. ct. order requiring Medicare Provider Reimbursement Review Board to review certain matters concerning medicare providers request for reimbursement. Held: Judicial review available for final decision of Board but Board had no jurisdiction to review claims which had not been timely filed.
690 F.2d 1041 (1982)	<u>McIlwain v. Hayes</u>	x		Affirmance of district court which upheld decision of Commissioner of Food and Drug Administration to extend provisional listings of certain color additives.
697 F.2d 366 (1983)	<u>McClam v. Barry</u>	x		District court dismissed suit against District of Columbia, certain officials, and various police officers. Decision affirmed in part, reversed in part, and remanded based upon circuit court's interpretation of various statutes of limitation.
697 F.2d 421 (1983)	<u>Devine v. White</u>	x		Arbitrator's decision in adverse action case set aside upon petition by Office of Personnel Management. Under circumstances of case, determination of standards to be followed by arbitrator, remand would do justice between parties without unduly burdening arbitral process.
697 F.2d 1095 (1983)	<u>McGehee v. C.I.A.</u>	x	x	Reversal of district court decision granting summary judgment to C.I.A. in Journalist's action to compel Agency to respond to his request for certain records under the Freedom of Information Act. Remanded for determination of legality of Agency's procedures concerning records of other agencies.
697 F.2d 1125 (1983)	<u>Cosgrove v. Smith</u>	x	x	Reversal of district court's summary judgment for government in suit challenging application of revised federal parole guidelines to male District of Columbia prisoners assigned to federal prisons. Remanded for resolution of factual matters.
699 F.2d 1166 (1983); cert. den. 464 U.S. 823 (1983)	<u>Vander Jagt v. O'Neill</u>	x		Affirmance of dismissal of complaint brought by fourteen Republican members of the House of Representatives alleging that the House Democratic leadership assigned them fewer committee seats than proportionally owed. While federal courts may declare rules constitutionally infirm, sep. of powers precluded act.
701 F.2d 972 (1983)	<u>U.S. v. Lewis</u>	x		Affirmance of conviction of possession of unregistered firearm. Government's evidence sufficient to sustain conviction for possession of sawed-off shotgun.

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704 F.2d 1269 (1983)	<u>Crowley v. Shultz</u>	x			Decision reverses in part and affirms in part district court's approval of special master's finding that attorney fees should be awarded in suit against State Department. Question was appealable and fees were barred by savings clause of Back Pay Act. Separate statement by Bork, J., clarifying decision.
707 F.2d 1413 (1983)	<u>Office of Com. of United Ch. of Christ v. F.C.C.</u>		x		Orders of F.C.C. deregulating commercial radio industry affirmed in part and remanded in part. Commission imposition on licensees of obligation to provide programming responsive to community issues was reasonable as standard but reasoning behind elimination of program logs was inadequate.
707 F.2d 1443 (1983); cert. den. 464 U.S. 1008 (1983)	<u>Loveday v. F.C.C.</u>	x			Affirmance of F.C.C. decision that California radio and television stations adequately discharged obligation to investigate and identify true sponsor of certain political advertisements. F.C.C. did not abuse discretion or act arbitrarily or capriciously in decision.
708 F.2d 789 (1983)	<u>Williams v. Barry</u>		x		Affirming in part and vacating in part district court granting of preliminary injunctive relief to prevent city from cutting off funds for support of shelters for homeless. Lower court properly found that due process requirements met but question of proper scope of judicial review not ripe for decision by that court.
709 F.2d 95 (1983); rev. in pt, aff'd in pt, 471 U.S. 159 (1985)	<u>Sims v. C.I.A.</u>		x	x	Reversal and remand of district court decision concerning what information Agency had to provide under Freedom of Information Act request for names of individuals and institutions that conducted certain secret research. At issue was definition of term "intelligence source" and if info. available from unclassified sources.
711 F.2d 401 (1983)	<u>York v. Merit Systems Protection Board</u>	x			Board's decision upholding Postal Service dismissal of employee remanded so Board could formulate standards for its actions in granting petitions for reconsideration of earlier decisions.
712 F.2d 650 (1983)	<u>Planned Parenthood Federation of America, Inc. v. Heckler</u>		x	x	Affirmance of district court injunction prohibiting enforcement of regulations issued by Department of Health and Human Services which were in excess of statutory authority. <u>Inter alia</u> , regulations required notification of parents or guardians when prescribing contraceptives to unemancipated minors.
712 F.2d 1428 (1983)	<u>Frantz v. U.S.</u>		x	x	Supplemental opinion to <u>Frantz v. U.S.</u> , 707 F.2d 582 (D.C.Cir 1983). Reverses district court dismissal of suit against administrators of federal witness program for interfering with child visitation rights of noncustodial parent whose children, with ex-wife are enrolled in program.
716 F.2d 926 (1983)	<u>ICBC Corp. v. F.C.C.</u>	x			Affirming Commission's decision rejecting request for waiver of rule designed to prevent interference among AM stations. Policy under which the black owned and oriented station's request was rejected was not arbitrary and capricious.
716 F.2d 1393 (1983)	<u>Lewis v. Exxon Corp.</u>	x			Affirming district court's summary judgment for Exxon which moved, during plaintiff's pendency of appeal from felony conviction, to terminate his Exxon franchise pursuant to Petroleum Marketing Practices Act. Fact of conviction and not veracity of conviction held to be basis for statutory termination.

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717 F.2d 602 (1983)	<u>Friends For All Children v. Lockheed Aircraft Corp.</u>	x			Affirming district court denial of motion to dismiss suit on forum non conveniens grounds. Claims brought against Lockheed for injuries suffered in crash in Saigon during 1975 "Operation Babylift." Relative ease in obtaining proof and interest in U.S. in retaining jurisdiction due to involvement prevailed.
717 F.2d 1460 (1983)	<u>McBride v. Merrell Dow and Pharmaceuticals Inc.</u>	x			Affirming in part and reversing in part district court dismissal of libel action brought by expert witness alleging defamation in magazine article about FDA hearings in which plaintiff testified. Plaintiff had also testified in Florida Bendectin birth defect trial.
