

Case Summary: *Tinker v. Des Moines Independent Community School District*

The Bill of Rights was adopted in 1791. But the First Amendment wouldn't be applied to school newspapers until nearly two centuries later.

It was in 1969 that the U. S. Supreme Court decided the first of two cases that have come to represent the issue of free speech and First Amendment protection for student journalists: [*Tinker v. Des Moines Independent Community School District*](#). The second case, [*Hazelwood School District v. Kuhlmeier*](#), was decided in 1988.

The Supreme Court first gave a specific standard for protection of students' First Amendment rights in the *Tinker* case. This grand protector of student press rights didn't involve a student newspaper at all. It dealt instead with high school and junior high school students from Des Moines, Iowa, who wore black armbands to school in protest of the United States' involvement in Vietnam. Still, the Supreme Court's decision in *Tinker* set the legal standard for student free expression rights in newspapers, yearbooks and other publications for the next 19 years.

The Tinker Tale

Tinker began on a snowy Saturday, Dec. 11, 1965. A large group of students met at the home of Christopher Eckhardt in Des Moines, Iowa, to make plans for a school protest against the Vietnam War. After long discussion, they decided to wear black armbands to school on Thursday, Dec. 16, and to continue wearing them until New Year's Day, 1966.

On Dec. 14, the principals of the Des Moines school system, having learned of the students' plan to wear armbands, adopted a policy that all students wearing armbands to school would be asked to remove them. If they refused, they would be suspended until they were willing to return without the armbands.

Most of the original group of students who had planned to protest backed out when they realized their records and their chances for college entrance and scholarships might be threatened.

On Dec. 16, Christopher Eckhardt, 16, a student at Theodore Roosevelt High, and 13-year-old Mary Beth Tinker, a student at Warren Harding Junior High and family friend, wore their home-made black armbands, complete with peace signs, to school. Mary Beth's 15-year-old brother, John, wore his the following day to North High School. More than two dozen students wore black armbands on Dec. 16 and 17 in Des Moines high, middle and elementary schools.

“Ultimately, only five Des Moines secondary-school students were singled out for discipline for wearing armbands in December 1965: Christopher Eckhardt, John and Mary Beth Tinker, Roosevelt sophomore Christine Singer, and Roosevelt senior Bruce Clark,” according to John Johnson in *The Struggle for Student Rights*.

More than two decades later, Christopher Eckhardt remembers what happened as if it were yesterday. “I wore the black armband over a camel-colored jacket.” There were threats in the hallway. “The captain of the football team attempted to rip it off. I turned myself in to the principal’s office, where the vice principal asked if I ‘wanted a busted nose.’ He said the seniors wouldn’t like the armband. Tears welled up in my eyes because I was afraid of violence.

“He called my mom to get her to ask me to take the armband off.” Christopher’s parents were peace activists; his mother refused. “Then he called a school counselor in. The counselor asked if I wanted to go to college, and said that colleges didn’t accept protesters. She said I would probably need to look for a new high school if I didn’t take the armband off.

“The year before, they allowed everyone to wear black armbands to mourn the death of school spirit . . . but on Dec. 15 the gym coaches said that anyone wearing armbands the next day had better not come to gym class because they’d be considered communist sympathizers.

“My former subversive activities had included being president of the student council in elementary and junior high school, membership in the Boy Scouts, listing on the honor roll, delivering *The Des Moines Register* and shoveling snow for neighbors.”

Mary Beth Tinker

Unlike her friend Christopher, Mary Beth Tinker remembers very little about the events of 1965 and the court cases that followed, although she thinks she attended all three court hearings.

“I think I’ve blocked a lot of it out. I didn’t realize the significance of the case for years,” she says. “I had just moved to St. Louis when the decision was announced in 1969. I was a high school junior, and I just wanted to fit in, blend in with the crowd. Suddenly, *Newsweek* and *Time* were descending on the school, wanting to take pictures of me.

Plus we’d gotten a lot of threats [in 1965]. A man who had a radio talk show threatened my father on the air. Red paint was thrown on our house. A woman called on the phone, asked for me by name, and then said, ‘I’m going to kill you!’

“I realized how hateful, how irrational people could be. Subconsciously there was a part of me that withdrew. I got a little bit protective of myself and our family.”

Winding Through The Courts

A school board meeting was held on December 21, 1965, with 200 in attendance. The armband ban had originated from a unanimous vote of Des Moines high school principals, not the school board. The board meeting was a lively exchange of different viewpoints. The meeting ended in a vote to postpone a decision. *The Des Moines Register* on Dec. 22 and *The New York Times* on Dec. 23 carried articles about the armband controversy. At the Jan. 3 meeting, the school board voted 5-2 to uphold the

administrative ban.

