

## ***Tinker v. Des Moines (1969)***

". . . In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."

— Justice Fortas, speaking for the majority

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## About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

## Teaching Recommendations Based on Your Time

(Note to teachers: The last activity for this case deals with speech on Internet sites. You may wish to segue into the [Hazelwood v. Kuhlmeier](#) case with this activity.)

If you have one day . . .

- Complete the activity titled "What Is Symbolic Speech? When Is It Protected"?
- Read the "Background" as a class. Have students complete the activity titled "Classifying Arguments in the Case" and predict the outcome.
- For homework, have students read the excerpt of the opinion and answer the accompanying questions.

If you have two days . . .

- Complete the activities for the first day.
- On the second day, discuss the opinion in the case and have students complete the activity titled "How Disruptive is Disruptive?" For homework, have them access the "[American Bar Association's Online Conversation with the Plaintiffs](#)."

If you have three days . . .

- Complete the activities assigned for the first and second days.
- On the third day, have students complete the "Gangs, Tattoos, and Symbolic Speech" activity as a class.

If you have four days . . .

- On the first day, complete the activity titled "What is Symbolic Speech" and read the "Background".
- Complete the activity titled "Classifying Arguments in the Case." Assign half of the class the majority opinion and the other half the dissenting opinion for homework.
- On the second day, discuss the decisions and complete the "Editorial Staff Reacts" activity. For homework, have students access the "[American Bar Association's Online Conversation with the Plaintiffs](#)".
- On the third day, have students complete the activity titled "How Disruptive is Disruptive?" For homework, complete the "Gangs, Tattoos, and Symbolic Speech" activity.
- On the fourth day, discuss the homework. Have students complete the jigsaw activity titled "The Internet, Schools and Symbolic Speech."

## Background Summary and Questions • • •

John and Mary Beth Tinker were public school students in Des Moines, Iowa in December of 1965. As part of a group against American involvement in the Vietnam War, they decided to publicize their opposition by wearing black armbands to school. Having heard of the students' plans, the principals of the public schools in Des Moines adopted and informed students of a new policy concerning armbands. This policy stated that any student who wore an armband to school would be asked immediately to remove it. A student who refused to take off his or her armband would be suspended until agreeing to return to school without the band.

Two days later and aware of the school policy, the Tinker children and a friend decided to wear armbands to school. Upon arriving at school, the children were asked to remove their armbands. They did not remove the armbands and were subsequently suspended until they returned to school without their armbands.

The children returned to school without armbands after January 1, 1966, the date scheduled for the end of their protest. However, their fathers filed suit in U.S. District Court. This suit asked the court for a small amount of money for damages and an injunction to restrain school officials from enforcing their armband policy. Although the District Court recognized the children's First Amendment right to free speech, the court refused to issue an injunction, claiming that the school officials' actions were reasonable in light of potential disruptions from the students' protest. The Tinkers appealed their case to the U.S. Court of Appeals but were disappointed when a tie vote in that court allowed the District Court's ruling stand. As a result they decided to appeal the case to the Supreme Court of the United States.

The case came down to this fundamental question: Do the First Amendment rights of free speech extend to symbolic speech by students in public schools? And, if so, in what circumstances is that symbolic speech protected? The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state governments as well, of which school systems are a part. The First Amendment, however, does not identify which kinds of speech are protected. For example, it is not clear whether hate speech against an individual or group is protected. Neither does the First Amendment specify what types of expressive actions should be considered as speech.

The Supreme Court of the United States has made many attempts to determine what types of symbolic speech are protected under the First Amendment. In 1919, the Court decided in *Schenck v. United States* that the right of an individual to protest World War I by distributing pamphlets urging draftee non-compliance was unconstitutional because the distribution "create[d] a clear and present danger that . . . will bring about . . . substantive evils." The Court wrestled with the issue of the right to symbolic speech again in the case of *Thornhill v. Alabama* (1940) when the Court ruled that picketing was a form of symbolic speech protected by the First Amendment because no clear and present danger of destruction of life or property or of breach of the peace was inherent in the action. Three years later in *West Virginia v. Barnette* (1943), the Court extended the First Amendment protection of symbolic speech to students in public schools. In *Barnette*, the Court held "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ."

In 1968 the Supreme Court of the United States agreed to hear Tinker's case and consider the constitutionality of the Des Moines principals' anti-armband policy. The Court's decision in *Tinker v. Des Moines* was handed down in 1969.

## Background Summary and Questions • • •

### Questions to Consider:

1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
4. In both *Schenck* and *Thornhill*, the Court seemed to make a rule that certain actions were guaranteed protection under the First Amendment's freedom of speech clause as long as those actions did not . . . What rule or test did the Court seem to make?
5. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they legally be allowed to protest by wearing T-shirts that read "Up with 'Butts!'"? Why or why not?

## Background Summary and Questions • •

John and Mary Beth Tinker attended public school in Des Moines, Iowa. In December of 1965 a community group in Des Moines decided to protest American involvement in the Vietnam War by wearing black armbands. The Tinkers agreed to wear their black armbands to school. However, principals in the school district, aware of the students' plans created a rule that any student wearing an armband to school would be suspended unless the student removed the armband. Although the Tinkers knew about this rule, they decided to come to school wearing armbands anyway. After refusing to take the armbands off, John and Mary Beth Tinker were sent home by the principal. Their suspension lasted until they agreed to come back to school without the armbands.

