

Topic:

Freedom of Speech or
Expression

Time:

1-3 hours

Grade:

5-6

Core:

5: 6050-0501

Objectives:

Students will:

1. Understand how court cases are handled by lawyers.
2. Learn what facts and issues are in a case.
3. Identify facts and issues in a case.

Procedure:

1. Discuss with the class the case study method. A good explanation of this method for elementary students is included in Handout 2.
2. Distribute to the class copies of the U.S. Supreme Court case of *Tinker v. Des Moines School District*, Handout 1.
3. Have a student read the case out loud.
4. The facts and issues should be determined by the students and written on the blackboard. See Handout 3.
5. Split the class into 3-6 groups. One or two groups can depict the facts, the issues and the decision, along with the rationale, by creating either a collage or a mobile. (This activity is further explained in Handout 4.)
6. Have each group explain its collage or mobile. When the decision/rationale group explains its project, the entire class should discuss what the decision should be and why.
7. For even further discussion, the teacher may divide the class into one group supporting *Tinker*, a group favoring the Des Moines School District, and an undecided group. Those with the two conflicting points of view could list points and counterpoints to persuade the undecided students. When discussion lags, the teacher may take a final vote.

Additional Resources:**Author:**

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(Procedure continued)

8. Briefly, the U.S. Supreme Court supported the protesting students. (The teacher should wait until the end of the discussion to reveal the Court's decision.) A more complete explanation of the Supreme Court's reasoning is included in Handout 5, for teacher reference or for advanced students.

The U.S. Supreme Court ruled in favor of the students. Their conduct had been orderly and had not violated the rights of others. Students do not "shed their constitutional rights of freedom of speech or expression at the schoolhouse gates." The Court said there was not a disturbance or any reason to believe there would be a disturbance. The wearing of black armbands, therefore, was a lawful form of expression.

HANDOUT 1

TINKER v. DES MOINES SCHOOL DISTRICT

John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, were high school students in Des Moines, Iowa. Mary Beth Tinker, John's sister, was a 13-year old student in junior high school.

In December, 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. John, Mary, Christopher, and their parents had previously engaged in similar activities, and they decided to participate in the program.

The Principal of the Des Moines school became aware of the plan to wear armbands. On December 14, 1966, the Board met and adopted a policy that any student wearing an armband to school would be asked to remove it and if he/she refused, would be suspended until he/she returned without the armband. The students were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their school. John Tinker wore his armband the next day. They were all sent home and suspended from school until they came back without their armbands. They did not return to school until after the planned period of wearing armbands had expired--that is, until after New Year's Day.

HANDOUT 2

USING THE CASE STUDY APPROACH WITH ELEMENTARY STUDENTS

Most students in the elementary grades are not able to deal with the vocabulary in factual statements written for older students. Moreover, elementary students are likely to possess only basic skills in analysis and evaluation. The following is a suggested approach for using the case study method with younger students. Another approach to the case study method--using artwork--is described in Handout 4.

Case Study Approach--Elementary Process

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|----|---------------------------|---|
| 1. | Background (facts) | Teacher presents the background of the case to students. |
| 2. | Review of facts | Students identify and review the facts, clarifying the circumstances, terms, and characters in each case. |
| 3. | Investigation of issues | Students determine the issues that are raised in the case. |
| 4. | Consideration of decision | Students examine the facts and issues and decide the case. For example, what do you decide? Why? |

The case of John and Mary Beth Tinker (see Handout 3) is one that can be used effectively with elementary students.

HANDOUT 3

CASE STUDY STRATEGIES

John and Mary Beth Tinker decided _____ to wear black armbands to school. The

school allowed students to wear symbols like political buttons, but the principal told the Tinkers they would not be allowed in school wearing armbands. They decided to go to school wearing the armbands anyway. Their armbands symbolized their protest of the Vietnam War. Some students just outside the school got angry at John and Mary Beth for wearing armbands. The principal sent them home and refused to let them come back to school if they wore their armbands.

