

## At the Schoolhouse Gate

### Purpose:

In this lesson students will study a case involving junior high school (grades 7-9) students who used symbolic speech to express their opinion about a controversial war. They will compare the differing opinions of two of the Supreme Court Justices who decided the outcome of the case. Students will examine the need to balance students' rights to free expression with the school's responsibility to maintain a safe learning environment.

### Procedure:

1. Give students a copy of the handout *Tinker v. Des Moines: A Landmark Case*. After they have had time to read the page explain that this 1969 Supreme Court ruling on students' right to expression is still considered a landmark case. Introduce the concept of symbolic speech – expressing views through actions – and encourage students to give examples of other forms of symbolic speech (burning a flag or draft card, wearing a symbol on your clothing, raising a fist during the playing of the national anthem).
2. Establish a historical context for the discussion by asking students what they know about U.S. society during the Vietnam War era. What have students learned about this time in history from their grandparents and other adults who lived during the period and/or their U.S. History classes? Why do students think that the Court agreed to hear a case involving the suspension of secondary school students? Discuss the role of protest in the late sixties and early seventies, as well as the divided opinions about the Vietnam War between generations and among families.
3. Ask students why schools might be considered a special setting for interpreting First Amendment rights. Discuss the responsibility of school authorities to insure the safety of students and create a good environment for learning. Tell the students that a survey of principals in 1969 showed that two-thirds of high schools and half of junior highs (schools with grades 7-9) reported some type of student protest during that year. Protests included national issues such as the Vietnam War and racism and local issues such as school rules and the types of classes that students wanted to take.
4. Tell students that you want them to compare the opinion written by Justice Fortas with the opinion written by Justice Black. Which philosophy makes more sense? Can students cite examples from their school experience in which students practiced their constitutional rights at school? Do they agree that wearing a black armband to support a controversial viewpoint would not disrupt the educational environment? Is there any evidence that Justice Black was correct when he said that students do not have enough wisdom and experience to practice exercising their rights?

5. Conduct a class discussion about the opinions of the two Justices. Ask students which Justice the Court agreed with.

6. Explain to students that the opinion of Justice Fortas was the majority opinion. The Court ruled 7 to 2 that the school policy was discriminatory because it allowed some types of political messages but not armbands. The Court found that the armband was a symbol that conveyed a political message. The Court said that students' freedom of speech could be limited, but only if exercising their rights would "substantially interfere with the work of the school or impinge upon the rights of other students." The school had to provide evidence of "substantial interference" before the Court would uphold the infringement of student rights. Justice Fortas wrote in the majority opinion, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." This case became a standard for balancing the rights of students with the need for a good environment for learning.

**Enrichment/Extension:**

1. Prior to giving students information about the outcome of *Tinker v. Des Moines* assign students to either the side of the attorneys for the Tinkers or the attorneys for the school district. They can research the *Tinker* case on the Internet (a good site is [www.oyez.org](http://www.oyez.org)) and then conduct a debate between the attorneys for the Tinker family and the attorneys for the school district. Students not involved in the debate can serve as judges. Allow them time to meet and decide on which side "won" the debate.

2. Interested students could research teachers' rights to expression in school. Are certain forms of expression prohibited because of the teacher's special role in the educational process? Do students agree with Court decisions in this area?

3. The *Tinker* case was widely publicized during the mid-1960s. Have students search the Internet to find editorials written about the case that appeared in newspapers or news magazines from that period. Ask students what the public response was to the case. Ask them how they think they would have reacted. Do they see any results of the *Tinker* decision in their school today?

## ***Tinker v. Des Moines: A Landmark Case***

In 1965, in Southeast Asia, Communist North Vietnam, aided by Communist rebels in South Vietnam, was fighting to conquer non-Communist South Vietnam. The United States, staunchly opposed to Communist expansion, had been helping the South Vietnamese government. In 1965 the United States increased its aid and for the first time committed ground troops to the conflict.

Already deeply divided about the U.S. role in the conflict, Americans engaged in heated debates about the war, sparking protest marches and dinner table conflicts in every community – and in many schools.

John Tinker, 15 years old, his sister Mary Beth Tinker, 13 years old and Christopher Eckhardt, 16 years old, decided to protest the Vietnam War by wearing black armbands to their Des Moines schools during the Christmas holiday season. The armbands symbolized mourning for U.S. soldiers who were dying in the war.

Upon learning of their intentions, and fearing that the armbands would provoke disturbances, the principals of the Des Moines school district resolved that all students wearing armbands be asked to remove them or face suspension. When the Tinker siblings and Christopher wore their armbands to school, they were asked to remove them. When they refused, they were suspended until after New Year's Day.

The Tinkers' parents argued that the school board had violated the students' First Amendment right to free speech. They pointed out that other, similar symbols, such as campaign buttons, were allowed in school. The school board countered by arguing that the armbands would be disruptive, and might even lead to fights.

### **The Opinion of Justice Fortas**

As long as students' expression of their views does not disrupt learning or cause disturbances that would threaten other students' safety that expression should be allowed. Students do not shed their constitutional rights at the schoolhouse gate.

Students should be able to practice using their constitutional rights to free expression at school. If students are not allowed to express unpopular ideas, they may get a false impression of the importance of debate and minority views in a democracy. How can students learn citizenship without practice?

### **The Opinion of Justice Black**

School discipline, like parental discipline, is an important part of training our children to be good citizens. Taxpayers send children to school to *learn*, not teach.

Students have not reached the point of experience that enables them to teach their elders.

Mature behavior cannot be learned in a school that tolerates lewd, indecent, or offensive behavior. How can students make good decisions without first learning information?