The Tinkers filed a suit in the U.S. District Court to stop the school principals from enforcing the rule in the future. Although the District Court said that this type of protest was a form of expression protected under the First Amendment's freedom of speech clause, the Court sided with the school officials, saying that the rule was needed to "prevent the disturbance of school activities." The Tinkers appealed their case to the U.S. Eighth Circuit Court of Appeals, but they lost. The Tinkers decided to appeal the case to the Supreme Court of the United States.

The fundamental question of the case came down to this: Does the First Amendment's promise of free speech extend to the symbolic speech of public school students? And, if so, in what circumstances is that symbolic speech protected? The First Amendment to the Constitution says, "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state government as well, of which schools are a part. However, the First Amendment does not say which kinds of speech are protected. It also does not specify what types of expressive actions should be considered as speech.

The question of what kind of speech or action is protected under the First Amendment has been considered many times by the Supreme Court of the United States. Generally, the Court has held that the First Amendment protects adult symbolic speech that does not harm or threaten to harm. However, at the time of *Tinker*, it was unclear whether students' rights in this area were different.

In 1968 the Supreme Court of the United States agreed to hear the Tinker's case and consider whether the Des Moines public schools ban on armbands was an unconstitutional violation of the students' right to free speech. The Court's decision in *Tinker v. Des Moines* was handed down in 1969.

## Background Summary and Questions • •

### Questions to Consider:

1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
4. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they be allowed to protest by wearing T-shirts that read "Up with 'Butts!'"? Why or why not?

## Background Summary and Questions •

### Vocabulary

#### **protest**

Define:

---

Use in a sentence:

---

#### **sued (to sue)**

Define:

---

Use in a sentence:

---

#### **violated (to violate)**

Define:

---

Use in a sentence:

---

#### **symbolic speech**

Define:

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Use in a sentence:

---

#### **disrupt**

Define:

---

Use in a sentence:

---

***Tinker v. Des Moines***

**appealed (to appeal)**

Define:

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Use in a sentence:

---

**constitutional**

Define:

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Use in a sentence:

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John and Mary Beth Tinker attended public school in Des Moines, Iowa in 1965. Their school did not allow students to wear armbands to *protest* the Vietnam War. However, the Tinkers decided to wear armbands to school anyway. The school officials asked the Tinkers to remove their armbands, but the Tinkers refused. John and Mary Beth Tinker were suspended from school until they agreed to remove the armbands.

The Tinkers sued the school district in the U.S. District Court. The Tinkers believed that the Des Moines school district *violated* their right to free speech under the First Amendment to the U.S. Constitution. Even though the students were not speaking with their voices, they believed that wearing armbands was like speaking. This is called *symbolic speech*.

The District Court sided with the school officials. The Court said that wearing the armbands could *disrupt* learning at the school. Learning without disruption was more important than the free speech of the students.

The Tinkers *appealed* their case to the next level of courts, U.S. Court of Appeals for the Eighth Circuit. But the Circuit Court agreed with the District Court. The Tinkers then appealed their case to the Supreme Court of the United States. The Court had to answer this basic question: Does the *constitutional* right of free speech protect the symbolic speech of public school students?

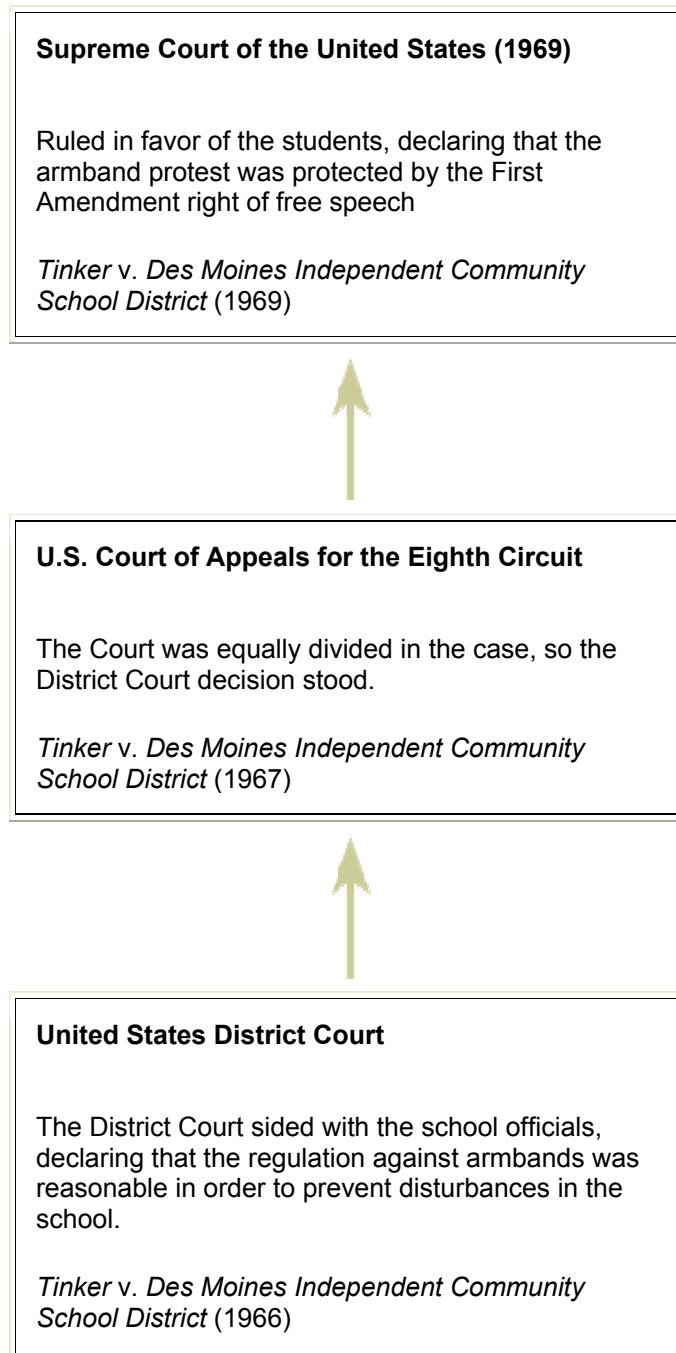
In 1968, the Supreme Court of the United States agreed to hear the case of *Tinker v. Des Moines*. They issued their decision in 1969.

