In the

Supreme Court of the United States

BESSIE B. GIVHAN,
Petitioner,

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, ET AL.,
Respondents.

No. 77-1051

Washington, D.C.
November 7, 1978

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v.	:	No. 77-1051
WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, ET AL., Respondents.	:	

Washington, D.C.
Tuesday, November 7, 1978

The above-entitled matter came on for argument at 11:10 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM BRENNAN, Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

DAVID RUBIN, ESQ., 1201 Sixteenth Street, N.W., Washington, D.C. 20036; on behalf of the Petitioner.

J. ROBERTSHAW, ESQ., Robertshaw & Merideth, P.O. Box 1498, Greenville, Mississippi 38701; on behalf of the Respondents.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 77-1051, Givhan against Western Line Consolidated School District, et al.

I think you may proceed when you're ready, Mr. Rubin.

ORAL ARGUMENT OF DAVID RUBIN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. RUBIN: Mr. Chief Justice, and may it please the Court:

I represent the petitioner in this case, Mrs. Bessie Givhan.

The question presented here is whether a teacher was unprotected by the First Amendment against termination of her employment for the particular views she expressed merely because those views were communicated privately to her principal, rather than in a public forum.

The case arose in 1971 in Mississippi during the throes of court-ordered school desegregation.

QUESTION: Isn't it a little bit broader than that, Mr. Rubin? The action wasn't taken because of just some communications. It was based on a total attitude evaluated by the principal, was it not?

MR. RUBIN: No, Your Honor.

The district court in this case found that the

primary, indeed, almost the entire reason for the termination of the petitioner's employment was because of her criticism of certain policies and practices of her school district and her school, criticism which was expressed to her principal, criticism that the policies and practices were racially discriminatory.

The court of appeals, while it accepted the factual findings of the district court, concluded that the communications for which she was penalized were unprotected by the First Amendment because they were expressed privately to her principal rather than in a public forum.

This is a ruling that the respondents have conceded was erroneous, and rightly so. Because if the First Amendment means anything, it means that an individual is protected against punishment by the government for expressing a particular idea.

This isn't to say that First Amendment interests are absolute and that the interests of the school district as the employer can't be accommodated.

But this Court created a means for such accommodation in its Pickering decision, which established a balancing test under which the teacher's free speech interest is to be balanced against the interests of the school district as employer implicated by the teacher's expressions.

The court of appeals thought that to recognize a

free speech interest in a teacher to express a particular idea to her principal would necessarily imply a right to an audience with the principal, as the court of appeals put it.

But no right of access of any sort need be implied by the ruling that we seek from this Court. The -- for purposes of this case it may be assumed arguendo that the school authorities could absolutely bar by rule or regulation or directive access.

That might present a constitutional question, but it would be not the constitutional question presented by this case.

QUESTION: You mean just have a suggestion box type of thing? Say that any teacher can put suggestions in the suggestion box if she wishes to address to the principal, but there's no guarantee that the principal is going to have time to read them?

MR. RUBIN: Well, what I'm saying is that there may be limits that must be placed on what the school authorities can do by way of barring access. But for this case it is unnecessary to reach that question, because there were no regulations --

QUESTION: Well, why -- A, why must there be limits, and B, why must there be regulations, if in the normal course of the teacher-principal relationship, the teacher knows that the principal, say, has a meeting from 4:00 to 5:00.

And she comes up to him at one minute to 4:00 and says, "Look, this policy that you're enforcing seems to me all bad, and I don't think it's consistent with the constitution." The principal says, "Sorry, I got to go to this meeting. Some other time maybe but not now."

Is that unconstitutional?

MR. RUBIN: I don't think that it would be. And certainly for purposes of this case, the Court need not address that type of --

QUESTION: Well, but don't you get some sense out of the 5th Circuit's opinion that the reason for the discharge here was that the teacher was more or less bugging the principal, rather than for the content of her suggestions?

MR. RUBIN: Well, it's clear from the findings of the district court here that the petitioner did not harrass the principal.

The district court specifically found that there were only two occasions on which she communicated these criticisms to him.

QUESTION: But we deal with the opinion of the court of appeals, not with the district court's opinion, don't we?

MR. RUBIN: But the court of appeals did not find that the petitioner harrassed the principal.

QUESTION: Well, it didn't find that the petitioner

harrassed, but it certainly intimated -- at least I got the intimation out of it -- that the reason for the discharge wasn't the -- so much the communication or the contents of the communication as just the very unseemly times and demands on the principal's time.

