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SYNOPSIS OF REPORTED DECISIONS OF THE DISTRICT OF COLUMBIA CIRCUIT
IN WHICH JUDGE ALTONIN GREGORY SCALIA AUTHORED A SIGNED OPINION
OR OTHER STATEMENT

Paul L. Morgan
Legislative Attorney
August 12, 1986

SIGNED OPINIONS AUTHORED BY JUDGE SCALIA

CITATION	TITLE OF CASE	OPINION			LEGAL ISSUES INVOLVED IN CASE
		MAJ	CONC	DIS	
No. 84-1492 (July 29, 1986)	<u>Brock v. Cathedral Bluffs Shale Oil Co.</u>	x			Reversal and remand of Federal Mine Safety and Health Review Commission ruling which dismissed a safety violation fine. Commission improperly regarded Secretary of Labor's general statement of enforcement policy as a binding regulation which the Secretary was required to strictly observe.

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No. 85-5887 (July 29, 1986)	<u>Republic Airlines, Inc. v. United Airlines, Inc.</u>	x		Affirming district court judgment on the pleadings against Republic for failure to state a claim. Agreement that Republic sought to enforce did not comply with federal regulations and was thus unenforceable as a matter of law.
No. 85-5249 (July 18, 1986)	<u>Washington Post Co. v. United States Department of Health and Human Services</u>	x		Reversal of district court decision affirming H.H.S. decision to withhold certain information requested under Freedom of Information Act. Issue was whether H.H.S. had raised the defense that the information was privileged in a timely fashion.
No. 85-1146 (June 24, 1986)	<u>Regular Common Carrier Conference v. United States of America and Interstate Commerce Commission</u>	x		Commission approval of certain tariff rules set aside as being contrary to law.
No. 85-1348 (June 20, 1986)	<u>In re: Center for Auto Safety</u>		x	National Highway Traffic Safety Administration repeatedly missed statutory deadline for promulgating fuel economy standards under the Energy Policy and Conservation Act. Court would retain jurisdiction until standards promulgated for 1989 model year. Case not moot.
No. 85-1231 (June 20, 1986)	<u>Center for Auto Safety v. National Highway Traffic Safety Administration</u>		x	Petitioner organizations have standing to bring suit in representative capacity for members who have suffered an injury-in-fact but the N.H.T.S.A. had authority under the Energy Policy and Conservation Act of 1975 to set fuel consumption standards for new vehicles within reasonable range.
No. 84-1292 (June 20, 1986)	<u>National Treasury Employees Union v. Federal Labor Relations Authority</u>	x		Remand of F.L.R.A. decision. Level of incentive pay awarded for performance of Agency work does not come within the nonbargainable management rights to assign work and direct employees as provided in the Civil Service Reform Act of 1978.
No. 84-5318 (June 18, 1986)	<u>Block v. Meese</u>	x		Upholds lawfulness under the Foreign Agents Registration Act and First Amendment of Justice Department's classification of three films as "political propaganda" and application of regulations requiring foreign agent's disclosure of names of certain recipients and exhibitors.
No. 85-5615 (June 17, 1986)	<u>Conefey v. Wyeth Laboratories</u>		x	Remand to district court with instructions to provide reasons for denying a motion to dismiss the action.
792 F.2d 241 (1986)	<u>Internat'l Assoc. of Bridge, Structural, and Ornamental Iron Workers, AFL-CIO Local No. 111 v. N.L.R.B.</u>	x		Question involving unfair labor practice by union local which attempted to discourage traveling union members from working within local's jurisdiction.
792 F.2d 194 (1986)	<u>McKelvey v. Turnage</u>		x	Question of whether the Veterans' Administration violated provision of Rehabilitation Act of 1973 by refusing to extend period of eligibility for veterans educational benefits for one seeking extension due to alcoholism. V.A. deemed such the veteran's own willful misconduct and would not extend. Affirmed.

