

Handout 3

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1969.

In 1965, a group of adults and students in Des Moines, Iowa, wanted to express their objections to the war in Vietnam. To protest the war, they planned to wear black armbands during the holiday season until New Years Day. 15-year-old John Tinker was one of the students.

When the principals of the De Moines schools learned about the group's plan to wear the black armbands, they adopted a policy that any student who wore an armband to school would be asked to remove it, and he would be suspended for as long as he refused. Tinker and the group knew about this policy, but wore the armbands anyway. They were all sent home and suspended until they would come back without the armbands. They refused to return until New Years Day.

The dispute

- The students said: The First Amendment of the Constitution protects students' right to freedom of expression, so we should have been allowed to wear the armbands.
- The school officials said: Because school officials may control student conduct in order to maintain discipline and avoid disruption in the school, the suspensions were allowed.

Opinion

Justice FORTAS delivered the opinion of the Court.

[T]he action of the school authorities was ... based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance¹ is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. 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, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious², society.

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. Certainly where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained³...

¹ *Undifferentiated fear or apprehension of disturbance* - a general fear of upsetting anyone.

² *Disputatious* - argumentative

³ *Sustained* - supported by the court
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It is also relevant that the school authorities did not purport⁴ to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference⁵ with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves⁶ of totalitarianism. 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 ... In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved...

[A student] may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without materially and substantially interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others. But conduct by the student, in class or out of it, which for any reason ... materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized⁷ by the constitutional guarantee of freedom of speech ...

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These [students] merely went about their ordained rounds⁸ in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it 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 neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

⁴ *Purport* - claim

⁵ *Material and substantial interference* - this means the expression must interfere in a big way—not just a little.

⁶ *Enclaves* - isolated groups

⁷ *Immunized* - free from regulation or prohibition

⁸ *Ordained rounds* - assigned schedule and activities, such as classes