Christine and Bruce decided to take no further action. Christopher Eckhardt, John and Mary Beth Tinker returned to school without armbands, but each wore black clothing. On March 14, Dan Johnston of the Iowa Civil Liberties Union filed a formal complaint on behalf of Chris, John, Mary Beth and their fathers as “next friends” in the U. S. District Court of the Southern District of Iowa.

They claimed that by suspending them, their schools had infringed on their First Amendment right to free expression. After an evidentiary hearing, the District Court dismissed the complaint, upholding the constitutionality of the schools’ actions, saying that they presented a disturbance of school discipline.

The case went to the U. S. Court of Appeals for the 8th Circuit, where the judges were split and so the District Court’s ruling stood. It finally reached the Supreme Court in Nov. 12, 1968.

On Feb. 24, 1969, the Supreme Court ruled that the Des Moines schools violated the First Amendment rights of the students by suspending them for wearing armbands. But the Court did not say that the schools could never control freedom of expression. It said students are entitled to some First Amendment rights but not necessarily all the First Amendment rights that others would have outside the school context.

The key: “Material and substantial disruption of school activities or invasion of the rights of other students” must be proved if student expression is to be controlled. School officials could censor only when they could show that the expression would disrupt the school environment or invade the rights of other students.

The Supreme Court said this standard had not been met — that by suspending the students for refusing to remove the armbands, the school violated the students’ right to free speech. The Court also held that the act of wearing black armbands was “closely akin to ‘pure speech’ ” and, as such, was protected by the First Amendment.

A Reflection Of The Times

Justice Abe Fortas, writing for the majority in *Tinker vs. Des Moines Independent Community School District*, declared, “Neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” — thus asserting that students are persons under the Constitution and that states would have to respect their rights in the same way they would citizens in other contexts. This idea became the guiding principle for student free expression rights.

The *Tinker* decision was embraced by First Amendment advocates, but others feared that giving students greater First Amendment rights was setting a dangerous precedent. This concern was particularly relevant in the late 1960s and early 1970s, when student activism and free expression were at their peak.

“*Tinker* came out of the Vietnam era, which was a time of great social ferment,” says Paul McMasters, ombudsman of the First Amendment Center. “It was all right to question authority and to protest and to state your beliefs loudly and clearly, which is what the students in Des Moines did.”

Despite the prevailing climate of free expression in the 1960s, *Tinker* was the first Supreme Court ruling that specifically provided protection for students’ First Amendment rights.

“Within a year of the decision we saw dress codes relaxed, hair codes relaxed,” says Christopher Eckhardt. “Justice Black was correct in his dissent when he said the decision would usher in a new era of permissiveness.”

School press reformers were able to use the *Tinker* decision to bolster high school journalism. Many faculty advisers interpreted *Tinker* as a blueprint for keeping school administrators away from school newspapers. Under the *Tinker* ruling, the advisers believed, students could be prevented from publishing articles in a school newspaper only if the articles were libelous, obscene or “materially and substantially interfered with the requirements of appropriate discipline in the operation of the school.”

Questions For Discussion

1. When or under what circumstances is wearing an armband protected speech?
2. Under what circumstances may student speech be limited in school according to the *Tinker* standard?
3. What other forms of student speech in school are protected under the *Tinker* decision?
4. Are there any forms of student protest on school grounds that are not protected under the *Tinker* decision?
5. Why is protecting the expression of controversial views important? Why do we tolerate hurtful or unpopular expression?
6. Are the desires of parents and administrators for a safe school environment, an academic environment and positive public relations necessarily in conflict with an active, unencumbered student media?

Points To Assist Discussion

1. **When or under what circumstances is wearing an armband protected speech?**
The armband is considered “symbolic” speech rather than “pure” speech. Whether as an expression of mourning or protest, the black armband has been used for many years. Justice Abe Fortas wrote the opinion of the Supreme Court. In it he

stated that the wearing of black armbands was correctly classified as a “type of symbolic act that is within the Free Speech Clause of the First Amendment.”

2. **Under what circumstances may student speech be limited in school according to the *Tinker* standard?**

Speech that is libelous or invades privacy is not protected. Speech that will materially and substantially disrupt school activities may be controlled. The First Amendment only prohibits government officials from suppressing speech; it does not prevent school censorship at private schools. A state constitution, statute or school policy could provide private school students with free speech protections.

3. **What other forms of student speech in school are protected under the *Tinker* decision?**

The *Tinker* decision was applied to student newspapers, literary magazines, yearbooks and broadcast media.

4. **Are there any forms of student protest on school grounds that are not protected under the *Tinker* decision?**

In *Cox v. Louisiana* (1965): the Supreme Court ruled that the rights of free speech and assembly do not mean that anyone with opinions or beliefs to express may address a group at any public place and at any time.

