

THE CONSTITUTION IN THE CLASSROOM



TEACHING MODULE: *Tinker* and the First Amendment

Description: This unit was created to recognize the 40th anniversary of the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). The *Tinker* case established that school officials could not punish or prohibit student speech unless that speech will result in a substantial disruption of school activities or invades the rights of others.

Objectives: The goal is to use this significant case with special relevance to young people to teach appreciation and respect for the Constitution and the Bill of Rights.

Length of Lesson: 1 class period (45-60 minutes)

Supplies Needed: This packet

Age Group: 9th-12th grade

OVERVIEW OF LESSON PLAN:

Part One: *Tinker v. Des Moines*

- Facts/summary to be read out loud to the class.
- **Handout:** Excerpt of *Tinker* to hand out for reading in class.
- **Discussion Questions:** Read the questions out loud and give students time to respond.

Part Two Understanding the First Amendment

- **Handout:** Distribute the one-page handout to the class.
- First Amendment Textual Review (discuss the meaning of the words in class) and additional discussion points.

Part Three First Amendment Quiz

- **Handout:** Distribute the one-page handout to the class.
- Have students fill out answers to questions 1-9.
- After the students fill out the quiz, explain the correct answers.

Part Four Class Debate – *Jamie Madison v. Jackson Community School District*

- Facts to be read out loud to the class.
- Provide class with squibs of other First Amendment precedents to be used in formulating their arguments.
- **Class Debate:** After dividing the class into two groups, read the questions and allow each side time to respond.

Tinker Background / Summary

The *Tinker* Case: Students Taking a Stand

During the United States war with North Vietnam in the 1960s, three Iowa public school students – John Tinker, Mary Beth Tinker and Chris Eckhardt – decided to express their support for ending the war by wearing black arm-bands to school. The school district found out about the students' plan and passed a no-armbands rule to stop them, but the students went ahead, knowing they were



risking being written up for violating school rules. A few other students asked them why they were wearing the arm-bands, and some of those students did not agree with the anti-war opinion, but nobody got into any fights. The school told John, Mary Beth and Chris to go home until they agreed to take off the arm-bands, and they were suspended for several weeks.

The students' families thought that it was wrong to punish people for having strong political views, so they went to court. The case went all the way up to the United States Supreme Court. On February 24, 1969, the Supreme Court decided that John, Mary Beth and Chris were right – they shouldn't have been suspended because all they did was peacefully express their opinions, and their right to express themselves in a non-disruptive way was protected by the First Amendment to the United States Constitution.

Justice Abe Fortas was the author of the decision that the Supreme Court issued. Here is part of what he said:

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

"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"

Tinker Excerpts Handout

TINKER V. DES MOINES INDEP. CMTY. SCH. DIST.

SUPREME COURT OF THE UNITED STATES

393 U.S. 503

Argued November 12, 1968

Decided February 24, 1969

MR. JUSTICE FORTAS delivered the opinion of the Court:

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. ... The wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.

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 problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

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. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. 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, society.

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. ...

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.

Tinker Discussion Questions

- Do you agree or disagree with the Supreme Court's decision?
- The Court had no trouble finding that wearing an armband is "speech" even though nothing was said out loud – what are some other ways people can "speak" without saying anything?
- The Court says this case is NOT about the length of skirts or hair style. What do you think they meant? Should the style of someone's appearance get less First Amendment protection than handing out leaflets?
- Supreme Court Justice Black disagreed with the outcome of the *Tinker* case and said that students are sent to "school on the premise that at their age they need to learn, not teach." Do you think that students have meaningful opinions and views that should be protected by the First Amendment?
- Look back at what Justice Fortas says about "hazardous freedom" – he says "our Constitution says we must take that risk." What does he mean?
- John Tinker's younger brother, Paul, was also suspended from school for wearing a black armband, and Paul was only in the second grade. Is Paul too young to express his opinions about Vietnam War and have his opinions protected by the First Amendment? Should a kindergarten student have the same First Amendment constitutional protection as a senior in high school?
- School officials may not punish student speech unless they can clearly demonstrate that it will cause a substantial disruption of normal school activities. What is a "substantial disruption?" What if an argument broke out in the cafeteria? What if a fight occurred in a busy hallway?
- In your opinion, when *should* school administrators punish student speech?

FIRST AMENDMENT UNITED STATES CONSTITUTION

“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 peaceably to assemble, and to petition the government for a redress of grievances.”

FIRST AMENDMENT TEXT REVIEW

What are the protections in the First Amendment?

- **Religion:** Congress will not establish a uniform religion for our country or interfere with the free exercise of religious beliefs. Congress shall not make any laws or issue any proclamations favoring one faith over another.
- **Speech:** The ability to express ideas, opinions and exchange information free of government restrictions. Remember, freedom of speech also includes symbolic speech, such as wearing a button or waving a sign.
- **Press:** Allows publishers (in all media) to gather and report news and opinions without government interference in their content.
- **Assemble:** Gives people the right to gather for peaceful and lawful purposes.
- **Petition the Government:** People may join together to seek change from our government. People who have been wronged by our government may seek relief through our court system or other government action.

Additional / Optional Discussion Points

FIRST AMENDMENT TEXT REVIEW

Q: “Congress shall make no law...” Does this mean your city council could close down all local newspapers and TV news stations by passing a city ordinance?

A: No, the Supreme Court says that a later amendment to the Constitution (the 14th Amendment) put state and local governments under the very same limits as Congress. If it is unconstitutional for Congress to do it, it's unconstitutional for the city council to do it.

Q: So if it's legal to hand out leaflets in the park, don't you also have the right to hand them out inside Wal-Mart?

