



Teacher Notes: *Tinker v. Des Moines* (1969)

The Background of the Case (00:00-2:24)

1. Who was Mary Beth Tinker and what did she plan to do?
Mary Beth was a 13-year-old junior high student in Des Moines, Iowa who, along with her brother and others, planned a silent protest of American involvement in the Vietnam War and support for the upcoming Christmas truce. The students planned to wear black armbands to school on December 16, 1965.
2. How did the school react to the students' plan?
After a newspaper article reported the students' planned protest, school administrators announced that students who participated would be asked to remove the armbands. If they did not comply, they would be suspended until they agreed to remove the armbands. Teachers and administrators alike were afraid that the protest would draw the students' attention away from their studies.

Stop and Think: (Stop at 1:34 to allow students to complete the first two questions and then restart to 2:24 to complete the last two questions.)

- Do you think the school officials should have made this policy before the student protest was carried out? Why or why not?
- What are some reasons school officials believed that this protest might cause disruption in the classrooms?
Have the students consider the possibility that there might have been students/teachers at the school who might have had friends or relatives involved in the war.
- How did school officials respond when the students wore the armbands on December 16, 1965? How did the Tinker parents respond?
Five students were suspended even though there was no evidence of any disruption or violence. A few teachers did complain that the protest drew the students' attention away from their studies. Mary Beth and John Tinker's parents filed a complaint in U.S. District Court asking for an injunction to restrain the school from suspending the students.
- How did the U.S. District Court respond?
The U.S. District Court dismissed the complaint. The school then announced that the students had to agree not to wear the armbands again or they would stay suspended until January 1, 1966, which was the day the students planned to end their protest.

Arguments at the U.S. District Court (2:25-3:35)

3. What were the school's arguments before the U.S. District Court?
Attorneys for the school district argued that schools had historically not been a place of public debate, but rather a place to teach students a set curriculum. They also argued that the courts had historically deferred to school officials to decide what was best for the students. They denied the students had constitutional rights in school and thus, there was no basis for their complaint.
4. What did the parents argue?
The parents argued that the students had planned this silent demonstration so that it wouldn't distract from the educational environment. Since the students weren't speaking, others could

draw their own conclusions about the reasons for the protest. They also argued that students should have some of the same rights in school that citizens have outside schools.

Stop and Think: What is your opinion as to whether or not school is an appropriate place for a silent, peaceful protest if it causes no reaction? Would your opinion change if there was a disruptive reaction to the protest? Why or why not?

Question brought to the U.S. Supreme Court (3:36-5:33)

5. How would you frame the issue when the case was brought to the Supreme Court?
[Formula for issue=Yes/No question + facts of the case + part of the U.S. Constitution in question]
Did the school district's policy prohibiting the wearing of armbands in public schools violate students' First Amendment rights of freedom of speech?
6. Summarize the petitioner's arguments before the Supreme Court?
Speech doesn't always have to be verbal. The armbands were a kind of symbolic speech.
7. Summarize the arguments of the respondent at the Supreme Court?
School officials shouldn't be second-guessed and should be allowed to make reasonable decisions concerning what they feel is best for students.

Stop and Think: At this point, which side do you feel has the strongest arguments? Defend your position.

The Ruling (5:34-7:34)

8. What was the Court's decision in the case, and which justice wrote the opinion of the Court?
The Court ruled 7 to 2 in favor of Mary Beth Tinker, her brother John, and friends. Justice Abe Fortas wrote that the school administration didn't prove that the protest substantially disrupted classroom instruction or caused any disciplinary problems. He wrote that that the armbands were akin to "pure" speech and therefore fell under the protection of the First Amendment.
9. Who were the two dissenting justices and what was the basis for their dissents?
Justice Hugo Black and Justice John Marshall Harlan II both dissented. Justice Harlan believed that the school principal had acted in good faith when he established the policy against wearing the armbands. Justice Black strongly dissented and argued that what the students did was not speech but conduct, and the First Amendment does not protect conduct. He also argued that the Court had no role in establishing policies for educating the young.

Impact of the Case (7:35-10:39)

10. What are two reasons the *Tinker* case is important and considered a landmark case?
 - a. Speech doesn't have to be verbal, it can be symbolic, and the First Amendment protects symbolic speech.
 - b. School children have constitutional rights and this includes some freedom of speech.
11. Why does Lackland Bloom, Jr. say the legacy of the case is hard to judge?
Some lower courts have based their decisions on the precedent set by *Tinker*. However, on the next three occasions that the Supreme Court considered school disciplinary actions against student speech, the Court sided with the schools.

Conclusion:

12. Paraphrase each of the quotes below:

- a. “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...” **Justice Abe Fortas from the majority opinion**
- b. “...if time has come when pupils of state supported schools, kindergartens, grammar schools, or high schools can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.”
Justice Black from the dissenting opinion
- c. “This case therefore wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest students. I wish...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.”
Justice Black from the dissenting opinion

13. Identify the quote(s) that support the majority’s view in *Tinker* and then identify the quote(s) that support the dissenting view. What evidence from the quotes support your answers?