718 F.2d 1151 (1983)	<u>Mosrie v. Barry</u>	x			Affirming district court in civil rights action. District of Columbia police officer was not deprived of any liberty interest when he was publicly criticized prior to his transfer and thus was not entitled to due process protections before transfer.
719 F.2d 407 (1983); cert. den. 467 U.S. 1255 (1984)	<u>Black Citizens For A Fair Media v. F.C.C.</u>	x			Affirmance of F.C.C. order adopting simplified renewal application for radio and television broadcast licenses. New system was adequate to permit F.C.C. to determine that license renewal in the public interest. Commission, in making decision, adequately complied with Administrative Procedure Act and Comm. Act.
720 F.2d 176 (1983)	<u>Von Aulock v. Smith</u>	x			Affirmance of district court dismissal of suit brought by former and current employees alleging that an EEOC interpretative bulletin authorized employers to discriminate on basis of age when maintaining pension plans. Plaintiffs lack standing to challenge bulletin where injury not fairly traceable to it.
720 F.2d 185 (1983)	<u>Kansas State Network, Inc. v. F.C.C.</u>	x			Affirming Commission's denial of an application for a tax certificate entitling station owners to favorable treatment under the I.R.S. Code. F.C.C. decision was rational and within scope of its authority.
720 F.2d 705 (1983); cert. den. 465 U.S. 1037 (1984)	<u>U.S. v. Garrett</u>	x			Affirmance of conviction for aiding and abetting transportation of minor interstate for purpose of prohibited sexual conduct for commercial exploitation. Speedy Trial Act properly applied, elements of offense proven. Defendant failed to prove withdrawal from conspiracy.
720 F.2d 1355 (1983); cert. den. 467 U.S. 1251 (1984)	<u>Crockett v. Reagan</u>		x		Affirmance of district court dismissal of suit by 29 members of Congress against the President and other officials challenging legality of United States presence in, and military assistance to, El Salvador. Nonjusticiable political question. Plaintiff's dispute primarily with fellow legislators.
721 F.2d 366 (1983)	<u>Yellow Taxi Co. Of Minneapolis v. N.L.R.B.</u>		x		Reversal of Board's decision that cab drivers who drove taxis under lease which expressly provided that they were independent contractors were nevertheless employees within meaning of the Labor Relations Act. No significant company control over drivers to justify employee status.
721 F.2d 385 (1983)	<u>Jayvee Brand, Inc. v. U.S.</u>	x			Affirming district dismissal of suit against U.S., Consumer Product Safety Commission and five former members of Comm. for losses caused by the banning of certain flame retardant compound. No jurisdiction under Tort Claims Act for such a suit. Members of Comm. immune from suit for official actions.

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725 F.2d 1380 (1983)	<u>Bellotti v. U.S. Nuclear Regulatory Com'n</u>	x			Affirmed Commission denial of petition by Commonwealth of Massachusetts to intervene in a Commission enforcement proceeding. State Attorney General not a person whose interest may be affected" by the proceeding under the Atomic Energy Act of 1954
726 F.2d 774 (1984); cert. den. 470 U.S. 1003 (1985)	<u>Tel-Oren v. Libyan Arab Republic</u>		x		Affirmance of district court dismissal of tort suit brought by survivors and representatives of persons murdered in armed attack on civilian bus in Israel. Lack of subject matter jurisdiction.
727 F.2d 1121 (1984)	<u>Silverman v. Barry</u>	x			Reversal of district court dismissal of civil rights action brought by apartment building owners against officers of the District of Columbia. Court had federal question and civil rights jurisdiction alleging that city had violated owners due process and equal protection rights in condominium conversion cases.
727 F.2d 1156 (1984)	<u>Ganadera Industrial, S.A. v. Block</u>	x			Affirming district court decision upholding Secretary of Agriculture's decision to withdraw company's privilege to import beef into the United States. Sec. had power to take action when sufficient reason to doubt that meat met standard of Federal Meat Inspection Act. Neither arbitrary nor capricious.
729 F.2d 835 (1984); cert. den. 469 U.S.881 (1984)	<u>Persinger v. Islamic Republic of Iran</u>	x			Affirming district court dismissal of suit by former hostage and parents for injuries inflicted by Iran's subjects during Embassy takeover. Iran enjoyed sovereign immunity with respect to claim of former hostage for injuries at embassy and to his parent's claim for damages for emotional distress.
730 F.2d 816 (1984)	<u>Jersey Central Power & Light Co. v. F.E.R.C.</u>	x			Affirmance of Commission order modifying utility rate schedule to exclude from rate base investment in cancelled nuclear plant and denying utility's request for rehearing. Rehearing granted, 768 F.2d 1500 (1985), <u>infra</u>
733 F.2d 164 (1984)	<u>Grano v. Barry</u>	x			Remand of case concerning demolition of historic Rhodes Tavern to district court. No basis in federal law for district court orders relative to status of the tavern. Matters involving local law should be adjudicated in local courts.
734 F.2d 828 (1984)	<u>Midwestern Gas Transmission Co. v. F.E.R.C.</u>	x			Affirmance of Commission order requiring company to credit revenues earned from performing short-term transportation services to its unrecovered purchased gas cost account.
734 F.2d 1547 (1984)	<u>Donovan v. Carolina Stalite Co.</u>	x			Reversal and remand of order of Federal Mine Safety and Health Review Comm. which reversed the imposition of civil penalties under the Federal Mine Safety and Health Act. Facilities involved were a "mine" within meaning of Act. Con- sent to inspection by operator of facility was waiver of Fourth Amend. rights.
736 F.2d 1559 (1984)	<u>Amalgamated Clothing & Textile Workers Union, AFL-CIO v. N.L.R.B.</u>		x		Enforcement of N.L.R.B. order relative to unfair labor practices. Preelection conduct did not so attenuate free choice as to compel rerun election. Scope of review of N.L.R.B. decisions is very limited if Board has followed appropriate and fair procedures. Board has great discretion in area of remedies.

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737 F.2d 1069 (1984)	<u>Nathan v. Smith</u>		x		Reversal of district court order requiring Attorney General to conduct preliminary investigation under Ethics in Government Act into charges against various Justice Dept. officials after KKK/Am. Nazi attack on 1979 N. Car. parade. Not enough evidence offered by plaintiffs to require preliminary investig. under Act.
