

# SYMBOLIC SPEECH IN HIGH SCHOOLS: Exploring TINKER v. DES MOINES SCHOOL DISTRICT, 393 U.S. 503 (1969)

Thirty-five years ago, in November of 1968, two high school students from Iowa went to the Supreme Court of the United States to ask the Court to uphold their right to protest the Vietnam War at their high school. Little did they know that their case would become a landmark case for free speech for public school students across this country.

When the United States began to get heavily involved in the Vietnam War in 1965, some Des Moines public high school students wanted to wear black armbands to school to show that they were opposed to the war. When the school administration heard about this plan, they adopted a new policy that stated that any student who wore an armband to school would be asked immediately to remove it or face suspension until agreeing to return to school without the band.

John and Mary Beth Tinker, brother and sister, and a friend decided to wear armbands to school anyway. When administration asked them to remove their armbands, they refused and they were suspended. They returned to school without armbands after January 1, 1966, the date scheduled for the end of their protest. However, their fathers filed a lawsuit in federal district court against the school on the grounds that the new policy violated their children's First Amendment right to free speech.

The district court first had to decide if wearing armbands really was the kind of "speech" protected by the First Amendment. The Court decided that wearing armbands was "symbolic speech" and was protected by the First Amendment. But the Court found that the school policy against wearing armbands was reasonable because the students' actions might be disruptive to other students. The Tinkers chose to appeal their case all the way to the Supreme Court of the United States.

In a 1969 decision, the Supreme Court agreed with the lower court that "symbolic speech" is protected by the First Amendment. However, they found that the Tinkers' wearing armbands was a quiet and passive activity that does not infringe upon the rights of others. The Court held that a rule against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First Amendment. Perhaps the line most quoted from the case is "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

## What do you think?

1. Originally, the First Amendment protection to free speech applied only to actions by Congress. After the passage of the 14th Amendment, it applied to actions by state governments and any governmental entity i.e. public schools. How do you think the Framers of the Constitution would feel about this protection extending to symbolic speech? To public schools?
2. Pretend that students in your school wanted to protest a school-wide ban on cell-phones. Should they be allowed to protest by turning on their phones and calling each other so that phones are constantly ringing? Would the Court in the Tinker case rule for the students or the school? Why or why not?
3. Would a school rule against tattoos violate a student's First Amendment rights? Why or why not?

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