

# **MOCK TRIAL**

## **Tinker v. Des Moines**

### **Agenda for Tinker Mock Trial**

#### **PRETRIAL (30 minutes)**

Pretrial preparation of witnesses by attorney panels. All attorneys and witnesses for Tinker will meet as a group and finalize trial testimony. All attorneys and witnesses for the School District will do likewise.

#### **OPENING ARGUMENT BY ATTORNEY FOR TINKER (4 minutes)**

Give a basic summary to the jury of what you intend to prove at trial and why your client should prevail.

#### **OPENING ARGUMENT BY ATTORNEY FOR THE SCHOOL DISTRICT (4 minutes)**

Give a basic summary to the jury of what you intend to prove at trial and why your client should prevail.

#### **PRESENTATION OF TINKER'S CASE (4 minutes per witness or 24 minutes total)**

- First Witness: John Tinker
  - Direct Examination
  - Cross Examination
- Second Witness: Christopher Eckhardt
  - Direct Examination
  - Cross Examination
- Third Witness: Betty Tinker
  - Direct Examination
  - Cross Examination
- Fourth Witness: Leonard Tinker
  - Direct Examination
  - Cross Examination
- Fifth Witness: William Eckhardt
  - Direct Examination
  - Cross Examination
- Sixth Witness: Aaron McBride
  - Direct Examination
  - Cross Examination

**PRESENTATION OF THE SCHOOL DISTRICT'S CASE** (4 minutes per witness or 12 minutes total)

- First Witness: Dennis Pointer  
Direct Examination  
Cross Examination
- Second Witness: Andrew Burgess  
Direct Examination  
Cross Examination
- Third Witness: Leonard Carr  
Direct Examination  
Cross Examination

**CLOSING ARGUMENTS**

- Council for Tinker (4 minutes)
- Council for the School District (4 minutes)

**INSTRUCTIONS TO THE JURY** (4 minutes)

The judge will instruct the jury on what issues they are required to decide and what the law is that applies to those issues.

**JURY DELIBERATIONS** (4 minutes)

The jurors will anonymously prepare a short written verdict.

**ANNOUNCEMENT OF THE VERDICT**

## Teacher Instructions

### ROLE ASSIGNMENTS

Roles should be assigned to students one week in advance of the beginning of the simulation. Allow sufficient time for them to research their roles and at least one day of small group discussions to alleviate any problems. Have students refer to information on their handouts.

One or two lawyers for Tinker	Andrew Burgess	Justice
One or two lawyers for School Board	Leonard Carr	Justice
John F. Tinker	Leonard Tinker	Justice
Christopher Eckhardt	Court Officer	Justice
Mary Beth Tinker	Chief Justice	Justice
Dennis Pointer	Justice	Justice
Aaron McBride	Justice	

### CONFERENCES

The lawyers, during the first two days, and the Justices, thereafter, have the most difficult roles. It will be beneficial if the time can be allotted to review with each of these individuals their perception of the way in which they should portray their roles.

The students who will be witnesses should meet with their respective lawyers to discuss what information each will contribute at the hearing.

### EVIDENTIARY HEARING

United States District Court . . .  
Judge \_\_\_\_\_ presiding.

The lawyers' instructions contain all the information necessary for the trial. See Role Descriptions 1 and 2, below.

The teacher should allow the lawyers representing Tinker to present their witnesses first. The lawyers for the School Board may then cross-examine the Tinker witnesses. The Tinker lawyers may, of course, cross-examine any witnesses presented by the School Board.

### ORAL ARGUMENT BEFORE THE SUPREME COURT

Before the Supreme Court, the lawyers may present no witnesses but must present a concise legal argument grounded on available legal precedent and the lawyer's knowledge of what might appeal to at least five justices. Although the facts of the case are obviously material, they have already been determined at the trial level. Appellate courts decide points of law; they do not determine facts.

The objective before the Supreme Court is to build a minimum winning coalition of five justices.

During the oral argument, either the Chief Justice or any of the associate justices may, at any time, interrupt the lawyers for the purpose of clarification of any point being offered.

