



10-1972

## Northcross v. Board of Education of Memphis City Schools

Lewis F. Powell Jr.

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Sally or Gail - Write

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

Brennan

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 23, 1973

Re: No. 72-1164 - Northcross v. Board of Education

Dear Bill:

I may be able to join your proposed per curiam, but I am troubled about one thing.

As I read Newman, the standard there established for § 204(b) of the Civil Rights Act of 1964, 390 U.S., at 402, was that one who obtains an injunction "should ordinarily recover an attorney's fee unless . . . ." On page 2 of the proposed opinion it is said that attorneys' fees under § 718 "must be awarded . . . 'unless . . . ." I may be unduly disturbed, but I sense a difference between "should ordinarily recover" and "must be awarded." Would there not be some merit in following exactly the Newman language here?

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

Dear Bill

I agree with Harry's suggestion in his letter of May 23 as to a language change to conform to Newman. With this change, I join your per curiam,

yes

May 24, 1973

No. 72-1164 Northcross v. Board of Education

Dear Bill:

I agree with Harry's suggestion in his letter of May 23 as to a language change to conform to Newman. With this change, I join your per curiam.

Sincerely,

Mr. Justice Brennan

cc: The Conference

lfp/gg