## Background Summary and Questions •

### Questions to Consider:

1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The Tinkers knew they would be suspended if they wore armbands to school. They decided to wear the armbands anyway. Why did they do this?
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Do you think that actions, like wearing an armband to protest, are the same as speech? Why or why not?
4. Imagine that students in your school wanted to protest the smoking rule. Do you think they should be allowed to wear T-shirts that read "Up with 'Butts!'"? Why or why not?

## Diagram of How the Case Moved Through the Court System



## Key Excerpts from the Majority Opinion

**The Court ruled 7 to 2. Justice Fortas delivered the majority opinion of the Court.**

Five justices agreed with the majority opinion. Two justices concurred, meaning that they agreed with the Court's decision that the school policy was unconstitutional, but they wrote separately to explain their reasoning. Two justices dissented. Justice Fortas delivered the majority opinion of the Court.

. . . First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . .

. . . The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures - Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. . . .

. . . On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem involves direct, primary First Amendment rights akin to "pure speech"

. . . In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained . . .

. . . the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students . . . [and] the school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. . . .

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance . . . Instead, a particular symbol - black armbands worn to exhibit opposition to this Nation's involvement in Vietnam - was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. . . .

## Key Excerpts from the Majority Opinion

### Questions to Consider:

1. In the majority opinion, the Court recognized the need to balance the specific rights in conflict in this case. What rights are in conflict here?
2. According to the decision, what must a school prove in order to justify a rule prohibiting its students' rights to free speech?
3. Students in the Des Moines schools were permitted to wear other symbols of political statements such as presidential campaign buttons. Why was this significant to the Court?
4. In light of this decision, what are some situations when the Supreme Court of the United States might allow the school district to restrict students' free speech?

## Key Excerpts from the Dissenting Opinion

**Two Justices dissented. Justice Black issued the more comprehensive dissent.**

. . . As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to 'pure speech'" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions are not "unreasonably" disrupted. . . .

. . . Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech. . . .

. . . While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. . . .

. . . I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. . . .

. . . [D]etailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, non-protesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons. . . .

. . . It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. . . .

. . . I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. . . .

## Key Excerpts from the Dissenting Opinion

### Questions to Consider:

1. Why was Justice Black so concerned about the Court's decision in the *Tinker* case?
2. How does Justice Black differ from the majority on how the balance between conflicting rights should be resolved in this case?
3. Do you think the discussions/disruptions resulting from the students' protests were significant enough to justify the suppression of speech? If so, describe protest behavior that would not be significant enough to justify the suppression of free speech. If not, how serious would the disruption have to be in order to justify the suppression of free speech?

## What Is Symbolic Speech? When Is It Protected?

*(Note to teachers: When you assign this activity, you may want to invite a lawyer or law student to help with discussion of these cases. For recommendations on guest speakers and other resources, go to the Landmark Cases home page ([www.landmarkcases.org](http://www.landmarkcases.org)) and click on Community Resources.)*

### Directions

1. Read the text below and complete the chart.
2. When you are finished with the chart, your teacher will go over the answers with you or will ask you to go online to find the answers.
3. After you have gone over the answers, complete the "Questions to Consider".

#### **The First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to peaceably assemble and to petition the government for a redress of grievances.

Almost everyone knows that the First Amendment contains the right to freedom of speech. What does this mean? On its most basic level, it means you can express an opinion without fear of censorship by the government, even if that opinion is an unpopular one. However, it does not mean you can say anything you want, whenever you want. For instance, fighting words—words that cause distress or incite violence—are not protected. In addition, obscene expressions are not protected by the First Amendment.

While most people understand these basic limitations on the right to free speech, understanding what constitutes "free speech" is complicated. For instance, some people argue that books, art, music, and other genres are also forms of speech because they, too, are expressive in nature. Over the years, the Supreme Court of the United States has debated what limitations should apply to these genres. The Court has also debated the claims made by others that actions that express an opinion are also protected. Often, these actions are referred to as "symbolic speech", which is below:

"Expression may be symbolic, as well as verbal. Symbolic speech is conduct that expresses an idea. Although speech is commonly thought of as verbal expression, we are all aware of nonverbal communication. Sit-ins, flag waving, demonstrations, and wearing . . . protest buttons are examples of symbolic speech. While most forms of conduct could be said to express ideas in some way, only some conduct is protected as symbolic speech. In analyzing such cases, the courts ask whether the speaker intended to convey a particular message, and whether it is likely that the message was understood by those who viewed it.

