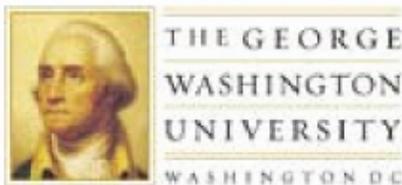


The Burger Court Opinion Writing Database

North Haven Board of Education v. Bell
456 U.S. 512 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543



CHAMBERS OF
THE CHIEF JUSTICE

February 11, 1982

May

RE: No. 80-986 North Haven Board of Education
v. Bell

Dear Lewis:

Would you be willing to take on a dissent in this case?

Regards,

Justice Powell

*ed
e l r s e .
P o u r y w s o
r r i .*

Supreme Court of the United State.
Washington, D. C. 20543



CHAMBERS OF
THE CHIEF JUSTICE

April 23, 1982

Re: No. 80-986 - North Haven Board of Education v.
Bell, Secretary, Dept. of Education

MEMORANDUM TO THE CONFERENCE:

I am not ready on this case for Wednesday release. It was listed as "tentative" in my earlier memo.

Regards,

A handwritten signature in cursive script, appearing to read 'WED', is written below the 'Regards,' text.

cc: Mr. Stevas
Mr. Goldstraw

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

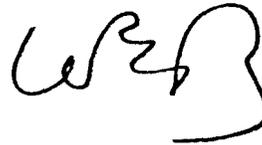
April 29, 1982

Re: No. 80-986 - North Haven Board of Education v. Bell

Dear Harry:

I continue to have problems with the breadth of the opinion and I will try to have a concurring draft out early next week when the "crunch" eases up.

Regards,



Justice Blackmun

Copies to the Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

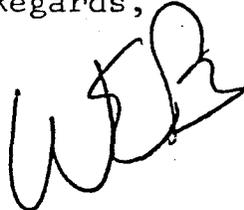
April 29, 1982

Re: 80-986 - North Haven Board of Education v. Bell

Dear Lewis:

Please join me in your dissenting opinion in this case.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

Copies of the Conference

M ✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 11, 1981

Dear Chief,

RE: No. 80-986 North Haven Bd. of Ed. v. Bell

Harry has agreed to undertake the opinion for
the Court in this case.

Sincerely,



William J. Brennan, Jr.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 17, 1982

RE: 80-986 North Haven Board of Education v. Bell

Dear Harry:

I agree.

Sincerely,



Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 18, 1982

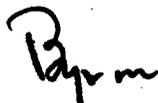
Re: 80-986 - North Haven Board of Education v. Bell

Dear Harry,

I like your draft in this case and would like to join it with one exception. On page 8 you indicate that we have a duty to give a liberal construction to civil rights legislation. I had not thought that our cases, including the two decisions you cite, support the proposition that special rules of construction apply to civil rights legislation. Furthermore, you appear to go on and take the usual approach to the issue of statutory construction involved in this case.

Would you consider eliminating the statement? I think it could be mischievous in later cases.

Sincerely yours,



Justice Blackmun

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 18, 1982

Re: 80-986 - North Haven Board of
Education v. Bell

Dear Harry,

Perhaps you would consider substituting
the following for the first sentence of the
second paragraph on page eight:

"There is no doubt that if we are
to give [Title IX] the scope that
its origins dictate, we must accord
it a scope as broad as its
language".

Sincerely yours,



Justice Blackmun

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 22, 1982

Re: 80-986 - North Haven Board of
Education v. Bell

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 16, 1982

Re: No. 80-986 - North Haven Board of Education v.
Bell

Dear Harry:

Please join me.

Sincerely,

T.M.
T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Brennan
 Justice Stevens
 Justice O'Connor

Justice Blackmun

Original filed: MAR 15 1982

Recirculated: _____

~~AAB~~



~~Plurality~~
~~JAB~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-986

Join

NORTH HAVEN BOARD OF EDUCATION, ET AL.,
 PETITIONERS *v.* TERREL H. BELL, SECRETARY,
 DEPARTMENT OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SECOND CIRCUIT

[March —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

At issue here is the validity of regulations promulgated by the Department of Education pursuant to Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U. S. C. § 1681 *et seq.* These regulations prohibit federally funded education programs from discriminating on the basis of gender with respect to employment.

