IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

JERRY TINKER, on behalf of Mary Beth Tinker and John Tinker,	)	CASE NO: 7-1810-C-1
Plaintiffs,	)	
vs.	)	
DES MOINES SCHOOL DISTRICT,	)	
Defendant.	)	

HISTORY THROUGH THE ARTS
STATE HISTORICAL SOCIETY OF IOWA

MOCK TRIAL SCRIPT

Celeste F. Bremer
U.S. Magistrate Judge
123 E. Walnut Street, Room 435
Des Moines, Iowa 50309-2036
515-284-6200

Instructions for Moderators

Set up the room with 2 counsel tables, a judge's bench, clerk's station, and witness chair. Place the exhibits on the bench.

You are here to facilitate the mock trial and jury deliberations. You will have about 20 minutes for the trial, 10 minutes for deliberations, and 10 minutes for discussion and questions.

Once your group arrives, please do the following:

1. Assign roles. Don't ask for volunteers (takes too long, and causes confusion). Ask the students if they are comfortable reading out loud, if not, find someone else. Try to balance the number of roles between boys & girls. Anyone not selected for a role in the trial is a juror, so everyone will get to do something.

2. Hand out scripts to each cast member (note, they are highlighted with the person's part). Give any hats, props, etc. to the correct witness.

3. Seat the attorneys, parties and witnesses at the counsel tables.

4. Have the judge go to the back of the room to put on the robe, then when court is announced (clerk bangs gavel), the judge comes forward and takes the bench.

5. Attorneys are free to use the exhibits during Opening and Closing. Help the attorneys/witnesses show and pass the exhibits to the jurors during relevant testimony (keep testimony going while exhibits passed around).

6. After closing arguments, have jury deliberate. If group is large, split into two or more panels. If the mock trial participants or adults in the room want to deliberate too, that's fine. But the verdict should be the result of the kids' discussion.

7. After the verdict(s) is(are) returned, answer any questions the students have, or use the discussion questions until your time is up. The students would also like to hear a short biography about you, and why you think being a lawyer is a good career.

8. DO NOT DISMISS THE STUDENTS EARLY! THEY MUST WAIT WITH YOU UNTIL THEIR NEXT SESSION.

Thank you so much for helping History Through the Arts be so successful!

Tinker v. Des Moines School District
MOCK TRIAL SCRIPT

Cast:

1. Judge: The Honorable Judge J. Johnston
2. Court Clerk
3. Plaintiff's Attorney: Terry Claim
4. Defendant's Attorney: Alex Alito
5. Plaintiff's Witness: Mary Beth Tinker, Student
6. Plaintiff's Witness: Jerry Tinker, Students' Parent
7. Defendant's Witness: Principal Ryan, School Principal
8. Defendant's Witness: Mel Radius, Math Teacher

MODERATOR: In December 1965, a small group of students and their parents in Des Moines decided to express their opposition to the United States' involvement in the Vietnam War by wearing black armbands for about two weeks.

The principals of the Des Moines public schools heard of the plan. On December 15, the school district adopted a policy prohibiting students from wearing black armbands while at school. The policy was announced in the schools. The students understood they would be suspended if they disobeyed the rule. On December 16 and 17, seven of the 18,000 students enrolled in the Des Moines public school system wore the black armbands.

The students wearing the armbands were called into the principal's office and asked to remove them. When they refused, they were suspended until they returned to school without the armbands. John Tinker, age 15, and Mary Beth Tinker, age 13, were among the students suspended.

School officials said their decision to ban the armbands was because the Vietnam War was “the subject of major controversy,” and any in-school demonstration related to the war could rapidly get out of control. At Harding Junior High School, a mathematics teacher reported that his lesson period had been practically “wrecked by disputes” between Mary Beth Tinker and other students.

Mr. Jerry Tinker sued the Des Moines School District on behalf of his children, alleging that their First Amendment right of free expression had been violated. Mr. Tinker was the Plaintiff, the person who files a lawsuit. The Des Moines School District was the Defendant, the person who is sued.