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792 F.2d 153 (1986)	<u>Church of Scientology of California v. Internal Revenue Service</u>	x			En banc decision defining meaning of so-called Haskell Amendment excepting from I.R.S. Code's definition of nondisclosable "return information" "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer." 26 U.S.C. §6103(b)(2) (1982)
792 F.2d 146 (1986)	<u>Church of Scientology of California v. Internal Revenue Service</u>	x			District Court's summary judgment in favor of I.R.S. vacated. I.R.S. had not sustained burden of proving that documents sought under a Freedom of Information Act request would "seriously impair federal tax administration"
791 F.2d 179 (1986)	<u>In re Sealed Case</u>	x			Interpretation of 18 U.S.C. 6002 (1982) relative to the extent immunity from prosecution would be granted under its provisions in a particular criminal investigation.
790 F.2d 938 (1986)	<u>Aluminum Company of America v. United States</u>	x			Shipper did not have standing to seek review of a determination that the I.C.C. lacked jurisdiction to consider a railroad's petition for review of interstate freight rates. I.C.C.'s assertion of original jurisdiction over the shipper was not final agency action and thus was not appealable.
790 F.2d 154 (1986)	<u>Gates & Fox Co., Inc. v. O.S.H.R.C.</u>	x			Regulation under which petitioner was cited for violating safety standards did not provide employer constitutionally adequate notice that it could be sanctioned for failing to provide rescue equipment to employees not working near advancing face of a tunnel or shaft.
788 F.2d 33 (1986)	<u>Mathes v. Commissioner of Internal Revenue</u>	x			Taxpayer excluded almost \$60,000 from gross income on tax return. IRS determined that wages were taxable and taxpayer sought redetermination of deficiency. Tax Court did not abuse discretion in dismissing petition. Taxpayer subject to sanction of double costs and reasonable attorney fees-frivolous and
783 F.2d 1082 (1986)	<u>United States v. Foster</u>	x			En banc decision that a criminal defendant who, after denial of motion for judgment of acquittal at close of Government's case in chief, proceeds with presentation of his own case waives objection to the denial. Rule to be applied prospectively only.
783 F.2d 1072 (1986)	<u>Rainbow Navigation, Inc. v. Department of the Navy</u>	x			Affirming district court ruling that decision to revoke shipping preference on the ground that rates charged were excessive and otherwise unreasonable was not supported by evidence.
780 F.2d 59 (1985)	<u>Northern Natural Gas Company, Division of InterNorth, Inc. v. F.E.R.C.</u>	x			Condition attached by Commission to a certificate of public convenience and necessity setting conditions after next rate case was not ripe for judicial review.
778 F.2d 8 (1985)	<u>Road Sprinkler Fitters Local Union No. 669 v. National Labor Relations Board</u>	x			Upholding decisions of the N.L.R.B. that a union had violated the National Labor Relations Act by causing employees to be fired or employment applicants not to be hired if not union members. Board lacked authority to provide remedy for unfair labor practice established by evidence but not charged in complaint.

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777 F.2d 764 (1985)	<u>ASARCO, Inc. v. F.E.R.C.</u>	x			Petitions for review of F.E.R.C. order dismissed as the order reserved claims of petitioners for later disposition and was not reviewable. Also petitioner could not urge before the Court objection that other petitioners presented to F.E.R.C. but that petitioner itself did not.
777 F.2d 760 (1985)	<u>Reynolds Metals Company v. F.E.R.C.</u>	x			Major industrial customer of electric utility filed petitions for stay under All Writs Act and for stay pending review of F.E.R.C. order imposing on the utility, and hence its ratepayers, a 36% share of the costs of a nuclear plant. Petitions denied and dismissed. Order not final so petitions premature.
777 F.2d 751 (1985)	<u>American Federation of Government Employees, AFL-CIO, Local 3090 v. Federal Labor Relations Authority</u>		x		Decision of F.L.R.A. dismissing unfair labor practice complaint vacated and remanded. Case not moot. Long standing regulation provides that filing of exception does not operate as stay of decision so agency must comply with arbitrator's award.
777 F.2d 1 (1985)	<u>Hirschey v. Federal Energy Regulatory Commission</u>		x		Remand of 760 F.2d 305 (1985), <u>infra</u> . Consideration of petitioner's claims for award of attorney fees and costs under the Equal Access to Justice Act as prevailing party in action against F.E.R.C.
776 F.2d 355 (1985)	<u>Illinois Commerce Commission v. Interstate Commerce Commission</u>	x			Order of Inter. C.C. vacated in part and remanded. Question of amending regulations dealing with whether requested abandonment of railroad line should be granted and the amount of subsidy to be required to preclude abandonment.
775 F.2d 392 (1985)	<u>Citizens for Jass on WRVR, Inc. v. Federal Communications Commission</u>	x			Remand to F.C.C.'s decision rejecting without a hearing a petition of a citizens group for denial of renewal of radio broadcasting license. Proper standard of evidence is whether question of fact placed in issue is "substantial" one and did not require establishment of "clear, precise and indubitable" proof.
774 F.2d 1205 (1985); cert. den. 54 U.S.L.W. 3662 (1986)	<u>City of Charlottesville, Virginia v. F.E.R.C.</u>	x			Denial of city petition for review of F.E.R.C.'s decision to use "stand-alone" methodology to determine tax allowances included in costs of services and hence rates of two interstate natural gas pipelines which were part of consolidated group. Approach was reasonable and correct.
774 F.2d 490 (1985)	<u>Electrical District No. 1 v. Federal Energy Regulatory Commission</u>	x			Remand of order to F.E.R.C. Commission could not lawfully make rate increase effective as of date of its order directing compliance filing rather than upon date of acceptance of compliance filing.
773 F.2d 1368 (1985)	<u>City of Cleveland, Ohio v. F.E.R.C.</u>	x			Denying petition for review of order of F.E.R.C. accepting a compliance filing by electric utility. Procedures not contrary to law, arbitrary or capricious, or impermissibly vague.
773 F.2d 1325 (1985)	<u>In Re the Reporters Committee For Freedom of the Press</u>	x			Affirming district court decision allowing intervention in civil defamation action by group of reporters but denying group prejudgment access to trial documents under seal. No violation of First Amendment right of public access by sealing documents until entry of judgment where claim of confidentiality