I

Title IX proscribes gender discrimination in education programs or activities receiving federal financial assistance. Patterned after Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252, 42 U. S. C. § 2000d *et seq.*, Title IX, as amended, contains two core provisions. The first is a “program-specific” prohibition of gender discrimination:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” § 901(a).

Nine statutory exceptions to § 901(a)’s coverage follow. See §§ 901(a)(1)–(9).¹

¹These exceptions provide that, with respect to admissions, § 901(a) applies only to institutions of vocational education, professional education,

HAB

March 18, 1982

Re: No. 80-986 - North Haven Board of Education v. Bell

Dear Byron:

Thank you for your note. I would like very much to accommodate your concern. Would the following, to replace the first four lines of the second paragraph on page 8, be acceptable to you?

"Our duty to 'accord [Title IX] a sweep as broad as its language' precludes us from reading §901(a) too narrowly. United States v. Price, 383 U.S. 787, 801 (1966); see also Griffin v. Breckenridge, 403 U.S. 88, 97 (1971); Daniel v. Paul, 395 U.S. 298, 307-308 (1969); Jones v. Alfred H. Mayer Co., 392 U.S. 409, 437 (1968); Piedmont & Northern Ry. v. ICC, 286 U.S. 299, 311-312 (1932)."

Sincerely,

HAB

Justice White

Reproduced from the Collections of the Manuscript Division, Library of Congress

HAB

March 18, 1982

Re: No. 80-986 - North Haven Board of Education v. Bell

Dear Byron:

What you now suggest is acceptable, and I shall change the sentence accordingly.

Sincerely,

HAB

Mr. Justice White

EMPHATIC CHANGES
P. 8

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Circulated: Mar 2 1982

No. 80-986

NORTH HAVEN BOARD OF EDUCATION, ET AL.,
PETITIONERS *v.* TERREL H. BELL, SECRETARY,
DEPARTMENT OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

At issue here is the validity of regulations promulgated by the Department of Education pursuant to Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U. S. C. §1681 *et seq.* These regulations prohibit federally funded education programs from discriminating on the basis of gender with respect to employment.

I

Title IX proscribes gender discrimination in education programs or activities receiving federal financial assistance. Patterned after Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252, 42 U. S. C. §2000d *et seq.*, Title IX, as amended, contains two core provisions. The first is a "program-specific" prohibition of gender discrimination:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance" § 901(a).

Nine statutory exceptions to § 901(a)'s coverage follow. See §§ 901(a)(1)-(9).¹

¹These exceptions provide that, with respect to admissions, § 901(a) applies only to institutions of vocational education, professional education,

Supreme Court of the United States
Washington, D. C. 20543

March 25, 1982

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 80-986 - North Haven Board of Education v. Bell

Dear Sandra:

This is in response to your letter of March 22. I do not think that the two footnotes "effectively decide" the issues. I thought, instead, that they made clear the limits of the opinion. These footnotes, however, apparently disturb you, and I therefore shall eliminate them. A new draft will be around shortly.

Sincerely,



Justice O'Connor

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-986

NORTH HAVEN BOARD OF EDUCATION, ET AL.,
PETITIONERS, *v.* TERREL H. BELL, SECRETARY,
DEPARTMENT OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

At issue here is the validity of regulations promulgated by the Department of Education pursuant to Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U. S. C. § 1681 *et seq.* These regulations prohibit federally funded education programs from discriminating on the basis of gender with respect to employment.

I

Title IX proscribes gender discrimination in education programs or activities receiving federal financial assistance. Patterned after Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252, 42 U. S. C. § 2000d *et seq.*, Title IX, as amended, contains two core provisions. The first is a "program-specific" prohibition of gender discrimination:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance" § 901(a).

Nine statutory exceptions to § 901(a)'s coverage follow. See §§ 901(a)(1)-(9).¹

¹These exceptions provide that, with respect to admissions, § 901(a) applies only to institutions of vocational education, professional education,

STYLISTIC CHANGES

old footnotes 95+29 omitted

MAR 29 1982

New footnotes 10, 15, & 21
 Footnotes 11-31 Renumbered
 Stylistic changes
 Pages: 8, 9, 13, 15, 17, 18, 24

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____ MAY 4 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-986

NORTH HAVEN BOARD OF EDUCATION, ET AL.,
 PETITIONERS, *v.* TERREL H. BELL, SECRETARY,
 DEPARTMENT OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SECOND CIRCUIT

[April —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

At issue here is the validity of regulations promulgated by the Department of Education pursuant to Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U. S. C. § 1681 *et seq.* These regulations prohibit federally funded education programs from discriminating on the basis of gender with respect to employment.