In order to convince a court that symbolic conduct should be punished and not protected as speech, the government must show it has an important reason. However, the reason cannot be that the government disapproves of the message conveyed by the symbolic conduct"

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So, just as there are limitations on the extent to which "free speech" applies to the spoken word, there are restrictions on the actions that people seek to have protected as symbolic speech.

Examine the actions below. Based on the information you have just read, determine if each action listed is a form of constitutionally protected "symbolic speech". In the last column, provide a brief rationale for your response.

Action	Is the action a form of constitutionally protected "symbolic speech"?		Rationale
	YES	NO	
<p>In order to protest against a former employer, an individual marches outside the business by herself with a picket sign. State law says picketing is illegal. The individual is arrested and fined \$100.</p> <p><i>To read the case abstract and ruling, go to <a href="http://www.oyez.org/oyez/resource/case/389">www.oyez.org/oyez/resource/case/389</a>.</i></p>			
<p>An individual burns a draft card to express opposition to the war. Federal law says that burning draft cards is a crime.</p> <p><i>To read the case abstract and ruling, go to <a href="http://www.oyez.org/oyez/resource/case/645">www.oyez.org/oyez/resource/case/645</a>.</i></p>			
<p>A young man walking through a public park wears a jacket that says "F--- the draft. Stop the War." The individual is convicted for violating a law that forbids "maliciously and willfully disturb[ing] the peace and quiet of any neighborhood or person [by] offensive conduct." The individual is arrested and sentenced to 30 days in jail.</p> <p><i>To read the case abstract and ruling, go to <a href="http://www.oyez.org/oyez/resource/case/77">www.oyez.org/oyez/resource/case/77</a>.</i></p>			
<p>An organization applies for a permit to hold a demonstration on the National Mall. Members plan to erect "tent cities" in order to demonstrate the plight of the homeless. The permit was denied on the grounds that camping is forbidden on the Mall.</p> <p><i>To read the case abstract and ruling, go to <a href="http://www.oyez.org/oyez/resource/case/74">www.oyez.org/oyez/resource/case/74</a>.</i></p>			
<p>New Hampshire's state motto, "Live Free or Die" appears on license plates. An individual covers "or die" on the grounds that it goes against his religious and political beliefs. He is convicted for violating a state law, fined, and sentenced to jail time.</p> <p><i>To read the case abstract and ruling, go to <a href="http://www.oyez.org/oyez/resource/case/453">www.oyez.org/oyez/resource/case/453</a>.</i></p>			

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An individual burns an American flag in order to protest federal government policy. State law says it is a crime to destroy the flag. The individual is convicted, sentenced to one year in prison, and fined \$2,000.			
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To read the case abstract and ruling, go to [www.oyez.org/oyez/resource/case/379](http://www.oyez.org/oyez/resource/case/379).

**Questions to Consider:**

1. Are there any general standards that seem to apply to symbolic speech?
  
  
  
  
  
  
  
  
  
  
2. Based on what you have learned about symbolic speech, how do you think the Court will rule in *Tinker v. Des Moines*?

Arbetman, Lee P. and Edward L. O'Brien, eds. *Street Law: A Course in Practical Law*, sixth edition. Lincolnwood, IL: National Textbook Company, 1999.

## Classifying Arguments in the Case

The following is a list of arguments in the *Tinker v. Des Moines* (1969) court case. Read through each argument and decide whether it supports the Tinkers' position (T), the position of the Des Moines School District (DM), both sides (BOTH), or neither side (N). This activity can be used to help students prepare for a mini-moot hearing in this case. A description of this strategy can be found on the home page.

1. The First Amendment to the United States Constitution states:

*"Congress shall make no law . . . abridging the freedom of speech. . . ."*

The administration of a public school is an agent of the government. At a minimum, therefore, it must uphold the basic rights protected by the U.S. Constitution.

2. In the case of *Stromberg v. California* (1931), the Supreme Court ruled that the First Amendment protects symbolic speech by declaring unconstitutional a California law prohibiting a display of a red flag as a symbol of opposition to established government.
3. Free speech is not an absolute right. The government, at all levels, must balance the rights of individuals to free speech with other values the society holds dear. These other values may include public safety and protecting the rights of other individuals.
4. In order for a school to function, there must be rules prohibiting behavior that could be disruptive to the school's educational mission. Schools contribute to making us a more law-abiding people, and school discipline is an important part of children's development as good citizens.
5. Schools are meant to be a forum for learning, which includes the possibility for debate of controversial issues. Communication among students is an inevitable and important part of the educational process.
6. The Des Moines School District did not ban all expressions of political or controversial subjects. In the past the school had allowed the wearing of political campaign buttons, for instance.
7. Allowing students to flout a school rule regarding the wearing of armbands will lead us down a slippery slope. It is not difficult to imagine that if the Tinkers are supported, that students will see this as license to break other school rules as well.
8. In the late 1960s many student groups in universities around the country were conducting sit-ins, lie-ins, and other forms of protest against the Vietnam War that interrupted the normal functioning of schools.
9. The wearing of the armbands was a silent and passive expression of a position on the Vietnam War. There was no evidence of substantial disruption to the school resulting from the armbands; however, the school officials reasonably feared disruption and therefore took preemptive action to protect the learning environment of the students.