737 F.2d 1159 (1984)	<u>International Paper Co. v. F.E.R.C.</u>	x			Reversal of Federal Energy Regulatory Commission order vacating two exemptions from hydroelectric licensing requirements of the Federal Power Act. Commission lacked authority to vacate exemptions it had previously issued.
741 F.2d 410 (1984)	<u>Cowin v. Bresler</u>	x			District court decision affirmed in part, reversed in part and remanded. Minority shareholders' claims regarding breach of fiduciary duties by majority must be brought derivatively. Pleadings supported claim for appointment of receiver. Reliance not a prerequisite to standing in case of deceptive proxy solicitations.
741 F.2d 444 (1984)	<u>Oil, Chemical and Atomic Workers International Union v. American Cyanamid Company</u>	x			Affirmed order by Occupational Safety and Health Review Commission which affirmed administrative law judge's decision that employer's policy of giving fertile women working in conditions unsafe for women of childbearing age choice of being sterilized or losing jobs not cognizable under Occupational Safety and Health Act.
741 F.2d 1388 (1984)	<u>Dronenburg v. Zech</u>	x			Affirmance of district court summary judgment for Navy in action by admitted homosexual seeking to enjoin his discharge. District court had subject matter jurisdiction. No constitutional right to engage in homosexual conduct. Policy of mandatory discharge justified by unique needs of military.
742 F.2d 1498 (1984); cert. den. 471 U.S. 1073 (1985)	<u>Brown v. U.S.</u>			x	En banc reversal and remand of district court. Noncompliance with notice of claims provision in D.C. Code does not bar federal claims. Enactments of Congress applicable only to D.C. are to be treated as local law interacting with federal law as would the laws of the states.
743 F.2d 1 (1984)	<u>Athens Community Hospital, Inc. v. Schwelker</u>	x			Affirming district court decision on rehearing. Provider Reimbursement Review Board lacks jurisdiction to consider costs for which medicare provider seeks reimbursement but had not included in original cost report.
743 F.2d 918 (1984)	<u>P & R Temmer v. F.C.C.</u>	x			Affirmance of F.C.C. decisions revoking authorization to operate trunked specialized mobile radio communications systems. No abuse of discretion as companies did not comply with conditions. Commission did not abuse discretion by denying temporary waiver of rules.
744 F.2d 170 (1984)	<u>Donovan v. Williams Enterprises, Inc.</u>	x			Affirmance in part and reversal in part of Occupational Safety and Health Review Commission order relative to citations issued to contractor for safety violation while working on Hart Office Building. Contractor failed to establish defense for exposing employees to fall hazards. Citation properly depicted as willful.
744 F.2d 827 (1984); cert. den. 470 U.S. 1084 (1985)	<u>City of New York Municipal Broadcasting System v. F.C.C.</u>	x			Affirmance of Commission decision to terminate special exemption given station since 1963 to eliminate its nighttime cochannel interference with a Minneapolis class-I clear-channel station. Case pending at F.C.C. since 1954. Evidence supported decision which was not arbitrary, etc. or not in accordance with law.

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746 F.2d 64 (1984)	<u>New York State Energy Research and Development Authority v. F.E.R.C.</u>	x			Reversal of Commission ruling rejecting a state-authorized public benefit corporation's application for a license for a hydroelectric project. Commission acted arbitrarily and capriciously in applying new rule which took effect while application was pending.
746 F.2d 886 (1984)	<u>National Classification Committee v. U.S.</u>	x			Affirmance of I.C.C. order interpreting agreement between motor carriers providing for collective action in freight classification matters. Decision was supported by the record and was not arbitrary or capricious. Order did not operate retroactively to expose parties to antitrust liability for past rules.
746 F.2d 1492 (1984)	<u>National Association of Regulatory Utility Commissioners v. F.C.C.</u>	x			Affirmance of Commission order prohibiting restrictions on the resale and sharing of all interstate WATS service used in exclusively interstate communications. Commission had authority, under the Communications Act, to regulate service and decision, relying on the record, was not arbitrary or capricious.
746 F.2d 1503 (1984)	<u>Washington Hospital Center v. Service Employees International Union, Local 722, ALF-CIO</u>	x			Affirming in part and reversing in part district court order concerning arbitration of certain grievances. Refusal to arbitrate in one instance was sufficiently frivolous to justify awarding of attorney fees but employer had sufficient case authority to seek review of another decision so no attorney fee award.
746 F.2d 1555 (1984)	<u>Boston Carrier, Inc. v. I.C.C.</u>	x			Affirmance of Commission denial of application for motor carrier authority. Notices sent to carrier by Commission were sufficient, former employees were properly allowed to protest application, and evidence supported denial of application.
746 F.2d 1579 (1984)	<u>Dronenburg v. Zech</u>		x		Denial of suggestion for rehearing en banc of decision in 741 F.2d 1388, supra.
747 F.2d 763 (1984); cert. den. 473 U.S. 930 (1985)	<u>Middle South Energy, Inc., v. F.E.R.C.</u>	x			Federal Energy Regulatory Commission's order suspending initial rate schedule vacated and remanded. Commission does not have authority to suspend initial rate schedule. Court cannot legislate to remedy gap that language, legislative history and longstanding interpretation establish as part of statutory scheme.
747 F.2d 1493 (1984)	<u>American Employers Insurance Co. v. American Security Bank, N.A.</u>	x			Affirming district court decision in which a bank prevailed in suit seeking an accounting by borrower's surety of certain receipts and expenditures as required by a trust agreement. Bank's request for attorney fees denied.
749 F.2d 893 (1984)	<u>Lebron v. Washington Metropolitan Area Transit Authority</u>	x			Reversal of district court decision refusing to compel transit authority to display artist's poster critical of Reagan administration. Refusal to display poster was a clear-cut and impermissible prior restraint and violation of right of free speech.
750 F.2d 970 (1984); cert. den. 471 U.S. 1127 (1985)	<u>Ollman v. Evans</u>		x		Affirmance of district court decision in favor of two newspaper columnists whom a political science professor alleged had defamed him with result that he was denied a nomination as department chairman at the University of Maryland. State comments were constitutionally protected expressions of opinion.