(JUDGE *enters*)

CLERK: (*Hits gavel three times)* All rise. The U.S. District Court for the Southern District of Iowa is now in session. The Honorable Judge R. Stephenson presiding.

JUDGE: Please be seated. Today, the court will hear the case of *Tinker v. Des Moines School District*. Both sides will make opening statements, question witnesses, and make closing arguments. We will begin with Mr. Tinker’s opening statement.

MR. TINKER’S ATTORNEY: May it please the court, and counsel. The law is simple in this case. The First Amendment of the U.S. Constitution, our most basic and treasured law, says that all citizens have the right to speak freely. Students in school have this right, just like any citizen. The School District will argue that public schools have a right to control student speech, if that speech interrupts school activities. While schools do have this right, the Tinker’s “speech” was wearing an armband. This *did not* interrupt any school activities. The students should not have been suspended.

JUDGE: The School District may now give an opening statement.

SCHOOL DISTRICT ATTORNEY: Thank you, Your Honor. May it please the court, and counsel. I agree that the law *is* simple in this case. Schools *are* allowed to control student speech if it interrupts school activities. Mr. Tinker is wrong on one very important fact. Mary Beth Tinker's conduct *was* a major distraction that interrupted school activities. She went too far in expressing her views. Her suspension did not violate the First Amendment.

JUDGE: We will now hear from witnesses.

MR. TINKER'S ATTORNEY: We call Mary Beth Tinker.

CLERK: Raise your right hand. Do you swear or affirm that your testimony is true?

MARY BETH TINKER: I do.

MR. TINKER'S ATTORNEY: Tell us your name and age.

MARY BETH TINKER: Mary Beth Tinker, age 13.

MR. TINKER'S ATTORNEY: Where do you go to school?

MARY BETH TINKER: I go to Harding Junior High School in Des Moines.

MR. TINKER'S ATTORNEY: Did you attend school on December 16 of last year?

MARY BETH TINKER: Yes.

MR. TINKER'S ATTORNEY: Was that day different from any other school day?

MARY BETH TINKER: Yes.

MR. TINKER'S ATTORNEY: How was it different?

MARY BETH TINKER: My family and some of our friends decided we would wear armbands to protest the war. December 16 was the first day we wore them to school. I

sat through a few of my classes like usual. Then I got called to the principal's office. He said he would suspend me if I didn't take off the armband.

MR. TINKER'S ATTORNEY: What did you say?

MARY BETH TINKER: I said that our group planned to wear the armbands until New Year's to protest the war. I said I was going to keep it on.

MR. TINKER'S ATTORNEY: Were you suspended on the spot?

MARY BETH TINKER: Yes.

MR. TINKER'S ATTORNEY: Is this the armband? (HOLD UP EXHIBIT 1, the black armband).

MARY BETH TINKER: Yes.

MR. TINKER'S ATTORNEY: Did the principal give any other reason for suspending you, or only because you wore the armband?

MARY BETH TINKER: No, that was the only reason he gave.

MR. TINKER'S ATTORNEY: I have no more questions for this witness, Your Honor.

JUDGE: Does the School District have any questions?

SCHOOL DISTRICT ATTORNEY: Yes, we do, Your Honor. Did you know about the Des Moines School District rule banning armbands.

MARY BETH TINKER: Yes.

SCHOOL DISTRICT ATTORNEY: So you knew that you would be suspended if you wore an armband to school?

MARY BETH TINKER: Yes.

SCHOOL DISTRICT ATTORNEY: On December 16, did your armband cause trouble at school?

MARY BETH TINKER: A few students said things to me about the armband.

SCHOOL DISTRICT ATTORNEY: Was this during class?

MARY BETH TINKER: It was during math class.

SCHOOL DISTRICT ATTORNEY: So, discussion about your armband took up class time?

MARY BETH TINKER: Yes, a little, I guess.