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773 F.2d 375 (1985)	<u>Western Union Telegraph Co. v Federal Communications Commission</u>	x			Court lacked jurisdiction over petition filed before F.C.C. order of which it sought review had been entered
772 F.2d 979 (1985)	<u>Las Misiones de Bejar Television Co. v. Federal Communications Commission</u>	x			Statement of reasons to per curiam opinion allowing remand to enable F.C.C. to consider settlement between competing applicants for station license.
772 F.2d 951 (1985)	<u>Fink v. National Savings and Trust Company</u>		x	x	Affirming in part, vacating in part and remanding district court decision concerning employer-sponsored ERISA retirement beneficiaries suit against the plan's fiduciaries to enforce rights. Generally decided by application of <u>master/servant law</u> .
772 F.2d 940 (1985); cert. den. 54 U.S.L.W. 3578 (1986)	<u>United States v. Hansen</u>	x			Affirming conviction of former Congressman's willful filing of false statements in annual financial disclosure required by Ethics in Government Act. Rights under Speedy Trial Act not violated.
770 F.2d 1223 (1985)	<u>National Association of Government Employees, Local R7-23 v. Federal Labor Relations Auth.</u>	x			Affirming in part and remanding in part F.L.R.A. decision that agency did not interfere with statutorily guaranteed union rights in evaluating public employee's performance and in requesting employee to devote more time to job-related work.
770 F.2d 1220 (1985)	<u>Dir. Office of Workers Compensation Programs v. Belcher Erectors</u>	x			Reversal of decision of Benefits Review Board which had reversed an Administrative Law Judge's determination relative to a worker's not having a preexisting injury. ALJ's determination supported by substantial evidence.
770 F.2d 202 (1985)	<u>Sanchez-Espinoza v Reagan</u>	x			Affirming district court dismissal of action against President and other federal officials alleging claims arising out of U.S. actions in Nicaragua. Alien Tort Statute inapplicable to private actions of executive officials. Claims by Congressman presented nonjusticiable political question.
768 F.2d 352 (1985)	<u>FAIC Securities, Inc. v. United States</u>	x			Affirming district court decision invalidating F.D.I.C. regulations as contravening applicable statutory requirements. Brokers had standing to maintain suit.
765 F.2d 1196 (1985); cert. gr., 54 U.S.L.W. 3375 (1986)	<u>Securities Industry Association v. Comptroller of the Currency</u>			x	Denial of petition for hearing en banc of 758 F.2d 739, <u>infra</u>
762 F.2d 1119 (1985)	<u>Department of the Treasury v. Federal Labor Relations Auth.</u>	x			Order of F.L.R.A. was inconsistent with government-wide regulations requiring employment practices to be based on analyses of positions or occupations having common characteristics and thus unenforceable