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750 F.2d 1039 (1984)	<u>Renher v. U.S.</u>		x		Affirmance of district court dismissal of Federal Tort Claims Act actions due to improper venue. Reversal of district court dismissal of constitutional and pendent state law claims against two corporate defendants. May bring action for damages based upon violation of constitutional rights under Bivens principle.
752 F.2d 694 (1985)	<u>Paralyzed Veterans of America v. C.A.B.</u>			x	Judge Bork not a member of decision panel. Dissent is to denial of suggestion for rehearing en banc. Decision allowed C.A.B. to make regulations under the Rehabilitation Act of 1973 pertaining to all airlines, not just those receiving direct federal assistance. Dissent suggested Supreme Court precedent not follow.
753 F.2d 120 (1985)	<u>Sierra Club v. U.S. Department of Transportation</u>	x			Affirmance of Federal Aviation Administration orders allowing use of jet airplanes at airport located within a national park. No violation of National Environmental Policy Act.
755 F.2d 941 (1985); cert. den. 54 U.S.L.W. 3310 (1985)	<u>Prill v. N.L.R.B.</u>			x	Remand for reconsideration of order of National Labor Relations Board which rejected unfair labor practice charge by fired employee. Truck driver alleged that he had been discharged for refusing to drive unsafe vehicle and reporting condition to state authorities. Board decision flawed by lack of rationale.
756 F.2d 181 (1985); rev. 54 U.S.L.W. 4775 (1986) [See: No. 83-1694 (Aug. 7, 1987) infra]	<u>Catrett v. Johns-Manville Sales Corporation</u>			x	Reversal and remand of district court decision granting summary judgment to asbestos manufacturer in wrongful death suit brought by widow alleging that husband's death resulted from exposure to product. Manufacturer's moving papers patently defective on face rendering inappropriate the summary judgment.
757 F.2d 1297 (1985)	<u>Wilson v. Good Humor Corporation</u>		x		Affirmance in part and reversal and remand in part of district court directed verdict in favor of company. Three year old killed by auto when running across street to ice cream truck. Jury should have decided whether company should have known of special risks its operating procedure could create for children.
757 F.2d 1315 (1985)	<u>U.S. v. Mount</u>		x		Affirmance of district court decision convicting defendant of making false statement on passport application. Exclusionary rule did not apply to search and seizure made by British police officers in England absent participation by U.S. authorities. Evidence supported conviction.
758 F.2d 733 (1985)	<u>Farmers Export Company v. U.S.</u>	x			Dismissal in part and affirmance in part of Interstate Commerce Commission's refusal to reconsider two decisions. One petition dismissed as decision of I.C.C. not final. Second decision affirmed as no adequate showing made of material error, new evidence or substantially changed circumstances.
759 F.2d 21 (1985); vac. sub nom <u>Burke v. Barnes</u> 55 U.S.L.W. 4103 (1987) [moot]	<u>Barnes v. Kline</u>			x	Reversal and remand of district court decision for defendants in suit by divers Members and Officers of Congress seeking nullification of a pocket veto. Plaintiffs had standing; dispute not beyond court's authority because parties were coordinate branches of government. Pocket veto invalid under circumstances.
759 F.2d 176 (1985)	<u>U.S. v. Singleton</u>		x		Reversal and remand of district court decision suppressing evidence. Previous panel of Court of Appeals had held that certain evidence was reliable and recommended case. This decision prevented the district court from suppressing that evidence.

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760 F.2d 1330 (1985)	<u>Winston v. Taylor</u>			x	Judge Bork not a member of decision panel. Dissent is to denial of suggestion of rehearing en banc. Original circuit decision, 753 F.2d 141 (1985) affirmed and remanded, 54 U.S.L.W. 4703 (1986). Concerned sexual harassment allegation under Title VII of Civil Rights Act of 1964.
761 F.2d 763 (1985)	<u>Telocator Network of America v. F.C.C.</u>	x			Affirmance of Commission order establishing a private carrier paging system as a new license classification to operate within the private land mobile radio services.
763 F.2d 1432 (1985)	<u>U.S. v. Singleton</u>		x		Denial of suggestion for rehearing en banc of 759 F.2d 176, supra.
763 F.2d 1436 (1985)	<u>Weisberg v. U.S. Department of Justice</u>			x	Federal Courts Improvement Act of 1982 did not divest this court of jurisdiction over Freedom of Information Act case that contained a less substantial contract claim against the Department of Justice since notice of appeal in the case was filed prior to the effective date of the act.
763 F.2d 1441 (1985)	<u>Maryland Department of Human Resources v. Department of Health and Human Services</u>	x			Affirmance of district court decision upholding HHS vinding that Maryland had misapport federal grant monies. District court had federal question jurisdiction. HHS determination was not arbitrary or capricious and HHS had statutory right of recovery of misapplied funds.
764 F.2d 885 (1985)	<u>U.S. v. James</u>	x			Affirmance of district court conviction for possession of cocaine, marijuana, and phencyclidine. Police procedures satisfied requirements of federal knock and announce statute. Evidence supported conviction.
765 F.2d 210 (1985)	<u>Edison Electric Institute v. I.C.C.</u>	x			Challenges to four final orders of the I.C.C. relative to the Northeast Rail Services were within the exclusive jurisdiction of Special Court, Regional Rail Reorganization Act and were transferred thereto.
765 F.2d 1146 (1985)	<u>National Classification Committee v. U.S.</u>	x			Affirmance of I.C.C. action revising the national motor freight classification system. Procedural guarantees of Administrative Procedure Act met. Commission acted properly in adopting modifications to old classification system which was inconsistent with new policy of Motor Carrier Act of 1980.
765 F.2d 1169 (1985)	<u>Citizens Coordinating Committee on Friendship Heights, Inc. v. Washington Metropolitan Area Transit Authority</u>	x			Reversal of district court award of attorney's fees and costs to plaintiffs after parties had entered into a court-approved consent decree. Corporation, one of the party plaintiffs, lacked standing under the Clean Water Act to complain of claimed injury, thus, not entitled to costs.