SCHOOL DISTRICT ATTORNEY: No more questions.

JUDGE: Counsel for Mr. Tinker may now call the next witness.

PLAINTIFF'S ATTORNEY: We call Jerry Tinker.

CLERK: Raise your right hand. Do you swear or affirm that your testimony is true?

MR. TINKER: I do.

MR. TINKER'S ATTORNEY: State your name.

MR. TINKER: Jerry Tinker. I'm Mary Beth and John's dad.

MR. TINKER'S ATTORNEY: Mary Beth said she wore a black armband to school because her family and some friends had all planned to do so. Did you take part in this plan?

MR. TINKER: Yes, we were protesting the Vietnam War.

MR. TINKER'S ATTORNEY: You knew the School Board had a rule against wearing black armbands at school. You knew your children would get suspended for wearing the armbands at school. But they wore the armbands anyway?

MR. TINKER: Yes.

MR. TINKER'S ATTORNEY: You brought this case against the Des Moines School District for suspending your children, and to change the "no-armband" rule. Why not tell your children just to wear the armbands away from school grounds?

MR. TINKER: Because the school had no right to put the rule into place. Our family feels strongly that the war should end, and we were simply showing support for the peace movement.

MR. TINKER'S ATTORNEY: Thank you, Mr. Tinker. I have no more questions.

JUDGE: Does the School District have any questions for this witness?

SCHOOL DISTRICT ATTORNEY: Yes, Your Honor. Mr. Tinker, do you think that your children are getting a good education?

MR. TINKER: Yes.

SCHOOL DISTRICT ATTORNEY: So, would it be fair to say that you think school officials in Des Moines know how to run their schools well?

MR. TINKER: Sure.

SCHOOL DISTRICT ATTORNEY: But when school officials put in a rule against armbands because they thought armbands would disrupt the education of all students, you ignored the rule. Shouldn't school officials keep classrooms under control?

MR. TINKER: Sure, but that doesn't mean the School District can ignore the Constitution.

SCHOOL DISTRICT ATTORNEY: I have no more questions for this witness, Your Honor.

JUDGE: Does Mr. Tinker wish to call any more witnesses?

MR. TINKER'S ATTORNEY: No, Your Honor.

JUDGE: The School District may call its first witness.

SCHOOL DISTRICT ATTORNEY: The defense calls Principal Ryan.

CLERK: Raise your right hand. Do you swear or affirm that your testimony is true?

PRINCIPAL RYAN: I do.

SCHOOL DISTRICT ATTORNEY: What is your name and job title?

PRINCIPAL RYAN: Principal Ryan. I am the principal at Harding Junior High School in Des Moines, Iowa.

SCHOOL DISTRICT ATTORNEY: What happened on December 16? You can use Exhibit A to demonstrate.

PRINCIPAL RYAN: It was the first day of school after the Des Moines School District made the rule against wearing armbands. We were afraid of student protests like ones that took place at other schools. (HOLD UP EXHIBIT A, photo of student protests) Mel Radius, our math teacher, sent Mary Beth Tinker to my office because she was wearing a black armband.

SCHOOL DISTRICT ATTORNEY: Was that the only reason she was sent to your office?

PRINCIPAL RYAN: The teacher said the class was being disrupted by other students talking to Mary Beth, or making fun of her, because of her armband.

SCHOOL DISTRICT ATTORNEY: What did you do when Mary Beth got to your office?

PRINCIPAL RYAN: I asked her to remove the armband. She refused. I followed the rule, suspended her, and sent her home.

SCHOOL DISTRICT ATTORNEY: Did you feel the “no armband rule” was a good rule?

PRINCIPAL RYAN: Yes. For the most part, we let students wear what they want and say what they want. The armbands were only meant to cause trouble.

SCHOOL DISTRICT ATTORNEY: I have no further questions.

JUDGE: Does Mr. Tinker have any questions for this witness?

MR. TINKER’S ATTORNEY: Yes, Your Honor. Principal Ryan, do you feel that the new rule against wearing armbands goes against the students’ right to free speech?