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762 F.2d 1034 (1985)	<u>California Human Development Corporation v. Brock</u>		x	Department of Labor's formula for allocating funds under the Job Training Partnership Act, based upon 1980 Census occupational data rather than social security data, conformed to the relevant statutes and agency's own regulations and therefore was valid.	
761 F.2d 768 (1985)	<u>Maryland People's Counsel v. F.E.R.C.</u>	x		Petition granted to invalidate F.E.R.C. approval of experimental increase in natural gas pipeline competition. Commission failed to set forth a reasonable basis to show that amending certain contracts would benefit all pipeline rate payers.	
761 F.2d 746 (1985)	<u>Aluminum Co. of America v. I.C.C.</u>	x		Denial of petitions of review of I.C.C. dismissal of complaint against railroad rates applicable to aluminum ingot. Railroads had properly established substantial product competition regarding the products in question.	
760 F.2d 1297 (1985)	<u>National Black Media Coalition v. F.C.C.</u>	x		Limitation of statute governing time for filing notice of appeal from orders of F.C.C. is jurisdictional and alleged failure of F.C.C. to provide personal notice of its decision to parties did not operate to extend the otherwise applicable deadline.	
760 F.2d 318 (1985)	<u>Maryland People's Counsel v. F.E.R.C.</u>	x		On petition for review of F.E.R.C. order authorizing natural gas special marketing programs. Petitioner had standing to challenge marketing programs.	
760 F.2d 305 (1985)	<u>Hirschey v. F.E.R.C.</u>		x	x	Petitioner sought an award of attorney's fees and costs as a prevailing party in case against the Government arising out of the Federal Power Act. Barred by the Act; however, petitioner entitled to certain attorney's fees under Equal Access to Justice Act.
759 F.2d 936 (1985)	<u>Radiofone, Inc. v. Federal Communications Commission</u>	x		Dispute between competitors of radio paging service company, which went out of business while appeal was pending, and the F.C.C. regarding lawfulness of company's operations, was moot.	
759 F.2d 185 (1985)	<u>Trakas v. Quality Brands, Inc.</u>			x	Reversal of district court dismissal of action with prejudice for want of prosecution. Dismissal is a sanction of last resort to be applied only after less dire alternatives have been explored without success.
758 F.2d 739 (1985); cert. gr. 54 U.S.L.W. 3575 (1986)	<u>Securities Industry Association v. Comptroller of the Currency</u>		x	x	Affirming lower court ruling reversing decision of Comptroller of the Currency. National Banks are not entitled to approval of applications for establishment or purchase of discount securities brokerage subsidiaries.
757 F.2d 296 (1985)	<u>Simmons v. Interstate Commerce Commission</u>	x			Decision by the I.C.C. to require annual reports filed by railroads to contain only such information "as needed by the Commission on a regular and frequent basis" and not information of use to the general public had legal support but decision was procedurally defective.

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756 F.2d 902 (1985); rehear en banc gr. June 10, 1985, diss. Sep. 20, 1985	<u>Gott v. Walters</u>	x			Statute precludes judicial review of decisions of Administrator of Veterans' affairs on any question of law or fact.
756 F.2d 191 (1985)	<u>Atlanta Gas Light Co. v. F.E.R.C.</u>	x			Denial of petition for review of F.E.R.C. approval of gas company's curtailment plan. Plan consistent with Natural Gas Policy Act and with regulations of F.E.R.C.
756 F.2d 166 (1985); cert. den. 54 U.S.L.W. 3225 (1985)	<u>Interstate Natural Gas Association of America v. F.E.R.C.</u>			x	Order of F.E.R.C. was arbitrary and capricious where there was no explanation for the change from a prior order.
756 F.2d 91 (1985)	<u>Seattle v. United States</u>			x	Antarctica not "foreign country" within meaning of foreign country exception for Federal Tort Claims Act; venue proper in U.S. District Court for D.C.; D.C. law to be applied.
751 F.2d 1398 (1985)	<u>Carter v. Director, Office of Workers' Compensation Programs, U.S. Dept. of Labor</u>	x			Granting employee's petition for review of Benefits Review Board denial of reinstatement of suspended benefits.
751 F.2d 1336 (1985)	<u>Center for Auto Safety v. Peck</u>	x			Petition to review action of National Highway Traffic Safety Administration reducing minimum performance standard for automobile bumpers denied. Agency action not arbitrary or capricious, was based on valid factors and there was no clear error of judgment.
750 F.2d 970 (1984); cert. den. 53 U.S.L.W. 3837 (1985)	<u>Ollman v. Evans</u>		x	x	Expressions of opinion by newspaper columnists were constitutionally protected.
749 F.2d 875 (1984); cert. den. 54 U.S.L.W. 3223 (1985)	<u>Illinois Commerce Commission v. Interstate Commerce Commission</u>			x	Staggers Rail Act reasonably interpreted by the Interstate C.C. and the Act provisions were facially constitutional.
749 F.2d 815 (1984)	<u>Molerie v. F.B.I.</u>	x			Affirming lower court dismissal. No discrimination in failure to hire plaintiff as special agent as he was not qualified for job because he could not obtain security clearance. No due process. first amendment questions
749 F.2d 77 (1984)	<u>Romero v. National Rifle Association of America, Inc.</u>	x			Organization entitled to benefit of general rule of nonliability at common law for harm resulting from criminal acts of third parties with respect to its liability for death of robbery victim shot with gun taken during burglary. District court affirmed.