### **IN CAMERA OR CONFERENCE SESSION OF THE SUPREME COURT**

In the conference session (held *in camera*, that is in the justices' chambers) each justice first gives his/her opinion of (1) what are the relevant facts of the case, (2) what are the issues involved in the case, (3) how the conflict should be resolved (should the injunction be granted), and (4) what reasoning should be contained in the opinion.

The justices give their view of the case by order of seniority (The Chief Justice is always considered the most senior justice).

After the justices give their interpretation of the way in which the case should be decided, the Chief Justice decides the issues which will be voted upon. Votes which might be taken, for example, are:

1. Should the injunction be granted?
2. Should the case be decided on First Amendment grounds?
3. Should a "test" for this type of situation be constructed?

When voting, the justices vote by reverse seniority, from the most junior justice to the Chief Justice.

The *in camera* discussion should be conducted using the "fishbowl" technique, with other participants in the simulation having a chance to observe without joining in and then evaluate the proceedings.

### **"DEBRIEFING" THE TINKER CASE**

After a decision has been rendered by the "Supreme Court, the debriefing process can begin. It is important that sufficient time be allocated for it. Discussion should center on the effectiveness of the arguments for each side, on the realism with which the roles were played, and finally on an evaluation of the outcome of the actual *Tinker* case through examination of the excerpted decision.

## **STUDENT HANDOUT**

### **HOW MUCH FREEDOM OF EXPRESSION DO YOU HAVE INSIDE THE SCHOOLHOUSE DOOR?**

#### **FACTS**

John F. Tinker, 15 years old, and Christopher Eckhardt, 15 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 principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they 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 schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come 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.

#### **ISSUES**

Charging that their First Amendment right to freedom of expression had been abridged, the students sought an injunction in District Court prohibiting their school board from carrying out the suspensions. A hearing was held to determine whether there was sufficient evidence to warrant such an injunction. Students in the school had been permitted to wear ordinary political buttons and even an Iron Cross (A traditional German medal for valor), so the Tinkers' lawyers argued that the school was restricting the free expression of a particular point of view, i.e., opposition to the Vietnam War.

The District Court upheld the position of the school authorities on the grounds that the armbands might have tended to "create a disturbance" in the school. An Appellate Court supported the District Court decision, and then the Supreme Court agreed to hear the case on final appeal.

## ROLE CARDS FOR TINKER CASE

ROLE 1: LAWYER FOR TINKERS--DAN JOHNSON (May be shared by more than one participant.)

Your purpose is to convince the district court judge that he/she should grant an injunction that will restrain the authorities of the Des Moines Independent Community School District from disciplining your clients.

During the evidentiary hearing (similar to a trial court proceeding), you must not only cite the relevant law but also establish “the facts” of the case.

In citing the law, the following cases may be helpful: *Gitlow v. New York*, 268 U.S. 652, 69 L. Ed. 1138, 45 S. Ct. 625 (1925), wherein it was determined by the Supreme Court that an individual’s right of free speech is protected against state infringement by the due process clause of the Fourteenth Amendment; *West Virginia State Board of Education v. Burnett*, 319 U.S. 624, 87 L. Ed. 1628, 63 S. Ct. 1178 (2943); and *Stromberg v. People of State of California*, 283 U.S. 359, 75 L. Ed. 1117, 51 S Ct. 532 (1931), wherein it was established by the Supreme Court that the wearing of an armband for the purpose of expressing certain views is a symbolic act and falls within the protection of the First Amendment’s free speech clause.

In particular, you are seeking an injunction under 42 U.S.C. of 1983 (Civil Rights Act).

Since the facts of the case may be as important as the law, you must use those witnesses and only those who are most likely to establish the facts you would like on the record. You, therefore, would want to call John, Betty, and possibly Leonard Tinker (father) and Chris Eckhardt. You might also consider Chris’s father, William, and John’s American history teacher, Aaron McBride (a fictional character).

In calling these witnesses, you need to stress the facts that your clients acted out of deeply felt convictions and that by no means did they wish to display contempt for school authority or wish to cause a disturbance.

During your period of cross-examination of the defendants’ witnesses, your purpose is to show that the school authorities singled out a particular type of speech concerning a particular topic (the Vietnam War) to prohibit. Your chief concern is to show that the regulation was unreasonable or could not reasonably be defended as being necessary to the functioning of the school system.