I

Title IX proscribes gender discrimination in education programs or activities receiving federal financial assistance. Patterned after Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252, 42 U. S. C. § 2000d *et seq.*, Title IX, as amended, contains two core provisions. The first is a "program-specific" prohibition of gender discrimination:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance" § 901(a).

Nine statutory exceptions to § 901(a)'s coverage follow. See §§ 901(a)(1)-(9).¹

¹ Section 901(a)(1) provides that, with respect to admissions, § 901(a) applies only to institutions of vocational education, professional education,

file

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1982

Memorandum to the Conference

Cases Held for No. 80-986 -- North Haven Bd. of Ed. v. Bell

Four cases were held for North Haven. My recommendations are:

1. No. 80-493, United States Dept. of Ed. v. Seattle Univ. (Cert to CA9).

Respondent Seattle University brought this suit, challenging petitioner's authority under Title IX to investigate a complaint filed against the university by faculty members in the Nursing School, who claimed that respondent discriminated on the basis of gender in fixing salaries. The District Court granted respondent's motion for summary judgment on the ground that petitioner's employment regulations exceeded its authority under Title IX. The Court of Appeals agreed, concluding that Title IX does not protect employees unless the employment discrimination has an effect on students.

Petitioner adopts the position taken by respondent Bell in North Haven and contends that Title IX does protect employees. Respondent replies that the case is moot because, pursuant to its authority under Exec. Order No. 11246, HEW continued the investigation of respondent and then referred the underlying complaint of gender discrimination to the Department of Labor. On July 11, 1980, the Department of Labor issued its findings, concluding that respondent had not violated its obligations under the nondiscrimination and affirmative action provisions of Exec. Order No. 11246.

On December 1, 1980, this Court granted cert. Respondent subsequently moved to withdraw its attorneys on the ground that the federal investigation had been completed.

The case probably is not mooted by the Department of Labor's finding that respondent did not violate the Executive Order: petitioner contends that the Department of Labor's investigation was inadequate for purposes of Title IX, and points out that the Court of Appeals invalidated the employment regulations and enjoined petitioner from investigating any complaint of gender discrimination filed by an employee of the university. On the merits, the decision below invalidates the employment regulations and therefore is inconsistent with North Haven. I recommend that we GVR in light of North Haven and let the courts below wrestle with the mootness question.

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February 16, 1982

80-986 North Haven Board of Education v. Bell

Dear Chief:

I will be glad to try a dissent, although it will be some time before I get to it.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 16, 1982

80-986 North Haven Board of Education v. Bell

Dear Harry:

I am in dissent in this case, and intend to write.
It will take some time.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: APR 21 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-986

NORTH HAVEN BOARD OF EDUCATION ET AL.,
 PETITIONERS, *v.* TERREL H. BELL, SECRETARY,
 DEPARTMENT OF EDUCATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SECOND CIRCUIT

[April —, 1982]

POWELL, J., dissenting.

Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681 *et seq.*, prohibits discrimination on the basis of sex in education programs and activities receiving federal funds. In 1975, the Department of Health, Education, and Welfare (HEW)¹ promulgated regulations prohibiting discrimination on the basis of gender in *employment* by fund recipients. 34 CFR § 106.51(a)(1). Today, the Court upholds the validity of these regulations, relying on the statutory language, its legislative history, and several post-enactment events. Because I believe the Court's interpretation is neither consistent with the statutory language nor supported by its legislative history, I dissent.²

I

Although the Court begins with the language of the stat-

¹ As noted by the Court, *ante*, at —, n. 4, HEW's duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub. L. 69-88, 93 Stat. 678, 20 U. S. C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the Court in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See *ante*, at —, n. 4.

² The Court acknowledges that the post-enactment events it discusses only "lend credence" to its interpretation of the statute. *Ante*, at —.

April 29, 1982

PERSONAL

80-986 North Haven v. Bell

Dear Chief:

When we mentioned North Haven earlier this afternoon, I had totally forgotten that on February 11 you assigned to me the task of writing a dissent.

