

# Upholding Student Rights in the 20th Century: An Examination of *Tinker v. Des Moines Independent Community School District*

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In November 2017, the National Archives in Washington, D.C., opened an exhibit titled *Remembering Vietnam*. This exhibition traces the policies and decisions made by the architects of the conflict and helps untangle why the United States became involved in Vietnam, why it lasted so long, and why it was so divisive for American society. More information about the exhibit and a traveling version is available at [www.archives.gov/exhibits/currently-on-exhibit-remembering-vietnam](http://www.archives.gov/exhibits/currently-on-exhibit-remembering-vietnam).

As a part of this exhibition, the National Archives Office of Education and Public Programs is embarking on a nationwide effort to shed light on the experiences and stories of those impacted by the Vietnam War, both at home and abroad. Throughout 2018, a variety of educational events and public programs will take place at multiple National Archives locations across the country. This article highlights one example of how American student involvement in the war effort established a precedent for First Amendment rights.

*Tinker v. Des Moines Independent Community School District* is a precedent-setting court case, originally filed in 1965 at the U.S. District Court in Des Moines, Iowa. It was eventually argued in front of the U.S. Supreme Court and became a landmark case regarding the civil rights of students. The First Amendment, specifically freedom of speech, was the impetus for the lawsuit.

According to the court documents, in early December 1965, inspired by other protests, a group of adults and students met in Des Moines to plan a public

protest against the Vietnam War. The students (junior and high school aged) determined the best approach to protesting was to wear black arm bands from December 16 to New Year's Day as a peaceful way to express their opinions. The students planned to put a notice in the Roosevelt High School newspaper inviting other students to join the effort. (See p. 75) However, the editorial was censored by the high school and instead was shared with local media, thus ensuring the public knew of the planned protest.

On December 14, the principals of the involved schools in the Des Moines School District met and enacted a rule that "any student wearing an arm band would be asked to remove the arm band, and if he refused he would be suspended until he returned without the arm band." The policy was announced to all students on December 15, and a copy of it ran in *The Des Moines Register*. (See p. 76)

Mary Beth Tinker and Christopher Eckhardt arrived at their respective schools, Warren Harding Junior High and Roosevelt High School, on

December 16, and were suspended after refusing to remove their black arm bands. Mary Beth's brother, John, wore his arm band the next day to North High School and was suspended as well. In addition, about a dozen other students wore arm bands. However, only two other students who participated, Bruce Clark and Christine Singer, were disciplined. Two other Tinker children, Paul and Hope, ages 8 and 11 respectively, also wore arm bands to James Madison Elementary School, but were not suspended, as the newly enacted rule did not apply to elementary students.

Upon their suspensions, the junior and high school students refused to return to their respective schools until after the New Year's Day holiday, as that was the intended period for wearing the arm bands.

With assistance from the American Civil Liberties Union (ACLU), the Tinker and Eckhardt families filed a complaint against the school district in the U.S. District Court for violation of the right to free speech under the First Amendment; and stating that First Amendment rights are protected from state infringement (e.g., a public school board) under the due process clause in the Fourteenth Amendment of the Constitution. In the complaint, the families sought an injunction against both the school principals and the board of

education for disciplining (suspending) the students. It should be noted that two of the school board members, Arthur Davis and Robert Keck, did side with the students in that the arm bands did not present a danger to the school or other students.

Because the students were minors (under 18), their fathers were required to represent them on their behalf in the legal documents. Leonard Tinker and William Eckhardt are listed along with Mary Beth and John Tinker and Christopher Eckhardt in the court materials.

The Tinkers and Eckhardts both testified that their purpose for wearing the arm bands was to mourn those who died in the Vietnam War and to support

Senator Robert Kennedy's proposal that the truce proposed for Christmas Day 1965 be indefinitely extended.

The U.S. District Court dismissed the case on September 1, 1966, after an evidentiary hearing and agreed with the school district's actions based on their claim that the arm bands would have caused a disruption at the school. In the opinion, the court specifically stated "while the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disrupt the disciplined atmospheres required for any classroom." Therefore "school officials had a reasonable basis for adopting the arm band regulation."

Within the same opinion document, the District Court stated...

The plaintiffs' freedom of speech is only infringed upon to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Vietnam War during any orderly discussion on the subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance however, it is the disci-

*continued on page 78*

## Suggested Activities

## Teaching with Documents

### Debate the Case

Divide the class into two groups. Ask that they research the case further looking at both the U.S. District Court and the Supreme Court opinion and dissent. Assign one group to argue for the First Amendment protection and assign the other group to argue against. Students should form their arguments and present them to each other with factual debate. Questions to consider include the following: Were the arm bands a form of symbolic speech protected by the First Amendment? Does the constitutional right of free speech protect the symbolic speech of public school students? What about students in private or charter schools? Should a school district have the power to restrict speech to maintain discipline in a classroom environment? What kind of implications exist from this case that impact student participation in activities such as singing the National Anthem at a sporting event or stating the Pledge of Allegiance? The entire case, including the Supreme Court opinion documents, can be found at <http://research.archives.gov/description/7788707>.