## How Does a School Identify "Disruptive Speech"?

In the case of *Tinker v. Des Moines*, the Supreme Court of the United States ruled that student "speech" (expression) could not be punished or stopped unless officials could prove the speech would or did cause a substantial interference with the discipline required for the operation of the school. However, at what level of disruption must the school step in?

Read each example below and determine whether you think the student expression described is potentially disruptive enough to be punished or stopped by the school administration. There may not be conclusive answers in terms of court precedent, but these instances should be used as a springboard for discussion of what the *Tinker* case means for students.

1. Maggie and Sally come to school wearing new khaki pants. On the back of the pants, where pockets usually are, the girls put patches of the American flag. Therefore, when the girls sat down, they sat on the flag.
  - How disruptive are these actions?
  
  
  
  
  
  
  
  
  
  
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?
  
2. In order to protest the new cafeteria food offered at Valley High School, the student government organizes a protest. During both lunch periods, SGA officials plan to lead a walk-out from the cafeteria and a group march to the local McDonalds.
  - How disruptive are these actions?
  
  
  
  
  
  
  
  
  
  
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?

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3. Local gang members wear colored plastic bracelets on their wrists to declare their affiliation.
  - How disruptive are these actions?
  
  
  
  
  
  
  
  
  
  
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?
  
  
  
  
  
  
  
  
  
  
4. During a pep rally, a student leader uses very obscene language in a speech.
  - How disruptive are these actions?
  
  
  
  
  
  
  
  
  
  
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?
  
  
  
  
  
  
  
  
  
  
5. Atheists in your school decide they want to publicize and educate others about their beliefs. To make their point, they begin wearing T-shirts that portray Jesus as a monster with three heads.
  - How disruptive are these actions?
  
  
  
  
  
  
  
  
  
  
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?

## The Editorial Staff of the *Valley Voice* Reacts

The Supreme Court of the United States has just issued its ruling in the case of *Tinker v. Des Moines*. You are an editor for the *Valley Voice*, your school newspaper. You believe that students in your school should have an understanding of the Court's decision on the issue of symbolic student speech. Therefore, you decide to dedicate an issue of the *Voice* to addressing this topic. After soliciting editorials from the student body, you must decide which editorials to print.

Choose two editorials to print from the four below by determining the accuracy of their information. One editorial should explain and support the Court's ruling and the other should explain how the Court "got it wrong".

### Editorial Number One: "Power to the People!"

Last week, the Supreme Court of the United States (a.k.a. "The Court of Last Resort") finally got it right in the case of *Tinker v. Des Moines*. In this case, involving students' protests against American involvement in the Vietnam War, the Court at last realized that school officials couldn't tell students what to do. The Court, in its ruling, basically stated that, since schools are supported by the public's tax money, school officials are actually the employees of students and their parents. Therefore, as employees, school officials cannot force either students or their parents to "behave" and "follow school rules" without violating the First Amendment of the Constitution. When acknowledging that both middle and high school students could wear black armbands to advertise their opinion on American foreign policy, the Court agreed that students have virtually limitless rights to protest anything they don't like, even if the protests upset a few other students or teachers.

1. Does this editorial support or attack the Court's ruling in *Tinker*?
2. What does the author think the Court's ruling literally means?
3. Compare the author's understanding of the Court's ruling with the majority and dissenting opinions. Is the author providing an accurate explanation of the Court's decision? Why or why not?

**Editorial Number Two: "Teaching the Values of Democracy"**

Last week the Supreme Court of the United States restated, through the case of *Tinker v. Des Moines* that freedom of speech means exactly that. The Court's interpretation of the First Amendment to the Constitution was right on the mark in *Tinker*, it ruled. . . . "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures - Boards of Education not excepted. . . . [As]they are educating the young for citizenship [they must offer] scrupulous protection of Constitutional freedoms of the individual . . . [in order] not to . . . teach youth to discount important principles of our government as mere platitudes. . . ." As much as teachers might want their classrooms to be fully controlled and directed by them, the Court has taught an important lesson to all American educators: students are citizens too, and the best way to teach citizenship is to recognize and encourage it.

1. Does this editorial support or attack the Court's ruling in *Tinker*?
2. What does the author think the Court's ruling literally means?
3. Compare the author's understanding of the Court's ruling with the majority and dissenting opinions. Is the author providing an accurate explanation of the Court's decision? Why or why not?

### Editorial Number Three: "Apple Anyone?"

Imagine this. A student in social studies class decides to make public the fact that he hates women. During a debate on the role of women in the military, he "goes off", calling women (in general) obscene names. Enraged, he begins to recount the biblical tale of Adam and Eve and says that sin in the world exists only because of Eve's faults. Furthermore, he says, because woman brought sin into the world, women should be removed for reasons of world purification. Can he do this?

According to the Court's recent ruling in the case of *Tinker v. Des Moines*, the answer is "yes"! If the student attended an all-male high school and no evidence existed that his statements might "substantially interfere with the work of the school or impinge upon the rights of other students", the student is free to spout such nonsense. In this ruling, the Court said that, "without evidence that a student's political comments might lead to imminent disruption" he might express himself as he wishes. Absurd, isn't it?

Oh, by the way apple, anyone?