768 F.2d 363 (1985); cert. den. 55 U.S.L.W. 3257 (1986)	<u>Norfolk & Western Railway Co. v. U.S.</u>	x			Reversal of I.C.C. order authorizing shippers to seek reductions and refunds of certain rail freight rates. Petition for review not statutorily barred. Commission erred in construing statute to authorize dual rate reductions.

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768 F.2d 1500 (1985)	<u>Jersey Central Power & Light Company v. F.E.R.C.</u>	x			On petition for rehearing of 730 F.2d 816 (1984), <u>supra</u> , order of Commission modifying utility's rate schedule was remanded. Commission order reducing rates without a hearing was unreasonable.
770 F.2d 1131 (1985)	<u>Delmarva Power & Light Company v. F.E.R.C.</u>	x			Decision of Commission not to include annualized costs of new generating plant in utility's test period base vacated and remanded. In light of the Commission refusal to adopt a per se rule against selected annualization, Commission was to explain policy.
773 F.2d 327 (1985)	<u>Mid-Tex Electric Cooperative, Inc. v. F.E.R.C.</u>	x			Commission rule allowing electric utilities to include in rate bases amounts equal to 50% of investments in construction work in progress vacated and remanded. Purposes for adopting rule were valid but reconsideration mandated by effect of rule.
773 F.2d 362 (1985)	<u>Alabama Power Company v. F.C.C.</u>	x			Commission determination that pole attachment rates charged cable television operator by power company vacated and remanded. Commission errors made in calculations rendered the decision arbitrary and capricious.
775 F.2d 1193 (1985)	<u>Meadows v. Palmer</u>	x			Part IV of opinion written by Judge Bork. Affirms district court decision that affirmed Civil Service Commission decision that the Commission had no jurisdiction over appeals by District of Columbia employee relative to detail and reassignment. No jurisdiction as "detail" not an "employment practice."
777 F.2d 23 (1985)	<u>U.S. v. Western Electric Company Inc.</u>	x			Dismissal of appeal of district court decision setting forth four conditions that regional holding companies, created after reorganization of major telecommunications company, would have to meet to get a waiver of "line of business" restrictions to pursue other ventures.
778 F.2d 35 (1985)	<u>F.T.C. v. Brown & Williamson Corporation</u>	x			District court injunction relative to cigarette advertising, sought by F.T.C., affirmed in part and remanded. Manufacturer's advertisements were misleading but the injunction was broader than reasonably necessary to prevent deception.
778 F.2d 778 (1985)	<u>King v. Palmer</u>		x		Judge Bork not a member of panel reversing and remanding district court decision relative to employment discrimination complaint. He filed a statement concurring in denial of rehearing en banc, joined by five judges, because the issue the United States wanted the rehearing on had not been before the panel.
779 F.2d 687 (1985)	<u>National Classification Committee v. U.S.</u>	x			Affirming decision of Interstate Commerce Commission denying petitioner's request to amend provisions of rate bureau agreement. Petitioner's right to hearing not denied. Denial of application was consistent with applicable law. Commission's departure from past practice adequately explained.
780 F.2d 37 (1985)	<u>Robbins v. Reagan</u>		x	x	Affirmance of district court decision granting government's motion for summary judgment in suit challenging closing of shelter for homeless in federally owned building. District court had jurisdiction over suit and decision was not arbitrary or capricious. Government and agency were not estopped from closing.

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CITATION	STYLE OF CASE	OPINION		DIS	LEGAL ISSUES INVOLVED IN CASE
		MAJ	CONC		
781 F.2d 218 (1986)	<u>Morris v. Washington Metropolitan Area Transit Authority</u>	x			Affirmance of district court dismissal, on grounds of sovereign immunity, of suit brought against the WMATA by a discharged police officer. Congress and States of Maryland and Virginia validly conferred immunity upon the WMATA and D.C.'s participation did not defeat such Eleventh Amendment immunity.
784 F.2d 1114 (1986)	<u>Demjanjuk v. Meese</u>	x			Denial of writ of habeas corpus, immediate hearing, and stay of extradition warrant. Petitioner failed to establish that international convention concerning genocide was in effect in United States; but, if so it would not have pertained in this case. Petitioner failed to show likelihood of success on merits.
785 F.2d 1043 (1986); cert. granted, 55 U.S.L.W. 3424 (U.S. Dec. 15, 1986) (No. 86-656)	<u>Abourezk v. Reagan</u>			x	District court grant of summary judgment in suit challenging refusal to issue visas to aliens to come to speak on issues of public concern vacated and remanded. May exclusion be based upon mere presence or is higher standard of intent to engage in activities prejudicial to public interest required.
786 F.2d 424 (1986); cert. den. 55 U.S.L.W. 3201 (1986)	<u>Neumann v. Reinforced Earth Company</u>	x			Affirmance of district court judgment n.o.v. in favor of plaintiff's competitor in antitrust action. Designer of retaining walls used in construction of highways and bridges not entitled to recover due to failure to define proper relevant market.
786 F.2d 1186 (1986)	<u>American Maritime Association v. U.S.</u>	x			Remand of district court summary judgment against plaintiff in challenge to maritime subsidy board's decision to amend operating-differential subsidy contracts with subsidized carriers. Board's decision did not adequately assess impact on unsubsidized shippers necessitating remand.
786 F.2d 1199 (1986)	<u>Community For Creative Non-Violence v. Pierce</u>	x			Denial of motion to disqualify U.S. Attorney's office as counsel for Secretary of Housing and Urban Development on grounds of conflict of interest since same office would have to investigate allegations of perjury on part of HUD official. Would be intrusion of court into prosecutorial discretion.
787 F.2d 645 (1986)	<u>Beaufort County Broadcasting Company v. F.C.C.</u>	x			Affirmance of Commission decision denying applicant permission to construct FM station in community of 8,600 while approving another applicant's license to construct FM station in neighboring community of 3,000. Second applicant properly given preference under Communications Act of 1934.
789 F.2d 26 (1986); cert. den. 55 U.S.L.W. 3278 (1986)	<u>San Luis Obispo Mothers For Peace v. U.S. Nuclear Regulatory Commission</u>	x			En banc affirmance of Commission issuance of licenses for nuclear power plant. Regulations did not require Commission to consider potential complicating effect of earthquakes on emergency responses and such failure was not capricious or arbitrary. Petitioners not entitled to supplement record.