MR. RUBIN: No, Your Honor, the court of appeals specifically held not clearly erroneous the district court's finding that the primary reason for the termination was the communications that were made by the petitioner, and the criticism of the policies and practices of the school district as racially discriminatory.

It did not disturb the district court's findings which indicated that there had been no harrassment.

QUESTION: And you say it must rise to a level of harrassment before could discharge an employee because the employee insists upon more or less taking up time that the superior wishes to devote to other affairs?

MR. RUBIN: Well, I don't want to exclude the possibility that the school district might show some other legitimate interests in the -- in not hearing or not -- or in precluding the expression.

But I don't think I can catalog what those interests might be. Harrassment I would certainly think might be one of them.

Since the respondents have rightly conceded that

the court of appeal's holding in this case was in error, this presents this Court with the question of how to dispose of the certiorari issue, which is in an unusual posture, admittedly, because both sides have agreed that the court of appeals holding was wrong.

QUESTION: They don't agree the judgment was wrong.

MR. RUBIN: They do not agree that the judgment was wrong.

QUESTION: Well, that isn't unusual to find. Respondents don't entirely defend the reasoning.

MR. RUBIN: Well, I thought I ought to address myself to the posture since there hasn't been any debate in this Court on the merits of the certiorari issue.

Nevertheless, because we submit the issue is a clear one --

QUESTION: Well, there's debate on whether we should affirm or reverse.

MR. RUBIN: Yes, there is. And I intend in one moment to reach that question.

But I wanted to say that we submit the Court should resolve the certiorari issue on the merits. Because that is the only disposition, it seems to us, that will assure that the court of appeals does not adhere to its decision in this case with mischievous consequences.

QUESTION: What if we decided they used the wrong

standard? Why shouldn't we remand and let them deal with it first?

MR. RUBIN: To vacate and remand in light of the respondent's concession?

QUESTION: No, in light of whatever standard we thought was applicable?

MR. RUBIN: Well, the reason is that we believe that this Court should wrap up this case now -- and besides the Pickering question, the respondents have asked that the judgment of the court of appeals be affirmed on the grounds that when the Pickering test is applied, the respondents -- the petitioner's, rather, expression should be held unprotected.

And we join with respondents in asking this Court to decide the issue, although to decide it in petitioner's favor.

A remand on that issue would mean another round of briefing and arguments in a case that's already 7-1/2 years old. And we submit that there isn't any real issue to be decided under Pickering, because there is no legitimate interest of the school district as employer that is implicated or was implicated by the petitioner's expressions.

This isn't a case in which the petitioner was making some personal criticism or impugning the principal's character. She spoke on -- in connectionwith policies and practices of the school system. They were matters of policy.

QUESTION: Mr. Rubin, you represent only Givhan and not --

MR. RUBIN: That's correct. That's correct.

The petitioner's expressions were not calculated to threaten the working relationship between her and her principal, because they held no potential for public embarrassment. They were given in the private context.

Given that context, the only purpose that the petitioner could have had was to influence the principal to accept her ideas.

As I've indicated, there was no harrassment, because under the district court's findings, there were only two occasions on which these expressions were communicated to the principal.

And since there are no legitimate interests of the school district as an employer that were implicated by the petitioner's expression, there is nothing to place on the other side of the scale to counterbalance this petitioner's free speech interests.

QUESTION: Well, what if the school district authorizes the principal to say to the teachers, look, I just don't want to hear from you at all? You teach and I'll supervise and that's it.

You can say what you want to anyplace you want to, but just don't bother me with it.

MR. RUBIN: Your Honor, I think there might be a constitutional issue that could be raised under the Pickering test.

In other words, there may be --

QUESTION: Well, how would you phrase it?

MR. RUBIN: Well, it is conceivable that the First Amendment might confer some free speech right to criticiae at least school policies internally rather than being forced to go into a public forum.

QUESTION: And a free speech duty on the principal to listen?

MR. RUBIN: Well, at least a -- possibly -- a duty not to discipline the teacher for expressing the view. Whether he has to listen is another question.

But none of these questions are presented by the issue that is in this case, which is only whether a teacher can be disciplined because she expressed a particular idea to her principal.

The Court may assume, for purposes of this case, that access could be absolutely barred. The principal could close his ears, if he wished to.

I would only add that the expressions in this case were especially deserving of constitutional protection. The petitioner spoke as a concerned citizien about a matter of public importance, namely, the respective roles of

and whites in the environment of a school located in a school district then under court ordered desegregation, a topic of intense community concern at the time.