1. Does this editorial support or attack the Court's ruling in *Tinker*?
2. What does the author think the Court's ruling literally means?
3. Compare the author's understanding of the Court's ruling with the majority and dissenting opinions. Is the author providing an accurate explanation of the Court's decision? Why or why not?

**Editorial Number Four: "Free Speech" is a myth**

Supreme Court Justice Black, in his minority opinion for *Tinker v. Des Moines*, says, "It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases . . ." Unfortunately for Justice Black, the majority of the Court disagreed. In a decision upholding the right of students to wear black armbands protesting American involvement in the Vietnam War, the Court held that without evidence that a student's political comments might lead to imminent disruption he can express himself as he wishes. The problem with the Court's reasoning in this case is that there was evidence that the armbands caused disruption in school. "[D]etailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, non-protesting students had better let them alone". This is clearly a case of imminent disruption, and should therefore be prohibited by schools in order to ensure a safe and protective environment for students. Otherwise, what speech will be considered disruptive enough?

1. Does this editorial support or attack the Court's ruling in *Tinker*?
2. What does the author think the Court's ruling literally means?
3. Compare the author's understanding of the Court's ruling with the majority and dissenting opinions. Is the author providing an accurate explanation of the Court's decision? Why or why not?

## How Disruptive Is "Disruptive"?

(The following material could be used with the Continuum Activity. To review instructions and procedures for this activity, go to the Landmark Cases home page ([www.landmarkcases.org](http://www.landmarkcases.org)) and click on Continuum.)

In the case of *Tinker v. Des Moines*, the Supreme Court of the United States decided that student political speech could not be restricted or punished unless school authorities could prove that the action "would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" or impinge upon the rights of other students.

Describe two politically motivated activities students might participate in that could "interfere with the requirements of appropriate discipline in the operation of the school".

a.

b.

Describe two politically motivated activities students might participate in that could impinge upon the rights of other students.

a.

b.

You are now going to participate in an activity that may cause you to re-evaluate your opinion of exactly what disruptive means. Read the scenario on the next page and decide if, according to *Tinker's* standards, the school principal acted appropriately.

### Scenario

A week after the September 11 terrorist attacks on the United States, Muhammed, an eleventh-grade student in Detroit, Michigan, was upset about the way Muslim Americans were being treated. Muhammed witnessed a shopkeeper in his neighborhood verbally attack an Arab newspaper deliveryman who was being harassed by a group of young men. Deciding he must take a stand, Muhammed decided to go to school carrying a backpack covered with bumper stickers. The stickers read, "Terrorism sucks . . . so why do Americans do it?" While many students did not even seem to notice the stickers, one girl whose uncle was in the military became visibly upset. She asked her teacher if she could leave class and went to the counselor's office in tears. Her counselor called the principal, who in turn asked Muhammed to come to his office. Once in the principal's office, Muhammed was told he must remove his stickers or leave his backpack at home. When he refused, the principal warned Muhammed that his refusal to comply would lead to a two-week suspension. "For the constitution," Muhammed replied, "I'll take that chance."

Should the principal have suspended Muhammed for causing a substantial disruption? Defend your position below.

Mark an "X" on the continuum below to show exactly how disruptive you think Muhammed's actions were.

---

LEAST  
DISRUPTIVE

MOST  
DISRUPTIVE

You may have noticed that there are two signs at the front of the classroom. One sign reads, "Most Disruptive" and the other reads "Least Disruptive". Position yourself on the area on the continuum that matches your opinion. Your teacher may ask you to think about the question posed earlier in this lesson, "How disruptive is 'disruptive'?" For each question your teacher asks you, adjust your position on the continuum accordingly. Be prepared to explain why you have or have not moved.

**Continuum Questions for Teachers:  
How Disruptive Is "Disruptive"?**

**What if . . .**

1. The school Muhammed attends is in New York City?
2. The school Muhammed attends is in Boulder, Colorado?
3. The school Muhammed attends is near a military base?
4. Muhammed's bumper stickers also show U.S. soldiers?
5. Muhammed's bumper stickers also show a burning American flag?
6. Several students are upset by the stickers?
7. No students complain about the stickers?
8. A parent calls the school to complain about the stickers, but no students complain?
9. Muhammed convinces 10 other students to display the same stickers?
10. Muhammed convinces 50 others?
11. Muhammed convinces 100 others?
12. Muhammed's protest took place the day after the attacks?
13. Muhammed's protest took place a week after the attacks?
14. Muhammed's protest took place a month after the attacks?
15. Muhammed's protest took place a year after the attacks?
16. Muhammed begins displaying posters around school with the same slogan?
17. Other students begin wearing buttons that say "Arabs suck . . ."
18. At the end of his two-week suspension, Muhammed comes back wearing the same slogan on a T-shirt, rather than displaying bumper stickers?

## Gangs, Tattoos, and Symbolic Speech

The rise of gangs has been a major problem. In June of 2000, the Los Angeles Police Department (LAPD) issued statistical evidence of the problems associated with gang violence. At the time, police were able to account for 407 gangs in Los Angeles whose combined membership totaled over 64,500. These gangs wreaked havoc in homes, communities, and schools where criminal activities such as gang-related homicide and attempted homicide increased more than 130 percent between 1999 and 2000. As a result of statistics such as these and the fact that a large number of gang members are under the age of 18, school districts around the United States attempted to reduce gang violence by regulating which types of symbols students could display during school. Specifically, school officials banned gang symbols.