PRINCIPAL RYAN: No. The school can suspend students for yelling or cussing, so we can suspend them for wearing armbands that will upset other students.

MR. TINKER’S ATTORNEY: How did the school know that other students would be upset by the armbands?

PRINCIPAL RYAN: The war is a very upsetting issue. Students *did* get upset. Just look at what happened before we sent Mary Beth home.

MR. TINKER’S ATTORNEY: Other students were disrupting class by bullying Mary Beth. Did those students get sent to your office or suspended?

PRINCIPAL RYAN: No.

PLAINTIFF’S ATTORNEY: Your Honor, I have no more questions for this witness.

JUDGE: The School District may now call its next witness.

SCHOOL DISTRICT ATTORNEY: Your Honor, the School District calls Mel Radius to the stand.

CLERK: Raise your right hand. Do you swear or affirm that your testimony is true?

MEL RADIUS: I do.

SCHOOL DISTRICT ATTORNEY: What is your name and job title?

MEL RADIUS: My name is Mel Radius. I teach math at Harding Junior High School in Des Moines, Iowa.

SCHOOL DISTRICT ATTORNEY: What happened on December 16 that made you send Mary Beth Tinker to the principal's office?

MEL RADIUS: I started math class. The students were being very noisy. Most of their talk was directed at Mary Beth. I noticed she was wearing a black armband. I tried to start class, but it took me several minutes to quiet the students down. Once I got started, students kept interrupting class to make comments about Mary Beth's armband. After this happened a few times, I sent her to the Principal's office.

SCHOOL DISTRICT ATTORNEY: Why did you send Mary Beth, but not the other students, to the principal's office?

MEL RADIUS: She was breaking a rule by wearing the armband. It seemed that I could solve the problem by sending her to the Principal's office.

SCHOOL DISTRICT ATTORNEY: I have no more questions, Your Honor.

JUDGE: Does counsel for Mr. Tinker have any questions for this witness?

MR. TINKER'S ATTORNEY: Yes, Your Honor. How late did your class start?

MEL RADIUS: About five minutes.

MR. TINKER'S ATTORNEY: When you say that students "kept interrupting" class, how many interruptions were there?

MEL RADIUS: Probably three or four, but Mary Beth was only in class for fifteen minutes.

MR. TINKER'S ATTORNEY: Why did you let her stay for fifteen minutes?

MEL RADIUS: I wanted to see if the students would calm down and handle it.

MR. TINKER'S ATTORNEY: Do students frequently disrupt your class?

MEL RADIUS: Yes. But they are usually very minor things like talking or passing notes.

MR. TINKER'S ATTORNEY: More minor than the three or four comments made to Mary Beth that day?

MEL RADIUS: No. If I had let Mary Beth stay, there would have been more comments.

MR. TINKER'S ATTORNEY: If a student wore a normal bracelet, or a Happy Birthday hat, should that student be suspended if other students talk about it?

MEL RADIUS: I would probably say no.

MR. TINKER'S ATTORNEY: I have no more questions, Your Honor.

JUDGE: Does the School District have any more witnesses?

SCHOOL DISTRICT ATTORNEY: No, Your Honor. The School District rests.

JUDGE: We will now hear closing arguments from both sides. Mr. Tinker will go first.

MR. TINKER'S ATTORNEY: Thank you, Your Honor. Members of the jury. Any time an opinion is expressed, there is a chance someone might disagree. Any opinion can create a conflict. Any word spoken in class, in the lunchroom, or on the playground may start an argument. The First Amendment right of free speech allows all opinions to be expressed. The First Amendment makes our country great.

Does the First Amendment mean schools can't control behavior? No, but Mary Beth Tinker did not behave badly in class. All she did was silently express an opinion that other students disagreed with. Had she expressed this opinion by shouting, or saying hateful things to other students, then the school could have punished her. But, in making the "no armband rule," the school officials banned speech before any speech or disruption occurred. They took away the students' First Amendment right to peacefully express an opinion.