790 F.2d 942 (1986)	<u>Meeropol v. Meese</u>	x			District court summary judgment for government in Freedom Of Information Act case affirmed in part and remanded in part. Cooperation of F.B.I. was indicated by actions as it is unreasonable to expect even the most exhaustive search to uncover every document.
792 F.2d 210 (1986); cert. den. 55 U.S.L.W. 3473 (1987)	<u>Rothery Storage & Van Co. v. Atlas Van Lines</u>	x			Affirmance of district court decision. Van line's decision to terminate the contract of any agent with interstate authority which refused to transfer the authority to separate corporation did not violate Sherman Anti-Trust Act.

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CITATION	STYLE OF CASE	OPINION		LEGAL ISSUES INVOLVED IN CASE
		MAJ CONC	DIS	
792 F.2d 232 (1986); cert. den. 55 U.S.L.W. 3392 (1986)	<u>Three Way Corporation v. I.C.C.</u>	x		Affirmance of Commission decision approving, without hearing, application of plan line to amend pooling agreement with agents. Hearing not required where matter was not of major transportation importance with little likelihood that competition would be restrained.
793 F.2d 304 (1986)	<u>Hohri v. U.S.</u>		x	Dissent from denial of suggestion of rehearing en banc. Judge Bork not on panel hearing case, 782 F.2d 227 (D.C.Cir. 1986) which was vacated and remanded 55 U.S.L.W. 4716 (1987) [Federal Circuit Court had jurisdiction over case]. Decision involved compensation for Japanese-Americans interned during W.W.II.
793 F.2d 364 (1986)	<u>Monk v. Secretary of the Navy</u>	x		Reversal and remand of district court decision relative to marine corporal's challenge of his general court martial conviction for murdering his wife. Action should be treated as a petition for habeas corpus; thus, inasmuch as Monk was incarcerated in Kansas, U.S. District Court in D.C. had no jurisdiction.
793 F.2d 1366 (1986)	<u>Business and Professional People For the Public Interest v. N.R.C.</u>	x		Corporation not entitled to fees and expenses in connection with intervention in proceeding funded, in part, by Energy and Water Development Appropriations Act. Commission denial of fees under Equal Access to Justice Act upheld.
795 F.2d 116 (1986)	<u>Carter v. District of Columbia</u>	x		District court decision in suit alleging constitutional and common law torts against various police officers and the city affirmed in part and vacated and remanded in part. Arrestees failed to establish a persistent and pervasive pattern of conduct causing right deprivation. Error in evidence presentation.
795 F.2d 150 (1986)	<u>International Brotherhood of Electrical Workers Local 1466, AFL-CIO v. N.L.R.B.</u>	x		Affirming decision of Board dismissing Union claim that employer had committed unfair labor practice by eliminating Christmas bonus. By agreeing to integration clause of collective bargaining agreement, union lost further right to bargain over bonus.
795 F.2d 168 (1986)	<u>Coalition for the Environment, St. Louis Region v. N.R.C.</u>	x		Denying in part and dismissing in part a challenge to Commission elimination of case by case review of financial qualifications in certain license proceedings. Atomic Energy Act did not require otherwise and rule was not arbitrary or capricious.
795 F.2d 195 (1986)	<u>Northwest Airlines, Inc. v. F.A.A.</u>	x		Dismissal of review of F.A.A. decisions authorizing pilot to fly commercial aircraft after temporary suspension for flying while intoxicated. Airline lacked standing to challenge action taken relative to former employee.
796 F.2d 1534 (1986)	<u>Pittsburgh and Lake Erie Railroad Company v. I.C.C.</u>	x		Petition for review of Commission dismissal of complaint challenging a carrier cancellation of joint rates. I.C.C. exercised reasonable discretion under the applicable statutes.
798 F.2d 1450 (1986); cert. gr. sub nom Boos v. Barry, 55 U.S.L.W. 3569 (U.S. Feb. 23, 1987) (No. 86-803)	<u>Finzer v. Barry</u>	x		District court decision relative to challenge of statutes barring certain actions within 500 feet of foreign embassies affirmed in part and remanded. Statute was permissible accommodation between national interests and First Amendment. No less restrictive alternative. Not unconstitutionally vague or overbroad.

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CITATION	STYLE OF CASE	OPINION		DIS
		MAJ	CONC	
798 F.2d 1500 (1986)	<u>F.T.C. v. PPG Industries, Inc.</u>	x		
				District court decision on F.T.C. action contesting merger as violation of Clayton Act affirmed in part, reversed in part and remanded. Evidence supporting district court conclusion that acquisition may be forbidden under Clayton Act but preliminary injunction should have been entered rather than hold order.
800 F.2d 1165 (1986)	<u>National Treasury Employees Union v. Federal Labor Relations Authority</u>	x		
				Reversal of order of Authority holding that union committed an unfair labor practice by refusing to provide attorneys to represent nonunion employees in a statutory appeal. Unions duty is same as that in the private sector so no unfair labor practice where representation limited to collective bargaining.
800 F.2d 1187 (1986)	<u>Red Lake Band of Chippewa Indians v. U.S.</u>	x		
				District court summary judgment for U.S. in Federal Tort Claims Act suit for property damage on reservation affirmed in part, vacated in part and remanded. Certain FBI actions in hostage situation were protected from liability under FTCA and certain actions were not. Fact issues to be decided below.
801 F.2d 501 (1986); cert. den. 55 U.S.L.W. 3821 (1987)	<u>Telecommunications Research and Action Center v. F.C.C.</u>	x		
				Commission order refusing to apply three forms of political broadcast regulation to teletext, a new technology affirmed in part, reversed in part and remanded. Commission decision was reasonable but errors made in interpreting certain provisions of Communications Act. Rational decision in not applying Fairness Doctrine.
801 F.2d 390 (1986)	<u>Restaurant Corporation of America v. N.L.R.B.</u>	x		
				Review of Board decision that employer violated National Labor Relations Act by discharging employees for union solicitation. Petition for enforcement of order denied in part and granted in part and case remanded. Employer failure to treat employee solicitations the same as union solicitations is not discrimination.
