

# THE CONSTITUTION IN THE CLASSROOM



## TEACHING MODULE: *Tinker* and the First Amendment

Description: This unit was created to recognize the 40<sup>th</sup> anniversary of the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). *Tinker* 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 (30-60 minutes)

Supplies Needed: This packet

Age Group: Middle/Junior High

# OVERVIEW OF LESSON PLAN:

**Part One:** The *Tinker* case

- Facts to be read out loud to the class.

**Part Two** Understanding the First Amendment

- **Handout:** Distribute the one-page handout to the class.
- Go over both the *Tinker*-specific questions about the First Amendment, and more general First Amendment questions.

**Part Three** Bill of Rights Basics

- Describe the history and purpose of the Bill of Rights and the First Amendment

**Part Four** Additional/Optional Discussion Points

- Discussion points about how the First Amendment works and its limits.

**Part Five:** Class Debate – *Tinker*, the Sequel

- Facts to be read out loud to the class.
- **Class Debate:** Divide the class into two groups and give them a very brief time to formulate their arguments – visit with each group and discuss with them how *Tinker* applies to the argument they have been asked to make.

## 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-armsbands 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”*

## 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.”**

What are the protections in the First Amendment?

- **Religion**: Congress will not establish a uniform religion for our country or interfering 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.

### *Tinker* lesson questions

(1) Look at the Five Freedoms in the First Amendment. Which of the five freedoms is the one that protected John, Mary Beth and Chris against being suspended for their arm-bands?

(2) How can what the students did in the *Tinker* case be considered “speech” when they didn’t say anything out loud?

*[“Speech” has been held to cover all expressive conduct]*

- What else might be “expressive” besides speaking? [Painting a picture, putting a sign in your yard, putting a sticker on your car, handing out leaflets, making a movie, hanging up posters, etc.]

(3) Do you agree with the Supreme Court’s decision? Why?

(4) What if there had been fist-fights in the hallways over the Vietnam War that whole week before John, Chris and Mary Beth showed up in school with their arm-bands – do you think that should make a difference?

*[Note that courts have said that specific evidence that the speech is reasonably likely to provoke violence is probably enough to justify censorship even under Tinker]*

(5) The Court ruling says that students can express their viewpoints as long as there is no “substantial disruption” of school – what do you think a substantial disruption means?

*[Some examples of substantially disruptive conduct have included encouraging students to commit pranks or vandalism, taunting (especially using slurs) to incite violence, or wearing known gang symbols at schools with gang problems]*

(6) John Tinker’s younger brother, Paul, was also suspended, and Paul was only in the second grade. Should all students have the same level of First Amendment protection no matter how young?

*[Note that courts have said there is a sliding scale, and that schools’ interests will more easily override the value of the speakers’ participation in younger grades]*

(7) Let’s go back over that quote from Justice Abe Fortas. What do you think he means when he says: “Our Constitution says we must take this risk”?

# The Constitution and the Bill of Rights

- We have a Constitution because the Founding Fathers of our country got together in 1787 in Philadelphia and decided to write a set of rules for running the government  
**[Q: What are some other types of rules you know about – sports, etc.]**



- When they started out, they just wrote rules about the Congress and the President and the States – and then they realized something was missing: rules about the PEOPLE
- That's what the Bill of Rights is for – the Founding Fathers went back and added 10 more rules (these are called *AMENDMENTS* because they were added in later) that make sure the government can't get carried away and stop people from having the freedom to live their lives – and one of these is the *FIRST AMENDMENT*, that protected John and Chris and Mary Beth
- The reason the United States broke away from England and became independent was because people living in the United States back in the 1700s felt that the King of England was denying them their individual rights. They were paying taxes to England but couldn't vote on how the taxes would be spent, and when they tried to complain to the government of England, no one would listen – look back at the First Amendment and you can see how what happened to these colonists became a part of what they wrote into the Bill of Rights

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 14<sup>th</sup> 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.”  
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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.  
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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.  
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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.  
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7. Rachel wears a veil to school as part of her faith.  
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8. Amber, Adam and Angie use a room in the public library for a meeting of their “Support the Troops Club.”  
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9. Candice burns an American flag during a protest.  
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# **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

Divide the class in half and give them the following set of facts:

At this school, John, Mary Beth and Chris want to campaign in favor of starting school two hours later so students can get more sleep. So they decide that to make their point, they will do three things:

First, they all come to school on Monday morning wearing pajamas.

Second, they write up a petition and pass it around from table to table at the cafeteria at lunchtime for people to sign.

Third, during lunch, they bring out a microphone and an amplifier and they sing a protest song over and over: "All we are saying, is give sleep a chance."

All three of them are suspended for their behavior.

**Student Team:** Argue why the First Amendment should protect all three things the students did: the pajamas, the petition drive, and the song.

**Government Team:** Argue why none of these things are protected by the First Amendment, and why what these students did is different from what the students did in the *Tinker* case.

## Additional Discussion Questions:

- Would it make a difference if the singing took place after school on the front steps of the school? *[It might – no captive audience, listeners who disagree are free to leave]*
- Would it make a difference if someone who read the petition and disagreed with the students' opinion went to the principal and said she was offended by having to read opinions that disagreed with hers? *[It shouldn't – this is the heckler's veto concept; an offended listener does not get to prevent others from hearing lawful speech]*
- Would it make a difference if, the week before, there had been two fist-fights in the hallway between people who want school to start later and people who want school to start earlier? *[It might – that would go into the determination of the risk of substantial disruption]*