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749 F.2d 58 (1984)	<u>Shaw v. F.B.I.</u>	x			Reversing lower court. Photographs of participants in a peace march constituted confidential information and were obtained in the course of an authorized investigation, thus were not required to be disclosed under the <u>Freedom of Information Act</u> .
749 F.2d 50 (1984)	<u>Community Nutrition Institute v. Block</u>	x			Affirming lower court dismissal of suit challenging Secretary of Agriculture's regulations involving labeling of meat products. Regulations did not permit sale of meat misbranded in violation of Federal Meat Inspection Act and were not issued in violation of the <u>Administrative Procedure Act</u> .
747 F.2d 787 (1984)	<u>American Trucking Associations, Inc. v. I.C.C.</u>	x			Dismissal of petition not ripe for adjudication, thus appropriate for dismissal on the court's own motion.
747 F.2d 781 (1984)	<u>Transwestern Pipeline Co. v. F.E.R.C.</u>	x			Petition to set aside declaratory order of Federal Energy Regulatory Commission dismissed as there was no "party aggrieved" and thus no federal jurisdiction.
747 F.2d 1 (1984)	<u>Center for Auto Safety v. Ruckelshaus</u>	x			Granted petition to review decision of Environmental Protection Agency allowing auto manufacturers to remedy violations of emission control regulations by meeting stricter standards in future years. EPA's action not authorized by <u>Clean Air Act</u> .
746 F.2d 1563 (1984); rev. 54 U.S.L.W. 4755 (1986)	<u>Liberty Lobby v. Anderson</u>	x			Substantial fact issues existed as to whether certain allegations not based upon good-faith reliance on reputable sources were defamatory, false, and made with actual malice, precluding summary judgment in favor of publisher in <u>district court</u> .
746 F.2d 855 (1984); rev. 54 U.S.L.W. 4765 (1986)	<u>International Union, United Auto, Aerospace & Agricultural Implement Workers of America v. Donovan</u>	x			Court of Appeals had no jurisdiction to review Secretary of Labor's decision, unrestricted by law, to allocate funds under the Trade Act of 1974.
745 F.2d 1500 (1984); remand, 53 U.S.L.W. 3824 (1985)	<u>Ramirez de Arellano v. Weinberger</u>			x	See: 724 F.2d 143 (1983) <i>infra</i> . En banc rehearing reversed earlier decision. Plaintiffs had justiciable cause of action and standing. Doctrine of equitable discretion might permit some form of injunction. Act of State doctrine does not bar relief.
745 F.2d 677 (1984)	<u>Ass'n of Data Processing Service Organizations v. Board of Governors of the Federal Reserve System</u>	x			Denial of petition for review of Federal Reserve order approving bank's application to establish subsidiary to engage in certain data processing and transmission services. Services were found "closely related to banking" thus authorized under <u>Bank Holding Company Act</u> .
744 F.2d 871 (1984)	<u>City of Winnfield, LA v. F.E.R.C.</u>	x			Denial of petition for review of order of Commission authorizing increased rate for an electric utility. Evidence supported increase.