Should the Tinkers be allowed to wear armbands to school if they wish?

The Tinkers did not say any words of protest. Does the First Amendment apply to wearing armbands? Do you think it should? Why? Why not? Whose rights are in conflict here?

Note to teacher:

ISSUE:

What right should the law hold more important -- the right of the Tinkers to express freely their ideas or the right of the school to protect good order?

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INFORMATION:

In *Tinker v. Des Moines School District* (1969) 393 U.S. 503, the Supreme Court ruled in favor of the Tinkers since it was an orderly and symbolic expression of free speech.

Justice Fortas said:

“It can hardly be argued that either students or teachers shed their rights to freedom of speech or expression at the schoolhouse gates.”

He stated, also, *“that any conduct by students which materially disrupts or causes a substantial disorder or invasion of the rights of others, is, of course, not protected by the constitutional guarantees of freedom of expression.”*



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HANDOUT 4

CASE STUDY USING COLLAGES

Another way to deal with case studies is one which involves the use of collages. This strategy works well with students who are reluctant to participate in free-wheeling discussion sessions. A teacher might want to use both a traditional and nonverbal strategy.

Note that this activity requires some pre-planning so as to obtain the necessary magazines, markers, glue, and so on.

1. Divide the class into three groups: a fact group, an issue group, and an opinion group.
2. Give each group a sheet of butcher paper or poster board, a stack of magazines, glue and scissors, and the brief of a case.
3. Explain that each group will make a collage. Tell the students that a collage consists of words, pictures, or cartoons pasted on a large piece of paper in such a way as to give the feeling of being one large picture, and that the collage is supposed to portray a feeling and/or a point of view.
4. Give the following instructions to each group:
 - a. Fact group: “Show the facts of the case with pictures, words, and cartoons.”
 - b. Issue group: “Show the issue of the case with pictures, words, and cartoons.”
 - c. Opinion group: “Show the majority opinion of the court or show how you would decide the case with pictures, words, and cartoons.”

The class should be able to tell the facts, issues, and opinion of the case by looking at the collages.

5. Allow sufficient time for the students to read the case, talk to each other, decide what they should show on the collages, and make the collages.
6. Present the collages and discuss the case:
 - a. Pass each collage around the room.
 - b. Sit on the floor or close together so that everyone can see the collages easily.
 - c. Ask the students to explain the collages, report what they see in the collages, and describe the feelings they get from the collages.
 - d. Make a list of the things students mention about the collages.
 - e. One thing you might do is let the two groups who didn't work on each collage talk about it first. Then ask the group that made the collage to explain it.

TINKER DECISION AND BACKGROUND

More than three years after the dispute began, the Tinker case came before the highest court in the land. On February 24, 1969, the U.S. Supreme Court supported the protesting students 7 to 2.

Justice Abe Fortas spoke for the majority of the Court when he stated that “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’”

“Any word spoken in class, in the lunchroom, or on the campus that deviates from the views of another person,” said Fortas, “may start an argument or cause a disturbance. But our constitution says we must take this risk”

“In order for . . . 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”

THEN Justice Fortas set forth what some observers called a “Bill of Rights for Students.”

School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State

In conclusion, Justice Fortas noted that the students wore the armbands “to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them They caused discussion outside of the classrooms, but no interference with work, no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression”

JUSTICE Hugo Black was one of two justices who dissented (differed) from the Court majority:

One does not need to be a prophet or the son of a prophet to know that, after the Court’s holding today, some students in Iowa schools that indeed, in all schools, will be ready, able, and willing to defy their teachers on practically all orders This case . . . subjects all the public schools in the country to the whims and caprices of their loudest-mouthed but maybe not their brightest students.

Some people applauded the Court’s decision. Others predicted, along with Justice Black, a total collapse of authority in the nation’s schools.