If you were a school official, how easy or difficult would it be to enforce this ban? Look at the tattoo below. Would you be able to say whether this was a gang symbol?



In 1969, the Supreme Court of the United States ruled on the case of *Tinker v. Des Moines*. The Court decided that a student's constitutional right to freedom of expression existed in schools as long as the expression did not cause - or could not reasonably be predicted to cause - a substantial disruption to the work of the school. At the time, the expression being considered was the right to symbolic speech through the wearing of armbands to protest U.S. involvement in the Vietnam War.

Now, over 30 years later, tattoo art has become an accepted form of symbolic speech. In October of 2000, Massachusetts Judge Barbara Rouse recognized the First Amendment implications of tattooing. In a case that struck down a 38-year old ban on tattooing, she noted, "persons obtain tattoos to demonstrate commitment to other persons, to institutions, to religious beliefs, and to political and personal beliefs. The medium on which the drawn image appears should not be relevant when determining whether something is 'speech'; the tattoo itself is symbolic speech deserving of First Amendment protection."

If Judge Rouse is correct, it would seem that the right of students to display tattoos would be governed by the standard applied to armbands in *Tinker*.

Read the case brief on the next page and determine whether the U.S. Court of Appeals for the Eighth Circuit applied the *Tinker* standard toward student's tattoos.

*Stephenson v. Davenport Community School District*

**Facts:**

In 1992, Brianna Davenport was an honor roll student at West High School who teachers described as "conscientious and diligent". During this time, gang activity at West had become a significant problem, with gang members using school grounds to intimidate and recruit other students. In an attempt to combat the escalating gang activity, the school district created a new rule that said "gang-related activities such as display of 'colors', symbols, signs, etc. will not be tolerated on school grounds. Students in violation will be suspended from school and/or recommended to the Board for expulsion".

Brianna went to visit her counselor in August of that year to discuss routine schedule matters. During the meeting, the counselor noticed a small cross tattoo on her hand. After the counselor, the assistant principal, the school's police liaison officer, and another officer ruled that the tattoo was a gang symbol, Brianna was told that she would be suspended with a recommendation for expulsion if she did not remove or change the tattoo.

Although Brianna maintained that her cross tattoo was over two years old and she had no gang affiliation, the school district stood by both its policy and disciplinary decision. After undergoing painful and expensive laser surgery to remove the tattoo, Brianna was allowed to return to school. Upon her return, she filed a lawsuit against the school district, claiming that her First Amendment right to free speech was violated. The United States District Court dismissed her case, but the U.S. Court of Appeals for the Eighth Circuit heard her appeal.

**Question presented to the court:**

Did the school district's policy barring the display of gang symbols violate Brianna's First Amendment rights?

**Ruling:**

The Eighth Circuit Court of Appeals ruled that the school district's policy was unconstitutional. Specifically, the Court found fault with two characteristics of the policy.

1. According to the Court, the school's policy was too vague because it did not give students enough information about exactly what conduct/expression was prohibited.
2. Furthermore, the Court held that such a vague policy invited unconstitutional, arbitrary, and discriminatory enforcement because it allowed school administrators, police officers, judges, and juries to determine on a case-by-case basis exactly which colors, symbols, signs, etc. violated the policy.

**Tinker v. Des Moines**

**Directions:**

You are a member of the Davenport Community School District's School Board. As a board member, it is your job to create and approve specific school policies. With your fellow board members, revise the school's policy prohibiting the display of gang symbols so that it is constitutional.

*"Gang-related activities such as display of 'colors', symbols, signs, etc. will not be tolerated on school grounds. Students in violation will be suspended from school and/or recommended to the Board for expulsion. "*

Amend the policy to make it less vague.

- What specific conduct and symbols would you prohibit?
- What guidelines would you provide school officials with to ensure that only those students who were truly advertising gangs would be punished?
- Specifically, how would you define "gang"?
- What exact symbols would be prohibited?
- Which colors/color combinations are gang-related?

Write your amended district policy below.

## **The Internet, Schools, and Symbolic Speech: A Jigsaw Activity**

Directions: Each of the cases below represents a case heard in the federal or state courts. Your job will be to become an expert on one of the cases. After becoming an expert on a case, you will teach the key components of the case to your classmates.

### ***O'Brien v. Westlake City Schools Board of Education (1998)***

Sean O'Brien was a junior at Westlake High School when he created a Web site, "raymondsucks.org," which criticized his band teacher. When school officials at Westlake accessed the site from school, the assistant principal suspended Sean for 10 days for violating a rule in the Student Conduct Handbook. The handbook stated "students shall not physically assault, vandalize, damage, or attempt to damage the property of a school employee or his/her family or demonstrate physical, written, or verbal disrespect/threat."

As a result of his suspension, Sean's grades plummeted and he failed band. Believing that the suspension was an unconstitutional violation of the Free Speech Clause of the First Amendment, Sean filed a lawsuit against the school district's board of education. U.S. District Court Judge John M. Manos heard the case and agreed with Sean's lawyer who stated that school officials do not have the authority to regulate speech made by students off campus grounds. While admitting that the case may have been different had Sean "hurled obscenities at his teacher face-to-face on school grounds, in front of other students", the Judge recognized that "the involvement by the school in punishing plaintiff for posting an Internet Web site critical of defendant . . . raises the ugly specter of Big Brother."