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744 F.2d 197 (1984)	<u>Delta Data Systems Corp. v. Webster</u>	x			Fashioning relief for a disappointed bidder due to FBI's violation of federal procurement regulations.
741 F.2d 401 (1984)	<u>Thompson v. Clark</u>	x			Affirmance of lower court's dismissal of developer's challenge of final rule promulgated by Secretary of Interior increasing application and rental fees for certain noncompetitive federal oil and gas leases. Judicial review precluded by Regulatory Flexibility Act.
740 F.2d 1104 (1984)	<u>United States v. Byers</u>	x			En banc holding that statements by defendant to court-appointed psychiatrist tending to negate insanity defense admissible despite contention that such violated right against self-incrimination. No right to counsel attaches to examination by court-appointed psychiatrist.
738 F.2d 1375 (1984)	<u>United Presbyterian Church in the U.S.A. v. Reagan</u>	x			Affirmance of trial court's dismissal of action for lack of standing. Challenge to Executive Order establishing framework for governmental and military intelligence gathering functions.
738 F.2d 1304 (1984)	<u>de Peraz v. F.C.C.</u>	x			In granting instruction permit to potential competitor, the Commission's waiver of its rules regarding interference was not arbitrary or capricious, and the Commission did not impermissibly depart from its prescribed method of determining points of reference for communities.
737 F.2d 1173 (1984)	<u>Poindester v. F.B.I.</u>		x	x	Reversal and remand of decision on granting plaintiff's request for appointment of an attorney in a Title VII employment discrimination action.
735 F.2d 1517 (1984); cert. den. 53 U.S.L.W. 3668 (1985)	<u>Asociacion de Reclamantes v. United Mexican States</u>	x			Affirming district court decision that action seeking compensation from Mexico for alleged taking and conversion of certain land grant related claims barred by Foreign Sovereign Immunities Act.
734 F.2d 1541 (1984)	<u>South Carolina Electric & Gas Co. v. I.C.C.</u>	x			Denial of utilities petition for review of ICC order directing railroads to restate the value of their assets when changing method of accounting. Order not ripe for judicial review when not calling into question primary conduct in which utilities engaged.
733 F.2d 946 (1984); cert. den. 53 U.S.L.W. 3485 (1985)	<u>Moore v. U.S. House of Representatives</u>		x		While members of House of Representatives had standing to bring action alleging violation of constitutional mandate that revenue-raising bills originate in the House, declaratory relief properly withheld by lower court due to separation of powers concerns.
733 F.2d 128 (1984)	<u>United States v. Cohen</u>	x			Affirming lower court order committing to hospital for the mentally ill one found not guilty by reason of insanity of possession of unregistered destructive devices. Procedures enacted by Congress for commitment do not violate equal protection.

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732 F.2d 213 (1984)	<u>Devine v. Pastore</u>	x			Granting Director of O.M.B.'s petition for review of order of arbitrator mitigating penalty of removal imposed by Customs Service against an inspector for theft of merchandise entrusted to him. Arbitrator erred in assessment of penalty to be imposed, misinterpreted the agreement and misapplied the law.
730 F.2d 799 (1984)	<u>Bouchet v. National Urban League Inc.</u>	x			Affirming Title VII employment discrimination suit decision in favor of employer, employee's supervisor and dismissal of a second complaint.
730 F.2d 790 (1984)	<u>State of North Carolina v. F.E.R.C.</u>	x			Denial of petition for review of F.E.R.C. order prescribing curtailment plan for interstate natural gas pipeline.
728 F.2d 1500 (1984)	<u>Answering Service, Inc. v. Egan</u>		x		Corporation action against former codefendant for wrongful involvement in litigation not barred by D.C. preclusion law.
728 F.2d 543 (1984)	<u>Port Morris Express Co., Inc. v. Interstate Commerce Comm.</u>	x			Petition of appeal of order of I.C.C. granting application for authority to transport general commodities in both bulk and non-bulk form denied.
727 F.2d 1225 (1984)	<u>Carter v. Duncan-Huggins, Ltd.</u>			x	Affirming judgment entered in favor of a discrimination plaintiff. Evidence below sufficient for jury to adduce that employer intentionally discriminated against the plaintiff and jury award of \$10,000 not unreasonable.
727 F.2d 1145 (1984)	<u>Truohars, Inc. v. Covell</u>	x			Interpretation of contract.
727 F.2d 1127 (1984)	<u>New England Coalition on Nuclear Pollution v. N.R.C.</u>	x			Remand of order of Nuclear Regulatory Commission amending Commission's rules of practice in certain proceedings and certain substantive requirements. Amendments not supported by statement of basis and purpose.
726 F.2d 832 (1984)	<u>Air New Zealand Ltd. v. C.A.B.</u>	x			Denial of petition of foreign air carrier for review of Civil Aeronautics Board order as not ripe for review.
724 F.2d 1030 (1984)	<u>Chaney v. Heckler</u>			x	Denial of en banc rehearing of 718 F.2d 1174 (1983), <u>infra</u> .