Please find in favor of the Tinkers, and make the Des Moines School District get rid of the "no-armband" rule.

JUDGE: We will now hear from the School District.

SCHOOL DISTRICT ATTORNEY: Members of the jury, my client, the Des Moines School District, just wants to educate students. Not all speech is protected by the First Amendment. When student speech interferes with the school's ability to conduct class, the school may take action. Because of incidents that occurred in other schools, my client determined that wearing armbands would be disruptive, offensive, and interrupt education. On December 16, this happened. Mary Beth Tinker's wearing of the armband to school was disruptive, offensive, and interrupted education. By enforcing the rule against armbands, the school was able to restore order to the classroom.

The "no-armband" rule is allowed under the First Amendment. In banning disruptive and offensive speech, the school officials did their job of keeping order in the classroom. You should find for the School District and keep the rule.

JUDGE: Members of the jury, the parties have presented their cases. It is time for you to decide the case.

In our country, all people have a First Amendment right to freely express their opinions. Students in public schools have this right, but speech is not protected by the First Amendment if it harms others.

In this case, if you find that Mary Beth Tinker's black armband at school did not disrupt the class and was not offensive, you should find for Plaintiff, and the school must stop enforcing the rule.

But, if you find that the School District proved that when Mary Beth Tinker wore the armband, it disrupted class and was offensive, then you must find for the defendant, and the "no armband" rule stays in effect.

Here is a verdict form. Use the form to return your verdict.

(JURY *discusses the case)*

JUDGE: (A*fter jury has discussed the case and reached a verdict*). Will the presiding juror please read the verdict?

(*Verdict is read*)

JERRY TINKER, on behalf of Mary Beth Tinker and John Tinker, Plaintiff, v. Des Moines School District, Defendant.	Case No: 7-1810-C-1 **VERDICT FORM**

☐ We, the jury, find for the Tinker's. The School District must stop enforcing the rule against wearing armbands.

☐ We, the jury, find for the School District. The District's rule against wearing armbands shall remain in effect.

Discussion Questions

FIRST AMENDMENT: *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.*

1) Why was wearing an armband to school protected under the right to free speech?

2) Should schools be allowed to punish students for speech? If so, for what kinds of speech (i.e. cussing, shouting, political views, hate symbols)?

3) The First Amendment grants all citizens the right to free speech. In the actual *Tinker v. Des Moines School District* decision, the U.S. Supreme Court said that neither students nor teachers "shed their [right to free speech] at the schoolhouse gate." 393 U.S. 503, 506 (1969). What First Amendment constitutional rights (speech, religion, assembly) or other constitutional rights (bear arms) must be limited in order to operate schools safely and effectively?

4) What do you think about this case?

Summary

A high school principal in Juneau, Alaska decided to let the students and teachers out of class to watch the Olympic Torch Relay leading up to the 2002 Winter Olympics as it passed by the school. As the torchbearers and camera crews passed by, Frederick and his friends displayed a 14-foot banner bearing the phrase: "**BONG HiTS 4 JESUS**." *Morse v. Frederick*, 551 U.S. 393, 397 (2007). The principal told the students to put the banner away but Frederick refused to follow her directions. The principal took the banner from Frederick and suspended him for advocating the use of illegal drugs. *Id*. at 398.

Result

The Supreme Court decided that **the principal did not violate Frederick's First Amendment Free Speech** rights by ordering him to take the banner down, because school administrators must have the **ability to restrict speech that is harmful to other students**, such as promoting illegal drug use. Schools have a strong interest in stopping student drug abuse and "[t]he First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers." *Id*. at 408. The Court added that "[t]he particular concern to prevent student drug abuse at issue here, embodied in established school policy . . . extends well beyond an abstract desire to avoid controversy." *Id*.

5) Private schools can make rules against students' expression that public schools cannot. Why is this true? What do you think about that?