Student protest that will disrupt school activities or endanger the safety of others is not protected. “Reasonable regulation of speech-connected activities in carefully restricted circumstances,” according to Justice Abe Fortas (*Tinker*), is permitted.

5. **Why is protecting the expression of controversial views important? Why do we tolerate hurtful or unpopular expression?**

Justice Abe Fortas delivered the opinion of the Court. He states, “Any departure from absolute regimentation may cause trouble. Any variation from the majority’s opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk ... and our history says that it is this sort of hazardous freedom — this kind of openness — that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, [argumentative] society.”

6. **Are the desires of parents and administrators for a safe school environment, an academic environment and positive public relations necessarily in conflict with an active, unencumbered student media?**

Gwen Gregory, deputy general counsel for the National School Board Association, spoke with understanding of both sides’ views at a session on student press rights at the fall 1993 convention of the Journalism Education Association.

While she enthusiastically supported the legal reasoning of *Hazelwood*, she said

she did not feel that principals should clamp down so hard on journalists that they're not allowed to write about anything except school events. If agreement can't be reached with the principal, she said "go to the school board to see if you can get more power."

"A lot of schools," Gregory added in a later comment, "don't have the freedom that, as a matter of education, I think they should have. Kids can be helpful in covering a lot of areas — crime for instance. If they let their feelings be known to people in power, there might be some changes made."

"We are not talking about a conspiracy of high school officials across the land to put a gag on high school students," says Paul McMasters, the Freedom Forum's First Amendment ombudsman. "Almost without exception, I would dare say, these are good, dedicated and sincere people who have a public trust and are trying to carry it out the best way they can."

Administrators and school board members who want to support student press rights often must face parents and pressure groups that are far less tolerant.

Fay Hartog-Rapp, acting as legal counsel to about three dozen school districts in the Chicago area, said, "It is the responsibility to the entire school community that school officials must consider when they make the difficult decision on censorship."

Hartog-Rapp acknowledges that student journalists can learn valuable lessons from the mistakes they make, but cautions, "One must always question what price [is paid by] those mistakes . . . if [they are] to the detriment of other students' personal privacy or their reputation or their view of themselves in the school," Hartog-Rapp said. Codes limiting hate speech exist for that reason, she said.

"You need to look at it as a lesson not only in civics, but in economics and accountability," she continued. "The question is, what is our responsibility to the greater community who we serve, and is the educational lesson more important than the harm that might befall the rest of the community?"

Temple University Professor Dr. Tom Eveslage discussed student press rights in an honors lecture delivered at the August 1993 convention of the Association for Education in Journalism and Mass Communication. "The *Tinker* Court removed some barriers; the *Hazelwood* Court erected a few," he said. "Both cases altered the school terrain of student journalists, but neither case stopped students from covering the territory. In both rulings, the Court acknowledged the critical-thinking process, and said — in far different language — that the process must be preserved.

"After Mary Beth Tinker slipped on her armband that December morning in 1965, she of course went to a much different school [from student journalists today].

But Mary Beth had a lot in common, too, with many of today's student journalists — a sense of concern and caring, a belief that what she had to say was important and worth saying, a feeling that she deserved the chance to tell others what she thought, to make a difference.”

University of Colorado's Robert Trager and Joseph A. Russomanno offered, perhaps, the deepest consideration of freedom of expression in schools in a paper presented at the Association for Education in Journalism and Mass Communication 1993 convention.

“When free expression is limited in order to instill majoritarian societal values in their schools, this turns the First Amendment on its head. Rather . . . students' expressive rights should be at the core of the societal values that public schools teach — and that schools should allow students to practice.

“The First Amendment is instrumental in providing the foundation for dissent, self-fulfillment, human dignity and liberty — all vital in the realization of both the polity and the individual.

“Every organization, including the school, has a culture, serving to inform its membership about how to interpret and respond to social life. . . . Schools are societal surrogates for students. The school is one of the few — perhaps the only — institutions with which the pre-adult has contact outside the home.

“By providing structure and standards, the school can bestow a sense of significance to its students, letting them ‘know they belong to a functioning and complete society.’ Alternatively, a system that distinguishes between what is permitted within the school and outside its door symbolically conveys to students — citizens who are in their politically formative years — that viewpoints can be constrained based not merely on their content, but also on their location.”

A school environment devoid of free expression is not likely to produce an adult ready to support the sentiment attributed to Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.”

Much of this file is excerpted from "From Tinker to Hazelwood: Landmark Supreme Court decisions and how schools deal with them" originally published in Death By Cheeseburger: High School Journalism in the 1990s and Beyond by Alice Bonner, et. al. Reprinted by permission, The Freedom Forum.