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724 F.2d 143 (1983); vacated, 745 F.2d 1500 (1984); vacated 53 U.S. L.W. 3824 (1985)	<u>Ramirez de Arellano v. Weinberger</u>	x			Allegations that the Secretary of Defense had wrongfully occupied plaintiffs' Honduran property was justiciable but injunctive relief inappropriate as it would intrude into foreign affairs, require continuing supervision of court in Honduras, question legality of Honduran officials' action under their law.
723 F.2d 975 (1983); cert. den. 53 U.S.L.W. 5236 (1984)	<u>Sea-Land Service, Inc. v. Dole</u>	x			Secretary of Transportation not required to hold hearings prior to taking certain actions under the Merchant Marine Act of 1936.
723 F.2d 950 (1983); cert. den. 467 U.S. 1241 (1984)	<u>Papago Tribal Utility Authority v. F.E.R.C.</u>	x			Interpretation of contract between parties.
723 F.2d 82 (1983)	<u>Kansas Cities v. F.E.R.C.</u>	x			Denying petition for review of Commission order allowing increased electricity rates to be charged by supplier. Evidence sufficient to show that F.E.R.C. had acted within bounds of sound discretion.
720 F.2d 192 (1983)	<u>Isoules v. Connas</u>	x			Affirmed lower court dismissal of action for libel and slander.
718 F.2d 1174 (1983); rev. 53 U.S.L.W. 3532 (1985)	<u>Chapier v. Heckler</u>			x	Inmate under death sentence asserted that use of certain drugs for execution, without prior Food and Drug Administration approval violated provisions of federal law. FDA had jurisdiction to interfere with state gov. use of drugs for execution and had arbitrarily and capriciously refused to exercise jurisdiction.
718 F.2d 1170 (1983)	<u>Dunning v. N.A.S.A.</u>	x			Denial of petition of government employee for review decision of Merit Systems Protection Board affirming 15 day suspension imposed by N.A.S.A. Evidence supported propriety of suspension for insubordination and supported finding that action was not taken in reprisal for earlier challenge to procedures.
718 F.2d 1164 (1983)	<u>City of Bedford v. F.E.R.C.</u>	x			Denial of petition for review of Commission orders granting preliminary permits for preparation of license applications relative to hydroelectric facilities. Commission procedure reasonable.
718 F.2d 475 (1983)	<u>Safir v. Dole</u>	x			Upon complaint of former shipper bankrupted, in part by predatory pricing by certain carriers, the Secretary of Commerce directed recovery of some subsidies paid carriers. District judge modification of order vacated and remanded with order to dismiss. No jurisdiction due to lack of standing.
717 F.2d 1419 (1983), cert. den. 466 U.S. 937 (1984)	<u>Ensign-Bickford Co. v. OSHA</u>			x	Affirmance of Commission finding that employer willfully violated the general duty clause of the Occupational Safety and Health Act. Clause not unconstitutionally vague and Act not preempted by Department of Defense safety manual on explosives manufacture.