Other cases you may rely upon are *Burnside v. Byars*, 5<sup>th</sup> Cir. 365 F. 2d 744 (July 21, 1966), and *Blackwell v. Essaguena County Board of Education*, 5<sup>th</sup> Cir. 363 F. 2d 749 (July 21, 1966), wherein it was held that a school regulation prohibiting the wearing of “freedom buttons” was not reasonable. The Court stated that school officials “. . . cannot infringe on their students’ right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution where the exercise of such rights in the school buildings and school rooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school” (*Burnside v. Byars*, 363 F. 2d. 749).

## ROLE 2: ATTORNEYS FOR SCHOOL DISTRICT--ALLAN A. HERRICK AND PHILLIP C. LOVIEN

Your purpose is to convince the district court judge that he/she should deny the plaintiff's request for an injunction.

At the evidentiary hearing (similar to the trial court proceeding) you must not only cite the relevant law but also establish "the facts" of the case.

In citing the law, the following case may be helpful: *Dennis v. United States*, 341 U.S. 494, 95 L. Ed. 1137, 71 S. Ct. 857 (1951); *Near v. State of Minnesota*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625 (1931); *Pocket Books, Inc. v. Walsh*, 204 F. Supp. 297 (D. Conn. 1962), wherein it was established that the protections of the free-speech clause are not absolute; the *United States v. Dennis*, 183 F. 2d 201, 212 (2d Cir. 1950), wherein it was asserted that "in each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."

Since "the facts" of the case may be as important as the laws cited, you must make every effort to ensure that the record displays those facts which you wish to have on the record. In light of this, you would want to call Dennis Pointer (Mary Beth's math teacher), Andrew Burgess (the high school principal), Leonard Carr (the school board president), and perhaps others.

Your prime concern in examining your witnesses is to display the fact that "there was reason to expect that the protest would result in a disturbance of the scholarly, disciplined atmosphere within the classroom and halls of your schools."

On cross-examination of the plaintiffs, your purpose is only to ascertain whether they were aware of the regulation.

## ROLE 3: JOHN F. TINKER

You are a student at North High School. You are 16 years old. You, your parents, and your friends have been against the American involvement in the Vietnam War from the beginning. You feel that there is no justification for American participation in a foreign "civil war."

You have participated in antiwar protests in the past, and, along with your parents and friends, you decided to wear a black armband to school to display your support for the continuation of the Christmas truce and your grief for those who have died in Vietnam.

Mary Beth and Chris wore their armbands on Monday, but you were a little hesitant. However, after Mary Beth and Chris were suspended, you decided to wear your armband on Tuesday. You felt self-conscious because of the stares your armband drew, but you feel determined that it was your right to express your views in this way. After third period, you were called to the principal's office. Upon your refusal to take off the armband, you were suspended.

**ROLE 4: CHRISTOPHER ECKHARDT**

You are 15 years old and you attend Roosevelt High School

You wore an armband on Monday, the first day of the demonstrations. You are, perhaps more vocal than the Tinkers about your opposition to the war.

**ROLE 5: MARY ELIZABETH (BETTY) TINKER**

You are 13 years old and you attend Warren Harding Junior High School.

**ROLE 6: LEONARD TINKER**

You are the father of John and Mary Beth Tinker, and you completely support their feelings in regard to the Vietnam War.

**ROLE 7: WILLIAM ECKHARDT**

You are the father of Chris Eckhardt, and you completely support his feelings in regard to the Vietnam War. In fact, you and your wife gave Chris the idea to wear the black armband. After the school authorities declared the wearing of armbands illegal, you were the first to see the possibilities for a test case on “Free speech” grounds.

**ROLE 8: DENNIS POINTER**

You are Betty Tinker’s math teacher. Betty entered the room on the Monday of the demonstration wearing her armband. The armband caused a discussion of the war; it lasted all period and completely disrupted your class.

**ROLE 9: AARON MCBRIDE**

You are John Tinker’s history teacher. The wearing of the armband caused no disruption in your class, and you believe that this form of symbolic protest is akin to “pure speech” and as such is protected by the First Amendment. John is one of your best and hardest-working students; you believe the school board should never have prohibited the armbands.