QUESTION: Didn't the notice to this teacher recite that the reasons were -- for the nonrecommendation for rehiring -- one, the flat refusal to administer standardized national tests to the pupil in your charge, is one of the reasons.

That has nothing to do with the First Amendment, does it?

MR. RUBIN: But the district court's finding, Your Honor, was that the primary, indeed, almost the entire reason, was her communications to her principal, not -- they didn't make a finding --

QUESTION: Well, this is still a part of the record, isn't it?

MR. RUBIN: There was a dispute as to whether she refused to administer the standardized test. Her testimony, which was corroborated by another teacher and a guidance counsellor, was to the effect that she did give thetest. And the district court concluded that there was a conflict in the evidence on that point, and made no finding on it.

QUESTION: But the court of appeals agreed with the district court.

MR. RUBIN: The court of appeals agreed with the

district court on those factual findings, right.

The petitioner spoke not only as a concerned citizen, but she also spoke as a concerned teacher. She was concerned with the impact of the respective roles of blacks and whites in the school environment from the learning incentives of her students.

This is in a school of more than 90 percent black enrollment. She had taught black students for many years in the dual system, and had taught in both segregated and desegregated schools.

And she was among those members of the community most likely to have an informed opinion about the matter that she criticized.

And for all these reason, we submit that this Court should rule that the constitution protects her against the punishment -- this punishment -- for expressing her ideas, and we ask that the Court reverse the judgment of the court of appeals and with instructions to reinstate the judgment of the district court.

QUESTION: The Mount Healthy case -- refresh my recollection; I read these briefs some time ago. The Mount Healthy case was decided between the trial and the appeal in this case?

MR. RUBIN: The Mount Healthy case was decided between the briefing of the case in the court of appeals

and the argument of the case in that court.

The respondents asked for a remand in the light of that case, but the court of appeals, which had the record before it -- and reviewing that record, concluded that there was no serious issue requiring a remand under Mount Healthy.

It's our position that under the decisions of this Court, the respondents not having filed any cross-petition, the issue not having been raised in our petition for certiorari, and the respondents not having raised the issue in the opposition to certiorari, the certiorari petition, that this Court will not consider that issue now.

I'd like to reserve the balance of my time for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Rubin.

Mr. Robertshaw.

ORAL ARGUMENT OF J. ROBERTSHAW, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. ROBERTSHAW: Mr. Chief Justice, and may it please the Court:

Basically, our position in this case is that the 5th Circuit reached the right result but for the wrong reason. And I must be perfectly candid with this Court and say that I don't think that the First Amendment protection is dependent on the forum or the degree of publicity or the manner in which it is exercised.

The question is whether the communication is or should be constitutionally protected.

Now I would like to take about two minutes and put this case in proper perspective.

First, there is a direct relationship between the quality of a community and the quality of its public education.

Second, you can't get a quality education without quality teachers. Now, how do we do this? In Mississippi, a teacher is employed under a written contract, statutory. She may not be paid unless she has a written contract.

During the term of that contract she may be discharged only for incompetence, for immoral conduct, for brutal treatment of a pupil, for willful neglect of duties, and for other good cause.

And our courts have rightly held that a professional contract is something not lightly to be done away with, and that the statute means what it says.

But at the end of the contract, then there is a decision as towhether a teacher should or should not be re-employed. Now, basically, this question is one of management.

The question is whether or not the petitioner in this case should have been re-employed. And we think that that is a proper decision to make, and that the management

should make it on the basis of daily contact over a long period of time; that the courts are ill equipped to make a contrary judgment based solely on evidence in a record that is put on in a formal atmosphere and upon his personal observation of a teacher on a stand where she obviously is going to be.

QUESTION: But in our Roth and Perry cases, we held that a teacher could not be denied renewal of her contract for reasons that violated the First Amendment, did we not?

MR. ROBERTSHAW: Perry v. Sindermann was a non-tenured case. This is a non-tenure case. And in Perry v. Sindermann this Court held that a teacher could not be denied re-employment because of exercise of constitutionally protected rights, and remanded that case for a determination as to whether that in fact happened.

Roth, as I understand it, simply held that a teacher -- a non-tenured teacher -- had no right to continue the employment protection by the Fourteenth --

QUESTION: But in Roth the district court had reserved ruling on the teacher's First Amendment complaint, and simply the case had come up her on the claim that there had been a denial of property right in a tenure. And we held that, defined tenure, and said that just an expectation isn't tenure.