SIGNED OPINIONS AUTHORED BY JUDGE SCALIA

CITATION	STYLE OF CASE	OPINION			LEGAL ISSUES INVOLVED IN CASE
		MAJ	CONC	DIS	
717 F.2d 1402 (1983)	<u>Steger v. Defense Investigative Service, Department of Defense</u>			x	Merit System Protection Board decision denying public employee attorney fees expended in successfully challenging discharge from employment was arbitrary and capricious. Board should have considered whether agency had taken action knowing it would not prevail on the merits.
716 F.2d 40 (1983)	<u>Simmons v. Interstate Commerce Commission</u>	x			Rule review petition dismissed as petitioner not an "aggrieved party" under Hobbs Act and intervenor did not meet procedural requirements of Act in timely fashion.
715 F.2d 644 (1983)	<u>Ryan v. E.A.T.F.</u>	x			Affirming lower court's interpretation of Freedom of Information Act provision authorizing exemption from disclosure of certain information relative to protection of revenue.
715 F.2d 632 (1983)	<u>Nat. Coalition to Ban Handguns v. E.A.T.F.</u>	x			Gun Control Act of 1968 did not require that applicant for firearms dealers' license have "bona fide" commercial enterprise with separate business premises and significant commercial operations.
714 F.2d 171 (1983)	<u>Carducci v. Regan</u>	x			Reassignment of employee of Customs Service without reduction in pay or grade is discretionary personnel practice committed to agency by Federal law and not subject to judicial review.
712 F.2d 1495 (1983)	<u>International Brotherhood of Teamsters v. National Mediation Board</u>	x			Agency possession of gummed address labels of employees eligible to vote in representative election was not control of labels so as to subject them to disclosure as agency records under the Freedom of Information Act.
712 F.2d 1462 (1983)	<u>Arlieff v. U.S. Dept. of Navy</u>	x			Reversing summary judgment for Navy where journalist had sought Freedom of Information disclosure of information as to prescription drugs supplied by Navy to Office of Attending Physician to Congress. Lower court could have restricted application for information to aggregate portions of records.
711 F.2d 211 (1983)	<u>Jordan v. Medley</u>	x			Reversal of lower court award of compensatory and punitive damages in landlord/tenant dispute involving abandonment of loaded rifle. Misapplication of landlord/tenant, principal/agent, and evidentiary law by lower court.
705 F.2d 1364 (1983)	<u>Toney v. Block</u>	x			Determination that race was not a factor in decision of personnel office to promote white employee over plaintiff, a black employee, was supported by the evidence.
703 F.2d 1297 (1983)	<u>DANA CORP. v. I.C.C.</u>	x			Granted petitioner's prayer for review of I.C.C. order relative to rates assessed by several railroads on specially equipped cars.

SIGNED OPINIONS AUTHORED BY JUDGE SCALIA

CITATION	TITLE OF CASE	OPINION		LEGAL ISSUES INVOLVED IN CASE	
		MAJ.	DIS.		
703 F.2d 586 (1983); rev., 468 U.S. 288 (1984)	<u>Community for Non-Violence v. Wall</u>		x	U.S. Park Service regulation against sleeping in parks unconstitutionally applied to demonstrators' expressive conduct.	
702 F.2d 1189 (1983)	<u>Dosier v. Ford Motor Company</u>	x		Res judicata	
702 F.2d 1183 (1983)	<u>AFGE Local 2782 v. F.L.R.A.</u>	x		Granting Union's petition for review of Federal Labor Relations Authority's affirmation of agency's refusal to bargain over certain proposal. Proposal not nonnegotiable simply because it conveys some constraints upon rights generally reserved in other contexts to management.	
702 F.2d 1079 (1983); rev. 468 U.S. 317 (1984)	<u>United States v. Richardson</u>		x	Is denial of a double jeopardy claim based on the insufficiency of evidence immediately appealable to court of appeals?	
700 F.2d 727 (1983)	<u>Drukker Communications, Inc., v. N.L.R.B.</u>	x		Setting aside N.L.R.B. determination and order against employer and parent corp. in unfair labor practice action.	
699 F.2d 1185 (1983)	<u>ECST-TV, Inc. v. F.C.C.</u>		x	F.C.C. acted arbitrarily by failing to give "hard look" at application for waiver of agency rule by not considering all relevant factors.	
698 F.2d 1239 (1983); rev. 467 U.S. 340 (1984)	<u>Community Nutrition Institute v. Block</u>		x	x	Standing, exhaustion of administrative remedies.
697 F.2d 1146 (1983)	<u>American Trucking Associations, Inc. v. I.C.C.</u>	x		Interpretation of the Motor Carrier Act by I.C.C. not arbitrary, capricious abuse of discretion or contrary to law.	
695 F.2d 383 (1982)	<u>U.S. v. Donelson</u>	x		Statute authorizing incarceration of youthful offenders for period longer than an adult could be sentenced for same act not violative of equal protection clause nor is the fact that a magistrate could only sentence youth to max. of one year while district judge could sentence to max. of six years under stat.	
685 F.2d 698 (1982); vac. and remand, 464 U.S. 979 (1983)	<u>Washington Post Co. v. U.S. Dept. of State</u>		x*	* Statement of disagreement of denial of rehearing on rem. Judge Scalia not a member of three judge panel hearing case. Issues: Exemptions from disclosure under the Freedom of Information Act.	

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