Upon losing the case, school officials expunged Sean's suspension, wrote him a letter of apology for "abridg[ing] students' legitimate exercise of their constitutional rights", and paid Sean \$30,000.

### ***Beussink v. Woodland R-IV School District (1998)***

Brandon Buessink, a junior at Woodland High School, added comments to his personal home page that criticized teachers and administrators at his school. When a student showed Brandon's Web site to a teacher, the teacher was upset by the vulgar language and criticism the site contained. Woodland's principal decided to suspend Brandon for five days due to the "offensive nature" of his site. At the end of the five days, the principal decided to extend Brandon's suspension for 10 more days.

Brandon took his case to U.S. District Court, arguing that the First Amendment's protection of free speech meant his suspension was unconstitutional. District Judge Rodney Sippel agreed. In his ruling, Judge Sippel said that school officials did not "show that its action [suspension of Brandon] was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. "

Summarizing his opinion, Judge Sippel concluded, "[t]he public interest is not only served by allowing Beussink's message to be free from censure, but also by giving the students at Woodland High School this opportunity to see the protections of the United States Constitution . . . "

***Emmett v. Kent School District Number 415 (2000)***

The "Unofficial Kentlake High Home Page", published by an 18-year-old student at that school, allowed visitors to vote on which mock-obituary subject posted on the site should be "next to die". Shortly after school administrators gained knowledge of the site, a local news station ran a story in which the site was described as containing a "hit list" of people to be killed. While the site contained a disclaimer stating that the site was an independent effort and for entertainment purposes only, school officials immediately placed the site's author on emergency expulsion. The school's action was based on a school policy prohibiting "harassment, intimidation, disruption to the educational process and violation of Kent School District copyright".

Although the student's expulsion was quickly converted to a five-day suspension, the student sued in U.S. District Court on First Amendment/Freedom of Expression grounds. District Court Judge John C. Coughenour admitted in his ruling that student Web sites "can be an early indication of a student's violent inclinations". However, the judge also stated that the student-generated nature of the site, combined with the failure of school officials to present any evidence that "the mock obituaries and voting on this Web site were intended to threaten anyone . . ." did not meet the standards laid out in preceding student free speech cases.

Upon conclusion of the case, the school district agreed to pay the student one dollar plus attorney's fees and remove the student's suspension from school records.

***Beidler v. North Thurston School District Number Three (2000)***

While completing his junior year at Timberline High School, Karl Beidler created a Web site depicting one of Timberline's assistant principals as a Nazi, drunk, and graffiti artist. After teachers complained about feeling uncomfortable with Beidler in their class and testifying that he found the Web site "appalling and inappropriate", the principal placed Beidler on emergency suspension. Beidler was ultimately transferred to an alternative educational program in his school district, but he was allowed to return to Timberline for his senior year.

Beidler took his case to a Washington state trial court and argued that his suspension and placement were unconstitutional under the First Amendment. Specifically, Beidler's attorney argued that because the Web site "caused no substantial disruption" and school officials had no "authority to police off-campus or Internet student speech", the suspension was unconstitutional.

The state trial court agreed with Beidler's attorney, ruling that the school district had failed to meet *Tinker's* standard governing disruptive speech.

***J.S. v. Bethlehem Area School District (1998)***

An eighth-grade student in Bethlehem, Pennsylvania was suspended for 10 days before being permanently expelled from middle school as a result of the Web site he published from his personal computer. This Web site contained vulgar and derogatory information about several employees from his middle school, asking questions like, "Why should she [his algebra teacher] die? . . . Take a look at the diagram and reasons I give, then give me \$20 dollars to help pay for the hitman".

After his expulsion, the student appealed the school board's decision by taking his case to his the Pennsylvania court of common pleas and the Commonwealth Court of Pennsylvania. Claiming a violation of his First Amendment right to free speech, the student and his attorney argued that his expulsion was unconstitutional.

A majority of the Commonwealth Court of Pennsylvania disagreed, stating that the student's Web site "materially disrupted the learning environment" because at school-sponsored activities and during school students were discussing the site. Furthermore, the court ruled that the medical leave taken by the teacher as a result of the Web site was clear evidence that the boy's site was distracting.

***Tinker v. Des Moines***

Complete the appropriate section of the chart below to "brief" your case.

Case	Background Facts	Constitutional Question Raised	Was the Tinker Standard Applied?How?	Court's ruling
<i>O'Brien v. Westlake City Schools Board of Education</i>				
<i>Beussink v. Woodland R-IV School District</i>				
<i>Emmett v. Kent School District Number 415</i>				
<i>Beidler v. North Thurston School District Number 3</i>				
<i>J.S. v. Bethlehem Area School District</i>				

## ***Tinker v. Des Moines***

Tying it all together . . .

In the space below, evaluate the following statement. Be sure to answer in paragraph form and include a topic sentence, three specific supporting details, and a conclusion.

"The Supreme Court's decision in *Tinker v. Des Moines* should be considered a landmark decision because the standards developed in *Tinker* are being used today in student free speech cases."

### **For Further Thought:**

All of these cases concerned the personal Web sites of individual students. Do you think that these cases would have been decided differently if the issues concerned a school-sponsored Web site? (*Note to teachers: This question provides a segue into the Hazelwood v. Kuhlmeier case.*)