803 F.2d 726 (1986)	<u>Panhandle Eastern Pipe Line Co. v. F.E.R.C.</u>	x		
				Commission order dismissing application, on jurisdictional grounds, for authorization to abandon certain purchases of natural gas reversed and case remanded. Natural Gas Act gives Commission jurisdiction over such action.
803 F.2d 1197 (1986)	<u>McLaughlin v. Bradlee (Two cases)</u>	x		
				Affirmance of district court decisions dismissing suit on basis of res judicata, denying motion to clarify complaint by amendment, and imposing sanctions for litigating in bad faith. Preclusion doctrine barred attorney's suit for violation of right of privacy and "discovery fraud" conspiracy. Sanctions justified.
803 F.2d 1213 (1986)	<u>Greenberg v. Food and Drug Administration</u>			x
				Reversal of district court summary judgment for FDA and CAT scanner manufacturer in suit by public citizen group staff attorney to compel disclosure of facilities owning CAT scanners of certain manufacturer. Material issues of fact precluded summary judgment under exemption to Freedom of Information Act.
804 F.2d 710 (1986)	<u>Natural Resources Defense Council v. U.S. Environmental Protection Agency</u>	x		
				Affirmance of EPA decision withdrawing proposed regulations governing vinyl chloride emissions. EPA acted reasonably under Clean Air Act provisions governing hazardous pollutants in relying on economic and technological factors in withdrawing regulations. En Banc decision, No. 85-1150 (D.C.Cir. July 28, 1987)
806 F.2d 281 (1986)	<u>Schultz v. Crowley</u>	x		
				Denial of suggestion of rehearing en banc. Judge Bork on majority below. 802 F.2d 498 (D.C.Cir. 1986) [Opinion by Scalia]. Suit concluded before effective date of Equal Access to Justice Act thus barring award of attorney fees under Act.

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CITATION	STYLE OF CASE	OPINION		DIS	LEGAL ISSUES INVOLVED IN CASE
		MAJ	CONC		
806 F.2d 1071 (1986)	<u>Center for Auto Safety v. Thomas</u>		x		This opinion and judgment vacated February 6, 1987, when suggestion for rehearing <u>en banc</u> granted. Challenge to rule of EPA designed to compensate automobile manufacturers retroactively for testing procedure changes which negatively affected fuel economy comparability for model year 1975.
806 F.2d 1093 (1986)	<u>Telecommunications Research & Action Center on Behalf of R. Checkhoff v. Allnet Communications Services, Inc.</u>		x		Affirmance of district court dismissal, for lack of standing, suit by nonprofit association on behalf of members to recover damages alleging illegal dual rate structure.
806 F.2d 1115 (1986)	<u>Telecommunications Research and Action Center v. F.C.C.</u>		x		Denial of suggestion that panel decision, 801 F.2d 501 (D.C.Cir 1986) be reheard <u>en banc</u> . That decision, <u>supra</u> , written by Judge Bork.
807 F.2d 217 (1986)	<u>Moncrief v. Lexington Herald-Leader Co.</u>	x			Affirmance of district court dismissal of libel action against newspaper publisher under the District of Columbia long arm statute. Mailing of paper, containing allegedly libelous article, into the District of Columbia was not sufficient basis for district court jurisdiction.
807 F.2d 1052 (1986); cert. den. 55 U.S.L.W. 3853 (1987)	<u>Securities Industry Association v. Board of Governors of the Federal Reserve System (Four cases)</u>	x			Reversal of district court decision invalidating Board's order permitting state chartered commercial bank to place commercial paper issued by third party. <u>Glass-Steagall Act</u> did not preclude bank from acting as advisor and agent to commercial paper issuers.
808 F.2d 1525 (1987); rehear gr in pt Apr 3, 1987; pet. for cert. filed 56 U.S.L.W. 3682	<u>Mississippi Industries v. F.E.R.C.</u>	x			By order of June 24, 1987, an order to rehear <u>en banc</u> was vacated and Judge Bork's dissent was adopted as majority opinion. Commission reallocation of costs for nuclear power plant among affiliated operating companies reversed and remanded. Commission decision not clear or rational in all aspects.
809 F.2d 794 (1987)	<u>(U.S. Feb. 20, 1987) (Nos. 86-1380, 1424)</u> <u>Haitian Refugee Center v. Gracey</u>	x			Affirmance of district court dismissal of action brought to challenge program of interdicting undocumented aliens on the high seas. Corporation and members lacked prudential standing as they were not within zone of interest intended to be protected. If no First Amendment claim, no injury, so no Article III standing.
809 F.2d 847 (1987); pet. for cert. filed 55 U.S.L.W. 3794 (U.S. May 15, 1987) (No. 86-1829)	<u>Independent U.S. Tanker Owners Committee v. Dole</u>	x			Transportation Department rule, sustained in district court, allowing subsidized vessels to enter domestic shipping market upon repayment of subsidy vacated. Rule authorized under Merchant Marine Act but statement of basis and purpose inadequate account of how Act's purpose served by rule.
809 F.2d 909 (1987)	<u>Amalgamated Transit Union, AFL-CIO v. Brock</u>	x			Reversal and remand of district court summary judgment for Labor Secretary who certified certain labor protective arrangements as "fair and equitable." Case not moot. Secretary could not certify, under Urban Mass Transit Act of 1964, such arrangements before dispute mechanism provision in place.
810 F.2d 1168 (1987)	<u>Jersey Central Power & Light Company v. F.E.R.C.</u>	x			Commission order modifying utility rate schedule to exclude investment in cancelled nuclear power plant vacated and remanded. Utility entitled to evidentiary hearing on whether rates "just and reasonable." Rehearing <u>en banc</u> of issues raised in 730 F.2d 816 (1984) and 768 F.2d 1500 (1985) <u>supra</u> .

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CITATION	STYLE OF CASE	OPINION		DIS	LEGAL ISSUES INVOLVED IN CASE
		MAJ	CONC		
810 F.2d 1224 (1987)	<u>National Treasury Employees Union v. Federal Labor Relation Authority</u>	x			Authority found two bargaining proposals to be nonnegotiable on ground that they would interfere with IRS' right to assign work. One sustained but second remanded to Authority for further proceedings as it would not impermissibly deprive IRS of right to assign work.