But even a non-tenured teacher can be -- cannot be fired in violation of the First Amendment.

MR. ROBERTSHAW: As I understand -- as I recall the facts of the two cases, both Roth and Sindermann were non-tenured cases.

QUESTION: Well, supposing you have --

MR. ROBERTSHAW: Now, in --

QUESTION: Supposing you have an employee who clearly under a contract at will, that can be terminated tomorrow by the state employer. And the clearly established reason for termination is because he makes a statement on some public issue that offends the employer.

Do you think that the employer can simply rely on the doctrine that he has no contractual right to be continued employment?

MR. ROBERTSHAW: I certainly do not. And it might be helpful for the Court to follow the development in our state of the law to the present form, which specifically holds now, even though we do not have -- this is a statute -- I might make a reference to it. It's called the School Employment Procedures Act.

And it specifically says that a non-reemployment decision may not be based upon a violation of a teacher's statutory or constitutional rights. And that is section 37-9-101, the school employment procedures law; and specifically, the

basis upon which the decision may be reversed is section 37-9-113.

Now I do not believe that there is or should be any difference between the constitutionally protected rights of a public employee or a private employee. I think that they're exactly the same.

And to the extent cases have been decided that seem to hold that a public employee has a higher right, I think they're wrong.

QUESTION: Well, do you mean to say that the grocery merchant can't fire his clerk because the clerk says something about a public issue that the merchant doesn't like?

QUESTION: You're going to apply the First Amendment to a private individual.

MR. ROBERTSHAW: I think the same rule applies to a private merchant as it does to a public employee; no more and no less.

QUESTION: Well, where -- what earthly authority do you have for that?

MR. ROBERTSHAW: Sir?

QUESTION: What earthly authority do you have for that under any decided case in this Court?

MR. ROBERTSHAW: I'm not sure, Mr. Justice, what the specifics of your question are.

QUESTION: Well, my question is very specific, and that is, do you know of any case from this Court that supports the proposition that you just stated?

MR. ROBERTSHAW: That there is a difference?

QUESTION: That there's no difference, which, as I understood, was your proposition.

MR. ROBERTSHAW: I think we must misunderstand each other, if you pardon me.

QUESTION: I'm sorry.

MR. ROBERTSHAW: I think I agree with exactly the point that I believe you're making, and that is, that they're treated alike under law.

QUESTION: No, no.

MR. ROBERTSHAW: Sir?

QUESTION: I understood my brother here, Rehnquist, in his questions implicitly to be making just the opposite point. And quite apart from any decided cases, the constitutional protections run only against government.

MR. ROBERTSHAW: I don't know any cases to that fact.

QUESTION: Well, quite -- you don't need any cases. You need the constitution of the United States.

MR. ROBERTSHAW: I agree.

QUESTION: The First and the Fourteenth Amendments protect us against governmental action, not against private

action.

MR. ROBERTSHAW: I agree.

QUESTION: There's no state action when the grocery clerk is dealt with by his employer, is there?

MR. ROBERTSHAW: Well --

QUESTION: There is state action here.

MR. ROBERTSHAW: There is state action here because the board of trustees which runs this is an arm of the state government.

We concede the jurisdiction in this case, sir.

Now, I think we ought to look in determining whether this was a proper re-employment decision at the context in which this action was taken.

Now, mind you, we do not criticize Mrs. Givhan for the -- for her right to make this. Our objection is to the manner and to the circumstances under which these statements were made.

Now, this school started out in the fall of 1969 --

QUESTION: Mr. Robertshaw, could I just ask one question?

MR. ROBERTSHAW: Judge, I'm hard of hearing.

QUESTION: You say that the decision was not based on what she said but rather the manner in which she said it, as I understand you.

MR. ROBERTSHAW: That's absolutely correct. That's

what Judge Smith found when he said she was overly critical.

QUESTION: But did not the judge say, at page 35A of the certiorari petition, that as a finder of fact, after hearing all the testimony and reviewing the exhibits, he concluded that the primary reason for the school district's failure to renew her contract was her criticisms of the policies and practices of the school district.

Do you accept that finding?

MR. ROBERTSHAW: Yes, sir, if I may explain myself.

At that time the district court was bound by Sindermann. Once you find that the exercise of First Amendment rights form a material part of the decision, then under Sindermann he had to reverse us. He had to hold against us.

