



# SUPREME COURT REPORTER



**Volume 105**

Pages 1-1784

*Covering*

VOLUMES 468-470 U. S. REPORTS

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*Cases Argued and Determined  
in the*

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1984**

ST. PAUL, MINN.

**WEST PUBLISHING CO.**

1988

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# JUSTICES

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OCTOBER TERM, 1984

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## CHIEF JUSTICE

HON. WARREN E. BURGER

## ASSOCIATE JUSTICES

HON. WILLIAM J. BRENNAN, Jr.

HON. BYRON R. WHITE

HON. THURGOOD MARSHALL

HON. HARRY A. BLACKMUN

HON. LEWIS F. POWELL, Jr.

HON. WILLIAM H. REHNQUIST

HON. JOHN PAUL STEVENS

HON. SANDRA DAY O'CONNOR

## ATTORNEY GENERAL

HON. WILLIAM FRENCH SMITH

## SOLICITOR GENERAL

HON. REX E. LEE

## CLERK

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## REPORTER OF DECISIONS

HENRY C. LIND

## MARSHAL

ALFRED WONG

## LIBRARIAN

STEPHEN G. MARGETON<sup>2</sup>

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<sup>1</sup> Appointed Clerk of the Court to succeed Alexander L. Stevas effective August 1, 1985.

<sup>2</sup> Appointed Librarian of the Court to succeed Roger F. Jacobs effective July 15, 1985.



# ALLOTMENT OF THE JUSTICES

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## DISTRICT OF COLUMBIA CIRCUIT

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969;  
took office June 23, 1969.

## FIRST CIRCUIT.

*Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico.*

JUSTICE WILLIAM J. BRENNAN, Jr., of New Jersey.

Appointed by President Eisenhower October 15, 1956;  
took office October 16, 1956.

## SECOND CIRCUIT.

*Connecticut, New York, and Vermont.*

JUSTICE THURGOOD MARSHALL, of New York.

Appointed by President Johnson August 30, 1967;  
took office October 2, 1967.

## THIRD CIRCUIT.

*Delaware, New Jersey, Pennsylvania, and Virgin Islands.*

JUSTICE WILLIAM J. BRENNAN, Jr., of New Jersey.

Appointed by President Eisenhower October 15, 1956;  
took office October 16, 1956.

## FOURTH CIRCUIT.

*Maryland, North Carolina, South Carolina, Virginia, and West Virginia.*

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969;  
took office June 23, 1969.

## FIFTH CIRCUIT.

*Louisiana, Mississippi, Texas, and Canal Zone.*

JUSTICE BYRON R. WHITE, of Colorado.

Appointed by President Kennedy April 12, 1962;  
took office April 16, 1962.

## ALLOTMENT OF THE JUSTICES

### SIXTH CIRCUIT.

*Kentucky, Michigan, Ohio, and Tennessee.*

JUSTICE SANDRA DAY O'CONNOR, of Arizona.

Appointed by President Reagan September 22, 1981;  
took office September 25, 1981.

### SEVENTH CIRCUIT.

*Illinois, Indiana, and Wisconsin.*

JUSTICE JOHN PAUL STEVENS, of Illinois.

Appointed by President Ford, December 17, 1975;  
took office December 19, 1975.

### EIGHTH CIRCUIT.

*Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota,  
and South Dakota.*

JUSTICE HARRY A. BLACKMUN, of Minnesota.

Appointed by President Nixon May 14, 1970;  
took office June 9, 1970.

### NINTH CIRCUIT.

*Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada,  
Oregon, and Washington.*

JUSTICE WILLIAM H. REHNQUIST, of Arizona.

Appointed by President Nixon December 15, 1971;  
took office January 7, 1972.

### TENTH CIRCUIT.

*Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.*

JUSTICE BYRON R. WHITE, of Colorado.

Appointed by President Kennedy April 12, 1962;  
took office April 16, 1962.

### ELEVENTH CIRCUIT.

*Alabama, Florida, and Georgia.*

JUSTICE LEWIS F. POWELL, Jr., of Virginia.

Appointed by President Nixon December 9, 1971;  
took office January 7, 1972.

### FEDERAL CIRCUIT.

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969;  
took office June 23, 1969.

**ALLOTMENT OF THE JUSTICES**

**TEMPORARY EMERGENCY COURT OF APPEALS.**

**CHIEF JUSTICE WARREN E. BURGER, of Virginia.**

Appointed Chief Justice by President Nixon June 23, 1969;  
took office June 23, 1969.