You and I were the only dissenters at Conference, and I have assumed that you were still with me. Bill Rehnquist voted with the majority at Conference, but he was persuaded by my dissent, and has joined it. If there are statements in the dissent that give you difficulty, I would be happy to discuss them.

It may be when we were talking that there was confusion as to Hydrolevel, another CA2 case in which I circulated a strong dissent from Harry's Court opinion and rather hoped you would join me. In Hydrolevel you voted tentatively "the other way" at Conference.

Sincerely,

The Chief Justice

lfp/ss

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

changes: 4, 9-10, 15-16

From: Justice Powell

Circulated: _____

Recirculated: MAY 12 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-986

NORTH HAVEN BOARD OF EDUCATION ET AL.,
PETITIONERS, v. TERREL H. BELL, SECRETARY,
DEPARTMENT OF EDUCATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[April —, 1982]

POWELL, J., dissenting.

Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681 *et seq.*, prohibits discrimination on the basis of sex in education programs and activities receiving federal funds. In 1975, the Department of Health, Education, and Welfare (HEW)¹ promulgated regulations prohibiting discrimination on the basis of gender in *employment* by fund recipients. 34 CFR § 106.51(a)(1). Today, the Court upholds the validity of these regulations, relying on the statutory language, its legislative history, and several post-enactment events. Because I believe the Court's interpretation is neither consistent with the statutory language nor supported by its legislative history, I dissent.²

I

Although the Court begins with the language of the stat-

¹ As noted by the Court, *ante*, at —, n. 4, HEW's duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub. L. 69-88, 93 Stat. 678, 20 U. S. C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the Court in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See *ante*, at —, n. 4.

² The Court acknowledges that the post-enactment events it discusses only "lend credence" to its interpretation of the statute. *Ante*, at —.

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: _____

MAY 13 1982

Recirculated: _____

Changes 1, 3, 5, 15-16

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-986

NORTH HAVEN BOARD OF EDUCATION ET AL.,
 PETITIONERS, v. TERREL H. BELL, SECRETARY,
 DEPARTMENT OF EDUCATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SECOND CIRCUIT

[May —, 1982]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and
 JUSTICE REHNQUIST join, dissenting.

Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681 *et seq.*, prohibits discrimination on the basis of sex in education programs and activities receiving federal funds. In 1975, the Department of Health, Education, and Welfare (HEW)¹ promulgated regulations prohibiting discrimination on the basis of gender in *employment* by fund recipients. 34 CFR § 106.51(a)(1). Today, the Court upholds the validity of these regulations, relying on the statutory language, its legislative history, and several post-enactment events. Because I believe the Court's interpretation is neither consistent with the statutory language nor supported by its legislative history, I dissent.²

¹ As noted by the Court, *ante*, at —, n. 4, HEW's duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub. L. 69-88, 93 Stat. 678, 20 U. S. C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the Court in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See *ante*, at —, n. 4.

² The Court acknowledges that the post-enactment events it discusses only "lend credence" to its interpretation of the statute. *Ante*, at —.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

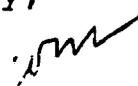
April 22, 1982

Re: No. 80-986 North Haven Board of Education v. Bell

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 16, 1982

Re: 80-986 - North Haven Board of Education
v. Bell

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 22, 1982

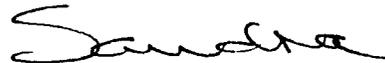
Re: No. 80-896 ⁹⁰⁰ North Haven Board of Education v. Bell

Dear Harry:

Although I find your opinion generally persuasive, I have two related concerns. The first is footnote 25, which suggests that the Department may investigate complaints of discrimination in programs not receiving federal funds. The second concern is footnote 29, which states that Title IX's provisions may be applicable "when employment discrimination has an adverse effect on federally funded programs or the beneficiaries of such programs, or when federal funds are not used directly to subsidize the institution's discriminatory practices but release other funds that are then used in a discriminatory fashion." The issues raised in these two footnotes were not presented to this Court for decision, and I am reluctant to join an opinion that effectively decides these issues without the benefit of an underlying record and full briefing.

Because neither of these footnotes is necessary to your holding, would you consider deleting them from the opinion?

Sincerely,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 29, 1982

No. 80-986 North Haven Board of Education
v. Bell

Dear Harry,

Please join me in the third draft of your
opinion.

Sincerely,



Justice Blackmun

Copies to the Conference