But he says the primary reason -- now what I'm saying is that under Mount Healthy v. Doyle, this Court held under -- which also was a tenure case -- that the district court should have gone further and made a specific finding as to whether the board would have not rehired the teacher independently of the constitutionally protected rights.

So that so far as Judge Smith's finding is concerned, if he said it's a primary reason, then he's bound under Perryman -- I mean Perry v. Sindermann.

But we want the fighting chance to show that we would not have rehired her anyhow.

QUESTION: But did you not make precisely this

argument to the court of appeals and they rejected this very argument?

MR. ROBERTSHAW: I did, but you must realize that the rejection of the 5th Circuit is dictum in view of the fact that they held there was no violation of the First Amendment rights.

So consequently, having held that there was no violation of her rights, then there would be no reason for remand.

QUESTION: But is it really dictum? Because if they -- if you had prevailed on that argument, they would not have had to decide the constitutional issue they did decide.

That argument, if you had prevailed, would have enabled them to avoid the constitutional issue. And would it not be good practice for an appellate court to see if they couldn't avoid the constitutional issue?

MR. ROBERTSHAW: Yes.

QUESTION: So it's really not dictum in the ordinary sense.

MR. ROBERTSHAW: Now, you've got to look at Pickering --

QUESTION: Counsel, would you stay close to the lectern so we don't lose any --

MR. ROBERTSHAW: I apologize.

You've got to look at Pickering for what it is. Pickering is a discharge case, not a re-employment case.

Now, we say even under Pickering, under the facts of this case, under the necessity for a close working relationship beteen a principal and a teacher, that the conduct of this teacher, some of which was protected by the First Amendment and some of which was not, put it in such a situation that the principal testified that he knew he had to run that school the following year, and that he felt he couldn't do it with Mrs. Givhan present, and that for that reason, he didn't recommend her.

QUESTION: Mr. Robertshaw, let me ask one other question; I don't mean to take too much time.

You are not defending the judgment of the court of appeals, are you? The judgment being that her claim must fail?

MR. ROBERTSHAW: I am not defending the judgment of the court of appeals to the extent that it holds that private communications between an employee and an employer are not protected by the First Amendment.

QUESTION: So you are asking us, without having filed a cross-petition for certiorari, to modify the judgment of the court of appeals?

MR. ROBERTSHAW: I'm -- to be perfectly frank, Your Honor, this is my first appearance before this Court.

I didn't know that if I wanted to raise a point, I had to file a cross-petition.

But I do think that this Court certainly has the power to determine the rules which should govern situations of this type and remand the case to the 5th Circuit or to the district court for proceedings consistent with your opinion.

QUESTION: So you don't think that -- you don't think that the court of appeals is correct in saying that on this record the petitioner should be -- is out of court.

You think there should be some further proceedings go on before her rights are terminated.

MR. ROBERTSHAW: I think in the intersts of basic fairness there should be, and for this reason:

The district court's decision was July the 2nd of 1975. Our reply brief --

QUESTION: Well, you don't believe the record that is before us is sufficient for us -- or at least you don't insist that we make any determination here based on a new -- on a different standard than the court of appeals?

MR. ROBERTSHAW: No, I don't think that the record is sufficient. I think that it should be remanded under Doyle, because in Doyle you said to the district court, you should have looked into this.

And the district court in this case had no way in the world of anticipating Doyle, which was not decided until

January of 1977.

Now, let me touch briefly on the type of comment that we're talking about.

And it is, I believe, a significant fact, and one that I had completely overlooked until preparing in what I hope is some depth for this, and that is that the district court in its orders in January of 1970 had retained specific jurisdiction for the entry of any other orders that might be necessary.

It had full jurisdiction over the case. So if in fact the respondent district had been guilty of discrimination in the handling of its administrative personnel in Glen Allan; if in fact it had been guilty of discrimination in the handling of the NYC workers; or if in fact it had been guilty of discrimination in assigning a white to take up tickets in the cafeteria; then that should have been brought to the attention of the district court and it was not.

And I say to you that it was not brought to the district court for corrective action because there was no need.

Now, as I understand it, those arethe three points on which they claim First Amendment protection.

Let me take the NYC workers. The NYC workers are hired by the employment service and referred on the basis of their qualifications to schools. We can only employ them

where we are told to employ them.

Now, all of the NYC workers were black. So you couldn't say that we were discriminating in the assignment.