811 F.2d 1563 (1987); pet. for cert. filed 55 U.S.L.W. 3822 (U.S. May 21, 1987) (No. 86-1871)	<u>National Fuel Gas Supply Corporation v. F.E.R.C. (two cases)</u>	x			Affirmance of Commission orders denying gas company request for retroactive rate increases. Issue concerning "first sale" gas not raised during final adjudication by Commission. Settlement reached between company and customers did not preserve right for later objection to rate set.
815 F.2d 1495 (1987)	<u>Western Union Telegraph Company v. F.C.C. (three cases)</u>	x			Reversal and remand of Commission orders abrogating certain procedural provisions of settlement agreement between long-distance carriers and AT&T and local telephone companies. FCC has power to change contract rates if unlawful and modify provisions of private contracts in the public interest.
815 F.2d 1527 (1987)	<u>Wolfe v. Department of Health & Human Services</u>			x	Affirmance of district court decision that information in H&HS "regulations log" not privileged under the Freedom of Information Act. Log information was insufficiently deliberative to be within deliberative process privilege and information was not within executive privilege.
815 F.2d 1551 (1987)	<u>Maxcell Telecom Plus, Inc. v F.C.C. (two cases)</u>	x			Affirmance of Commission's retroactive adoption of lottery procedure to select cellular radiotelephone licensees and Commission's finding that certain applications were untimely filed but reversing order that another application was untimely. Efficient processing justified use of procedure.
815 F.2d 1562 (1987)	<u>United Transportation Union, AFL-CIO v. Brock</u>	x			Affirmance of district court dismissal of challenge to Labor's decision to certify protective arrangements upon application for federal assistance to public transit authority. Urban Mass Transportation Act provisions did not entitle employees to reinstatement of collective bargaining rights in this instance.
816 F.2d 695 (1987)	<u>Bartlett on Behalf of Neuman v. Bowen</u>			x	Reversal and remand of district court dismissal of action challenging constitutionality of provision of Social Security Act. District court had jurisdiction to review the claim. Doctrine of sovereign immunity does not permit Congress to preclude all judicial review of constitutionality of enactment.
816 F.2d 783 (1987)	<u>Montgomery & Associates v. Commodity Futures Trading Commission</u>	x			Denial of motion for attorney fees. Motion was not timely filed under court rule.
816 F.2d 785 (1987)	<u>National Latino Media Coalition v. F.C.C.</u>	x			Denial of petition for review of F.C.C. action which stated that lottery may be used to break tie and award telecommunications license between or among equally qualified applicants. Statements were interpretative rule so no requirement for notice and comment. Challenge to interpretative rule not ripe for review.
No. 86-1412 (July 7, 1987)	<u>Securities Industry Association v. Board of Governors of the Federal Reserve System</u>	x			Affirmance of Board's determination that combined provision of securities brokerage services and investment advice by a member bank's affiliate not illegal. Board's decision is a reasonable interpretation of the language and legislative history of Glass-Steagall Act and consistent with prior precedent.

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CITATION	STYLE OF CASE	OPINION		LEGAL ISSUES INVOLVED IN CASE
		MAJ CONC	DIS	
No. 86-3041 (July 7, 1987)	<u>U.S. v. Butler</u>	x		Affirmance of district court jury verdict in case involving conspiracy to violate the Truth in Lending Act and violations of the Travel Act in a scheme to defraud involving mortgage loans that caused many victims to lose homes. No reversible error in court below.
No. 86-1239 (July 10, 1987)	<u>International Union, United Mine Workers of America v. Mine Safety and Health Administration (two cases)</u>	x		Administration's granting of indefinite interim relief from operation of mandatory safety standards pending decisions on petitions for modifications of the standards vacated. Such relief was contrary to clear congressional intent.
No. 86-5351 (July 17, 1987)	<u>Zoelsch v. Arthur Anderson & Co.</u>	x		Affirmance of district court dismissal of action for want of subject matter jurisdiction. Fraudulent misrepresentations in securities transaction were not made within the United States; thus, courts have no jurisdiction over suit brought under Securities Exchange Act of 1934.
No. 86-5510 (July 17, 1987)	<u>Carlin v. McKean</u>	x		Affirmance of district court dismissal of suit brought for injunctive relief including reinstatement as Postmaster General. Congress vested Board of Governors of the Postal Service with power of removal of Postmaster General without judicial review.
No. 86-1256 (July 21, 1987)	<u>Branch v. F.C.C.</u>	x		Denial of petition for review of Commission decision that station which employs television reporter would be required to give "equal time" to opponents if he ran for public office. Time would be equal to his regular daily appearances.
No. 85-1150 (July 28, 1987)	<u>Natural Resources Defense Council Inc. v. U.S. Environmental Protection Agency</u>	x		Decision constitutional and proper interpretation of statute.
No. 85-5233 (July 31, 1987)	<u>Bartlett on behalf of Neuman v. Bowen</u>		x	En banc review of an order of EPA with remand to EPA for reconsideration. In setting emission standards for hazardous pollutants, cost and technological feasibility cannot be considered in determining what is safe. Determination must be based solely upon risk to health.
No. 86-5210 (July 31, 1987)	<u>National Maritime Union of America, AFL-CIO v. Commander, Military Sealift Command</u>	x		Reconsideration of previous granting of suggestion of rehearing en banc and vacating order. Issues involved in decision not unique or important enough to justify en banc consideration.
No. 83-1694 (August 7, 1987)	<u>Catrett v. Johns-Manville Sales Corporation</u>		x	Affirmance of district court dismissal of suit for lack of standing under the Service Contract Act. Union challenged Command's contract to have private firms operate twelve government owned oceanographic ships. Union, representing civil service mariners who would be replaced, lacked causally traceable injury.
No. 85-5984 (August 7, 1987)	<u>Save Our Cumberland Mountains, Inc. v. Hodel</u>	x		Case again before the same panel after reversal and remand for reconsideration of earlier decision, 756 F.2d 181 (1985), supra. Defendant was not entitled to summary judgment as a matter of law in district court as the record contains sufficient evidence to create a genuine issue of material fact.