### Launch a 21st Century Campaign

Ask students to develop a similar campaign today. Social media did not exist in the 1960s; therefore, students should research the case by reading the testimony and explaining how they would develop a similar effort today. In addition, students should be asked to review their school district policy on dress codes and First Amendment rights pertaining to all students in the district/schools. Articles published in *The Des Moines Register* about this case are available to aid with research. Questions for consideration include: How will students message their efforts

and involve their friends? What types of social media platforms would work best for a modern day arm band campaign? How will the peaceful protest message not get lost in today's competitive media cycle?

### Compare/Contrast Research Project

Assign students a research project around comparing and contrasting similar cases that deal with the First Amendment. Examples include *Burnside v. Byars*; *West Virginia State Board of Education v. Barnette*; *Minersville v. Gobitis*; *Cox v. Louisiana*; and *Hazelwood School District v. Kuhlmeier*. Upon completion of their research, students should be able to articulate aspects of free speech, whether it be via symbolism or verbalization, as well as aspects of the Fourteenth Amendment as it reflects equality for all. This could be a group or individual project in which students write a paper or present their findings in another format such as a website, mini-exhibit, or PowerPoint presentation.

### Interview

In the years since the case, the Tinker family has continued to work toward causes around First Amendment rights. For students who want to learn more about how this case impacted the Tinker family, an interview with one of the litigants (e.g., Mary Beth Tinker or John Tinker) could be useful. Students who are working on National History Day projects and/or AP coursework might find this to be an excellent opportunity to practice their oral history interviewing skills. Mary Beth Tinker maintains a website where she can be reached: <https://tinkertourusa.org/about/tinkerbio/>

(3)

DEPENDANTS  
Exhibit 1  
Cause No. 7-1810-C  
Date JUL 25 1966  
U. S. District Court  
Southern Dist. of Iowa

(5) L J Jinkels

Def's. Ex. 1

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FILED

JUL 26 1966

F. E. VAN ALSTINE  
CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

ATTENTION STUDENTS!

Some high school and college students in Iowa who are interested in expressing their grief over the deaths of soldiers and civilians in Vietnam will fast on Thursday, December 16th. They will also wear black arm bands starting on that same day, December 16th. The National Liberation Front (Vietcong) recently proposed a 12-hour truce on Christmas Eve. The United States has not yet replied to their offer. However, Senator Robert Kennedy has suggested that the truce be extended indefinitely pending negotiations. If the United States takes this action the arm bands will be removed. If it does not the bands will be worn throughout the holiday season and there will be a second fast on New Year's Day. High school and college students are also encouraged to forego their usual New Year's Eve activities and meet together to discuss this complex war and possible ways of ending the killing of Vietnamese and Americans.

A meeting in Des Moines on New Year's Eve will be held at the home of Bruce Clark, 925-29th, for further information call his home. The meeting is being sponsored by Liberal Religious Youth the youth organization of the Unitarian Universalist Association. All students interested in saving lives and ending the war in Vietnam are urged to attend.

PLEASE COME!

[Redacted]



# D. M. Schools Ban Wearing Of Viet Truce Armbands

R 12-15-65  
By Jack Magarrell

Des Moines school officials said Tuesday that high school students will not be permitted to wear black armbands at school in support of a truce in Viet Nam.

A few students at Roosevelt High School were reported planning to wear the armbands Thursday.

Several groups of Iowa college students opposed to U. S. policy in Viet Nam have designated Thursday as a day of fasting and wearing black armbands to encourage U. S. acceptance of a Viet Cong offer of a 12-hour cease-fire on Christmas Eve.

Roosevelt Principal Charles Rowley refused to comment on the school's attitude toward the armbands.

E. Raymond Peterson, director of secondary education, met with high school principals Tuesday to assure a uniform policy.

Questioned about the policy, Peterson said, "For the good of the school system, we don't think this should be permitted."

"The schools are no place for demonstrations," Peterson said. "We allow for free discussion of these things in classes."

Peterson said the decision not to allow students to wear the black armbands was based on a general school policy against "anything that is a disturbing situation within the school."

School officials believe the educational program would be disturbed by the students wearing armbands, he said.

Peterson said the meeting with high school principals dealt with several other matters which school officials considered more important than a proposal by "eight or 10 students" to "get publicity" by wearing armbands.

FILE

JUL 26 1965

F. E. VAN ALST  
CLERK, U. S. DISTRICT  
COURT, DISTRICT OF IOWA

DEFENDANTS

Exhibit

PROPOSED POLICY FOR SECONDARY PRINCIPALS  
REGARDING STUDENT CONDUCT

The legal Code of Iowa makes specific provisions for the suspension or expulsion of a student from the public schools of the state. One of the valid reasons for suspension and expulsion is conduct detrimental to the best interests of the school. (Chapter 282, section 282.4 of the Iowa Code)

One of the most important responsibilities of a building principal is to help establish and maintain an atmosphere within the school which will allow teachers to achieve the primary purpose of public school education--that of educating each person to his maximum potential.