Now this leads to the objection that there were not enough black faces in the administrative offices. Now this was a school of 530-odd pupils. The administrative staff consisted of the principal, who was white; the assistant principal, who was black; the elementary supervisor, who was black; and the guidance counsellor for the school, who was black; and one white secretary.

Now I don't think you can say that we were discriminating there.

Now let's look at the assignment of people to the cafeteria. The objection is that the person who took up the tickets had, quote, the choice position.

But the facts are that that white was the only person employed at the cafeteria of the white race. The manager was black. All other employees were black.

The white had been hired on the recommendation -- or appointed, rather -- of the black cafeteria manager made to the cafeteria supervisor. Now if we had been discriminating there, the court could have taken corrective action.

Now really what we are getting down to is that we have a teacher, and we make no argument that she was not a competent teacher so long as she stayed within the scope

of her employment; but a teacher who was constantly interfering with the operation of the school under circumstances that were trying.

I didn't complete the picture. In the middle of the '69-'70, this entire district was shaken up. All seventh through twelve people went to Riverside, which was a center in the middle. At the north, O'Bannon, all in one through sixth pupils. At Glen Allan in the south, all one through sixth in that zone.

It was so bad that a consent decree was entered in the summer and we reconstituted this district at that time, by agreement.

Now, in your normal school situation, a kid goes in in the first grade, and he makes his associations; the teachers have worked together. There are peer groups formed. There is a comfortable atmospher.

Now, during the year in question, the year following which petitioner was not rehired, that was the fall opening in the new one through twelve configuration. They didn't even have a principal down there for the first four to five weeks. Thirgs were in confusion. There was no discipline. Students were walking the hall.

And the first and most paramount duty was to recreate an atmosphere conducive to the education of the pupils and to get on with the business of giving the best possible

education to the students of the district.

And I think we've done a good job of it. But in order to do it, you've got to have teachers who will cooperate; you will have teachers that will not protest the giving of routine tests, such as the six-weeks test or semester test; it doesn't make any difference which.

QUESTION: But the findings are not all in your favor on that score, the findings of the district court, are they?

MR. ROBERTSHAW: Well, the evidence is uncontradicted and it's admitted by petitioner. There was no finding on it.

QUESTION: Well, the finding -- there was a finding --

MR. ROBERTSHAW: The finding was that we had --

QUESTION: That you had dismissed her or failed to renew her primarily because of the First Amendment factor, isn't that the finding?

MR. ROBERTSHAW: Because she was a vocal critic, and because we had -- now, where in the -- I've been unable --

QUESTION: Would you mind giving the quote on that?

MR. ROBERTSHAW: Sir?

QUESTION: Would you mind giving me the quote where the district judge said what you said? Cause he said the primary reason was the failure to renew the criticism. Now what did he say that she was --

MR. ROBERTSHAW: On page 35A. However, when the school district's decision -- this is of the petition for certiorari, of course -- when the school district's decision to terminate Givhan's employment is placed in a setting contemporaneous with its conception and execution, it becomes clear to the court that the school district's motivation in failing to renew Givhan's contract was almost entirely a desire to rid themselves of a vocal critic of the district's policies and practices, which were capable of interpretation as embodying racial discrimination. The court conceives this to be a violation of Givhan's right under the First Amendment, Perry v. Sindermann.

Now --

QUESTION: The court finds that none of these -- which were specifically brought to the court's attention -- were neither petty nor unreasonable. None were petty or unreasonable: 35A, same page.

MR. ROBERTSHAW: Yes, sir.

Now --

QUESTION: You just don't want the school teacher to have the right to criticize.

MR. ROBERTSHAW: Sir?

QUESTION: Is that your supposition? That a teacher should not have the right to criticize the administration?

MR. ROBERTSHAW: No, sir, that --

QUESTION: Is that your position?

MR. ROBERTSHAW: No, sir, that is not my petition. I think that it is in the interest of the administration of a successful school, that there be a free interchange between teacher and principal of ideas and criticisms with the idea of something constructive.

But I do not think that in the presence of students, while classes are being changed, that's where -- or the circumstances under which that conduct should take place.

MR. CHIEF JUSTICE BURGER: You have anything further, Mr. Robertshaw?

MR. ROBERTSHAW: Does this mean that I -- oh, I see.

Are there questions from the Court?

MR. CHIEF JUSTICE BURGER: I hear none.

Do you have anything further, Mr. Rubin?

MR. RUBIN: No, Your Honor. I waive rebuttal.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 11:52 o'clock, a.m., the case was submitted.]