A: No, the First Amendment only limits what the government can do. A park is government property, and Wal-Mart is private property. There's no First Amendment right to free speech inside someone's private store, and the store can ban leaflets or have you kicked out if you violate their rules.

Q: So if the park is government property, that means I get to do whatever I want whenever I want?

A: No, the Supreme Court says the government can always put reasonable limits on the time, place and method of speaking. The government *can* stop you from using loudspeakers in the park at 3 in the morning to broadcast your message, or setting up an information booth that blocks the street.

Handout

FIRST AMENDMENT QUIZ:

Read the below questions and decide which First Amendment right is being described: (1) religion; (2) speech; (3) press; (4) assemble; (5) petition the government.

1. Jamie does not say the pledge of allegiance with her class because her faith does not approve of the line “one nation under God.”
 2. _____ Kelly is an animal lover who does not believe in the sale of fur coats. She stands outside a department store with a sign that says “Love Rabbits – Don’t Wear Them.”
 3. _____ Tim, Dave and Liz decide to meet at a local restaurant to talk about the recent presidential election.
 4. _____ Frank is an advocate for peace. He organizes a letter-writing campaign to urge the President to end the war.
 5. _____ Wendy writes an editorial in her family’s community newspaper about government corruption in her town.
 6. _____ Ann does not like one of the political candidates running for mayor. She decides to print and distribute a pamphlet describing his voting record.
 7. _____ Rachel wears a veil to school as part of her faith.
 8. _____ Amber, Adam and Angie use a room in the public library for a meeting of their “Support the Troops Club.”
 9. _____ Candice burns an American flag during a protest.
- _____

ANSWERS TO THE FIRST AMENDMENT QUIZ:

1. Religion
2. Speech
3. Assembly
4. Petition
5. Press
6. Press / Speech
7. Religion
8. Assembly
9. Speech

CLASS DEBATE:

Jamie Madison v. Jackson Community School District

Jamie Madison is a high school student who supports Amendment 5, a constitutional amendment to make it legal to prescribe an illegal narcotic, Zomac, to terminally ill people for pain relief. Jamie gets some “Vote yes on Amendment 5” campaign buttons and pins them to her book bag and clothing for five straight days. Several students make negative comments to Jamie when they see the buttons, but there are no incidents until the fifth day, when Jamie and another student, Tim, get into a heated debate while walking out to the parking lot after school. The principal runs out and breaks up the debate after he sees Tim raise his arm, thinking he may be about to hit Jamie. The principal tells Jamie she is suspended from school and she can return when she stops wearing the pins. The school principal reminds Jamie that it is against the school dress code policy to wear pins or buttons to school. The sharp ends of the pins could be used as a weapon.

Divide the class up into two teams (Jamie’s lawyer and the school’s lawyer) and debate the below issues. Use the First Amendment of the United States Constitution, the *Tinker* case, and the attached case summaries to support your argument. How do you resolve the following questions?

Issue 1: The First Amendment

- Does the First Amendment apply to this case?
- Does it matter if Jamie has worn other buttons to school for months and the principal is just beginning to enforce the school dress code policy? [*A: This might strengthen her claim that the enforcement targets the message, not the safety of the pins*]
- Is it fair that one person’s angry reaction to the buttons means that Jamie cannot deliver her message as she wants to? [*A: Courts disfavor the “heckler’s veto”*]
- Would it make a difference if Jamie wore buttons that encouraged people to drink Pepsi instead of a political cause? [*A: Commercial speech gets 1st Amendment protection but is afforded lesser value than political speech*]
- What if the policy banned not only metal buttons but also decals and stickers? [*A: Undercuts the school’s argument that this is a safety regulation – and she must have reasonable alternative channels for her message*]

Issue 2: Substantial Disruption of Normal School Activities

- Does an argument in the parking lot constitute a “substantial disruption of normal school activities?”
- Does it matter that Tim did not actually strike Jamie? Should the principal be required to wait until the first punch is thrown?
- Would the situation be different if Jamie and Tim got in a debate in the hallway during school hours?

Handout-Case Summaries for Debate

Chandler v. McMinnville School District (1992)

During a teachers' strike at a public high school, several students wear buttons to school that criticize substitutes who are replacing the striking teachers as "scabs." School officials say the insults are offensive to the substitute teachers and they punish the students who refuse to remove the buttons.

The Ninth Circuit U.S. Court of Appeals rules that the *Tinker* standard applies to the buttons, and the buttons could not be banned unless they substantially disrupted school. The fact that some substitute teachers found the words on the button offensive was not enough to cause a substantial disruption.

Morse v. Frederick (2007)

A high school student stands across the street from campus during a school-organized outing to watch the Olympic Torch relay pass through town. When the torch goes by, he holds up a joke sign, "Bong Hits 4 Jesus," and is suspended for his behavior.

The Supreme Court rules that the school did not violate the student's First Amendment rights. The student's sign promoted illegal drug use, and speech promoting illegal drug use is an exception to *Tinker*. A school can discipline such speech at school or at a school-sanctioned event even without showing it substantially disrupted school.

Jacobs v. Clark County School District (2008)

High school students challenge a dress code that limits students to wearing khaki-colored slacks and solid-colored tops, with no logos except the school's logo. They argue that the restrictions interfere with their First Amendment right to free expression.

The Ninth Circuit U.S. Court of Appeals rules that the dress code is not subject to the *Tinker* standard because the school in *Tinker* singled out certain viewpoints. The Clark County school regulation is not aimed at any particular student's message – it applies to everyone regardless of what message they want to deliver – so it is constitutional.