Since the best interests of the school may be served only through the establishment and maintenance of an orderly, disciplined faculty and student body it is deemed essential that school administrators be delegated, and assume, the responsibility of establishing and maintaining such an environment. Conduct by teachers or students which tend to disrupt the orderly conduct of the everyday educational program of the school, or which are considered by school administrators as likely to do so, must therefore be of immediate and urgent concern. When a resolution of problems of acceptable conduct are impossible through personal conference with a student and his parents, a student may be suspended from school to provide an opportunity for all concerned to seek a solution to the problem of conduct without causing a continued disturbance or disruption of the educational program of the school.

It is our desire that all students in our schools present such an appearance and so conduct themselves that the school attended can always be proud of them; however, should the conduct or dress of a student be such that it is believed that person or others will be distracted from the earnest pursuit of the educational purposes of the day and the moment it is expected that appropriate disciplinary action will necessarily be forthcoming.

FILED

JUL 26 1966

F. E. VAN ALSTINE  
CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

DEFENDANTS

Exhibit

3

7-1811-0



## STUDENT RIGHTS *from page 74*

plined atmosphere of the classroom, not the plaintiffs' rights to wear arm bands on school premises, which is entitled to protection of the law.

Seeking an appeal with the U.S. Court of Appeals for the 8th Circuit, the case was heard "en banc" meaning the entire bench heard the case, rather than a panel of judges from the 8th Circuit. However, the court was split evenly on a decision, thus, by default, upholding the District Court's decision without issuing an opinion.

In 1968, the Tinkers and Eckhardts, with continued assistance from the ACLU, appealed their case to the Supreme Court, which issued a decision in 1969. Many questions had to be considered by the Supreme Court, such as: Were the arm bands a form of symbolic speech protected by the First Amendment? Does the constitutional right of free speech protect the symbolic speech of public school students? Does a public school have the power to restrict speech to maintain discipline in a class-

room environment?

By a 7–2 vote, the Supreme Court decision favored the plaintiffs. The Court did not agree that the Des Moines school district proved the arm bands had caused "substantial interference with schoolwork or discipline." In the opinion written by Supreme Court Justice Abe Fortas, he further stated "[The wearing of arm bands] was closely akin to 'pure speech' which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment."

The Supreme Court pointed out that the school had allowed other political symbols, such as campaign buttons, to be worn by students. Fortas noted that "the wearing of arm bands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it." He also cited in *West Virginia v. Barnett* that school districts are not exempt from upholding the provisions in the Fourteenth Amendment, which allows individuals equal protection.

From the opinion in the case: "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 Fortas wrote for the majority. "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." 🌍

*Note:* The U.S. District Court case of *John F. Tinker et al. v. The Des Moines Independent Community School District*, et al. is housed at the National Archives in Kansas City. The full case, along with the U.S. Supreme Court opinion, can be viewed in the National Archives catalog <https://catalog.archives.gov/id/7788707>. John Tinker's testimony from the 8th Circuit Court of Appeals case can be found on DocsTeach [www.docsteach.org/documents/document/testimony-john-tinker](http://www.docsteach.org/documents/document/testimony-john-tinker).

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## Document Citations

**CV7-1810-C1\_Tinker\_v\_DesMoines\_170.jpg** This document (on page 75) shows the students' plans for a peaceful protest against the Vietnam War involving fasting and the wearing of arm bands. National Archives at Kansas City, Record Group 21, Records of the District Courts of the United States, U.S. District Court for the Central (Des Moines) Division of the Southern District of Iowa, Civil and Criminal Order Journals, 1967–1999, *John F. Tinker et. al. v. The Des Moines Independent Community School District*, Civil Case No. 7-1810. National Archives Identifier 7788707.

**CV7-1810-C1\_Tinker\_v\_DesMoines\_166.jpg** Article (on page 76) from *The Des Moines Register* about the banning of the arm bands. National Archives at Kansas City, Record Group 21, Records of the District Courts of the United States, U.S. District Court for the Central (Des Moines) Division of the Southern District of Iowa, Civil and Criminal Order Journals, 1967–1999, *John F. Tinker et. al. v. The Des Moines Independent Community School District*, Civil Case No. 7-1810. National Archives Identifier 7788707.

**CV7-1810-C1\_Tinker\_v\_DesMoines\_167.jpg** Proposed policy (on page 77) for student conduct in secondary schools in the Des Moines School District. National Archives at Kansas City, Record Group 21, Records of the District Courts of the United States, U.S. District Court for the Central (Des Moines) Division of the Southern District of Iowa, Civil and Criminal Order Journals, 1967–1999, *John F. Tinker et. al. v. The Des Moines Independent Community School District*, Civil Case No. 7-1810. National Archives Identifier 7788707.

## Additional Sources

*Tinker V. Des Moines: Free Speech for Students*  
by Susan Dudley Gold

*We Must Not Be Afraid to Be Free: Stories of Free Expression in America* by Ronald K.L. Collins and Sam Chaltain