**ROLE 10: ANDREW BURGESS**

You are the principal of North High School. You heard about the upcoming armband demonstration and called an administration meeting to head off the problem. The administrators, fearing a disruption of the school program, decided to ban the wearing of armbands.



#### ROLE 11: LEONARD CARR

You are the president of the Des Moines School Board. You support the decision of the school administrators because the community is deeply divided on the war, and you fear that any disturbance will lead to a major conflict.

#### ROLE 12: JUSTICE

You are a Supreme Court justice, a Democrat from the South. During your entire judicial career, you have fought for “incorporation” (making the Bill of Rights applicable to the states through the “due process” clause of the Fourteenth Amendment). This struggle often led you to align yourself with the liberals. However, you have departed from the position usually taken by the liberal bloc when questions of equality have been reviewed by the Court.

#### ROLE 13: JUSTICE

You are a lawyer who was elected to the National Football Hall of Fame. You are a Democrat but do not consistently vote with the liberal bloc. It would be more accurate to describe you as a moderate.

#### ROLE 14: JUSTICE

You graduated from Princeton, Oxford, and New York Law School. You are a firm believer in the strictly judicial nature of the Court’s function. You consider it your duty to decide each case according to the law, as the law had been determined.

#### ROLE 15: CHIEF JUSTICE

You have favored most of the major changes in constitutional doctrine undertaken by the Court. As a statesman, you have a sense of history, an understanding of people, and firmness of character. You are open, optimistic, and idealistic without being an ideologue. You see good in other human beings, and you are decisive.

#### ROLE 16: JUSTICE

You tend to favor individuals against the state and the weak against the strong. You spent 25 years developing your judicial philosophy while serving as a civil-rights lawyer. Your great-grandfather was a Maryland slave. You were brought up by your parents (your mother taught in an all-black school, and your father was a chief steward at a country club) to be very independent in thought.

#### ROLE 17: JUSTICE

You are renowned for your broad legal knowledge and sound judgment. You champion the civil rights of the small and often obscure individual as well as defend corporate giants.

## ROLE 18: JUSTICE

In the majority of the cases in which the Court has divided along liberal/conservative lines, you have clearly sided with those justices commonly identified as conservatives.

## ROLE 19: JUSTICE

You graduated from the University of Pennsylvania and Harvard Law School. Probably the most important force in your early life was your father, who worked to establish labor unions. When the opportunity arose, he ran for a council seat on the labor ticket. Your father's involvement with the labor movement had the effect of interesting you in labor law, an interest which would much affect your career.

Although you are considered a liberal judge, this opinion is perhaps based less on any of your decisions than on your personal beliefs about the obligations of citizens.

Perhaps an excerpt from one of your speeches best sums up your feelings about the job of the Court: "The constant for Americans, for our ancestors, for ourselves, and we hope for future generations is our commitment to the constitutional ideal of liberty protected by the law . . . . It will remain the business of judges to protect the fundamental constitutional rights which will be threatened in ways not possibly envisaged by the Framers . . . the role of the Supreme Court will be the same . . . as the guardians of (constitutional) rights."

## ROLE 20: JUSTICE

You are known as a distinguished conservationist, naturalist, and traveler; a prolific writer; and an experienced fisherman and camper. Your father was a home missionary for the Presbyterian church. As a small child, you had infantile paralysis, and the doctors told you that you would never have the full use of both legs. But you never learned how to be loser. You climbed and hiked in the mountains every day to rebuild your limbs. While you were growing up, you rode freight cars with hobos, shared meals with them, and slept outdoors with them.

You are fully capable of doing all your judicial work by yourself, and you probably use law clerks less than any other justice. Because of your extraordinary brilliance, you are the fastest worker of all the justices.

**STUDENT HANDOUT**

**TINKER APPEAL**

**DISTRICT COURT**

Judge

Witness Chair

Court Officer

Tinkers and Counsel

Counsel for School Board

**WITNESS**

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**ORAL ARGUMENT**

Justice Justice Justice Chief Justice Justice Justice Justice

Justice

Justice

Counsel for Tinkers

Counsel for School Board

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**“IN CAMERA” SESSION**

Chief Justice

Justice

Justice

Justice

Justice

Justice

Justice

Justice

Justice