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# COURT RULES

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## SUPREME COURT OF THE UNITED STATES

### AMENDMENTS TO SUPREME COURT RULES 17.2 AND 20.1

#### ORDER

July 5, 1984

It is ordered that Rule 17.2 of the Rules of the Supreme Court of the United States be amended to read as follows:

"17.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."

It is further ordered that Rule 20.1 be amended to read as follows:

"20.1. A petition for writ of certiorari to review the judgment in a criminal case of a state court of last resort or of a federal court of appeals or a decision of the United States Court of Military Appeals (see 28 U.S.C. Sec. 1259) rendered after June 1, 1984, shall be deemed in time when it is filed with the Clerk within 60 days after the entry of such judgment. A Justice of this Court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding 30 days."

It is further ordered that Rule 47 be amended to read as follows:

"47.3. An accused person petitioning for a writ of certiorari pursuant to 28 U.S.C. Sec. 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not relieved of the printing requirements under Rule 33 and is not entitled to proceed on typewritten papers except as authorized by the Court on separate motion."

The foregoing amendments shall become effective on August 1, 1984.

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Amendments to rules and new rules of appellate courts when timely furnished by the Courts are published in the National Reporter System to provide notice to the bench and bar. Since not all new rules or amendments are supplied for publication the National Reporter System is not a complete rules service. The clerk of the court should be consulted for current rule information.

# ORDER

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## SUPREME COURT OF THE UNITED STATES

### RECESS ORDER

**July 5, 1984**

The Court will take a recess from today until the first Monday in October, 1984, at which time the October 1983 Term will adjourn. The Chief Justice said:

"I am authorized to announce that all cases submitted to the Court for Decision and all other matters before the Court which were ready for disposition, have been acted upon by the Court. Accordingly, it is ordered that those cases remaining on the docket, but not ready for consideration, are hereby continued to the session of the Court beginning October 1 next. The Court will be in recess from today until the first Monday in October, 1984, at which time the October 1983 Term of the Court will be adjourned. The October 1984 Term of the Court will begin as provided by statute on the first Monday in October."



# THE SUPREME COURT'S NEW CERTIORARI JURISDICTION OVER MILITARY APPEALS

by

BENNET BOSKEY \* and EUGENE GRESSMAN \*\*

A fresh chapter in American law is now unfolding. It involves a wholly novel relationship between the military justice system and the civilian rule of law. The full significance of the change can be assessed only over time, as the relationship develops and its contours become visible. But assuredly—just as *Cohens v. Virginia*<sup>1</sup> settled the principle of Supreme Court judicial review over state courts on matters involving federal questions and thus fortified the constitutional balance between the Federal Government and the states—so the Military Justice Act of 1983 is bound to strengthen one of the most fundamental principles of our society, namely, a suitable degree of civilian control over the military.

The Military Justice Act of 1983 (P.L. 98-209) was enacted December 6, 1983, at the end of the 1st Session of the 98th Congress. The Act sought to achieve—and it can properly be said that the Act did achieve—important reforms and improvements in a number of different sectors of the military justice system. These were, in general, aimed at upgrading the level of fairness and even-handed justice in the administration of the military law by which the personnel of our Armed Services (and, occasionally, some other persons as well) are governed in criminal proceedings brought before military tribunals.

Without pausing to examine the intricacies of many of these changes, our primary purpose here is to discuss the change which is likely to be the most important one of all. This is contained in the provisions of the Act whereby Congress, for the first time in our history, has conferred on the Supreme Court of the United States jurisdiction to undertake a direct review of military appeals. The jurisdiction is not obligatory jurisdiction by the already narrowly-confined route of appeal as of right to the Supreme Court; it has been made part of the Supreme Court's discretionary jurisdiction on petition for certiorari. And the jurisdiction is not over all military appeals, but

\* Member of the District of Columbia and Supreme Court Bars; author of Volumes 1 and 1A, "Supreme Court" (1982 and annual Pocket Parts thereto), in WEST'S FEDERAL FORMS.

\*\* Member of the District of Columbia and Supreme Court Bars; William Rand Kennan, Jr., Professor of Law, The University of North Carolina; coauthor of STERN AND GRESSMAN, SUPREME

COURT PRACTICE (5th ed., 1978; 6th ed. scheduled for 1985), and author of Chapter 9, "Federal Rules of Appellate Procedure," in WRIGHT, MILLER, COOPER & GRESSMAN, FEDERAL PRACTICE AND PROCEDURE, Volume 16.

1. 6 Wheat. (19 U.S.) 264, 5 L.Ed. 257 (1821).