



CONSTITUTION IN THE CLASSROOM

FALL 2009 – *TINKER v. DES MOINES*

SUPPLEMENTARY MATERIALS

These lessons/activities are meant to be suggestions for how to teach the material in the lesson for *Tinker v. Des Moines* and to provide supplementary ideas for activities. Feel free to adapt them as needed, change them, or create your own. For high school and middle school classes, it is best to have 3 different activities (and maybe 1 or 2 backups). The activities never take as long as you think they will, and you want to avoid down time. The biggest thing to remember – Have Fun!

Prior to teaching, you should make contact with the classroom teacher. It may take several emails and phone calls because it is the beginning of a new school year. Don't give up! You may need to speak on more than one occasion in order to introduce yourself, ask questions about the class, and go over in detail what you plan to do with the class in order to solicit feedback and address any potential questions the teacher may have.

Taken together with the lesson plan, you will be prepared with the following activities:

1. Introduction Activity (supplement)
2. Explaining the *Tinker* Case Activity (supplement)
 - a. Background/Summary (lesson plan)
 - b. *Tinker* excerpts (lesson plan)
 - c. *Tinker* discussion questions (lesson plan)
3. Understanding the First Amendment (lesson plan)
 - a. First Amendment text review
 - b. First Amendment quiz
4. Group Activities
 - a. Class Debate (High School and Middle School lesson plans)
 - b. Right to Speak (Elementary School lesson plan)
 - c. Take a Stand (supplement)
5. Wrap-up Activity (supplement)

The High School/Middle School supplement begins on page 2.
The Middle School/Elementary School supplement begins on page 10.

Supplementary High School/Middle School Lesson Plan Materials

1. Introduction Activity

As students are coming in, introduce yourself casually. Pick three or four students to participate as part of the activity (maybe ask the teacher for suggestions on students to choose). Three of the students will be given armbands (you can also use wide ribbon or construction paper), and the other student will be the questioner.

Speak to the four students either outside the classroom or in a quiet corner of the classroom. The three students wearing armbands are wearing them as a sign of protest – you may want to suggest some ideas of what they could be protesting and let the 3 students agree on one – suggestions for protests could be having to wear school uniforms, not being allowed to wear gang symbols/colors, no cell phones in class, or even oil drilling in Alaska. As the class is getting started and you're introducing yourselves, the questioner will be asking them questions such as:

- Why are you wearing that armband?
- Where did you get that armband?
- Did you plan to wear the armbands on the same day?

The questioner can either walk over to them or talk across the classroom – this will depend on your comfort level and/or the teacher's suggestion for how the class will respond. Depending on the personality of the questioner, allow him/her to come up with their own questions or offer an opinion on the answers. The volunteer attorney who is handling this activity will be in charge of monitoring the questioner. As the questioner is questioning, the volunteers should start their introductions. Once the introductions are finished, ask some of the following questions:

- Why were you wearing the armband?
- Did you feel uncomfortable being questioned about it?
- This should lead to a discussion of protests/protesting.

Write three column headings on the board:

- Protest
- Ways to do it
- Impact on classroom/school

Now question the class. Allow the students time to answer and possibly be a little loud – this can be controlled. Write the responses on the board under the appropriate column. These are just suggested questions – feel free to add others and ad lib as the questioning goes on. Suggested questions:

Under Protest Column:

- What are some things/topics students your age would protest (school/local/state/national issues)?

- Have you or any of your friends, even been part of a protest? For what cause? What did you do?
- Of the topics listed, are there ones that would have been more successful, get more attention or involvement? Does it matter?

Under Ways to Do It Column:

- What are some ways students might protest at school?
- Does the way you protest have an effect on how successful the protest is? Why/why not?

Under Impact Column:

- Of the types of protests and/or the ways, what effect would they have on the classroom or school as a whole? Disruptions?
- Would or could any of the types of protest be considered dangerous?
- What do you think would be the reaction of teachers/administration/other students to the different types of protests?

Bring this introductory activity to a close by transitioning into the next activity – explaining the *Tinker* case. Remind the students to focus on the specific facts of what happened, what type of protest occurred, and what the court decided – and maybe suggest that they consider whether they would do the same thing the students in *Tinker* did.

2. Explaining the *Tinker* Case Activity

This is another chance for you to get creative in how you present the information. It is suggested that you not read the handout to the students or lecture to them for 10 - 15 minutes because that is a sure way to lose their interest. When you speak with the teacher before your teaching day, you may want to ask about the reading level of the students and if there are any students who have reading trouble, in case you decide to include student readings as part of the activity. Again, have a backup plan for delivering the information just in case.

Hand out the background/summary on the *Tinker* case, as well as the one page handout on the First Amendment. Briefly review the First Amendment handout and make sure the students understand that the First Amendment protects a number of rights, and that today we are focusing on the right of free speech. You may want to include a quick explanation of the Bill of Rights generally, although this is not the main point of the lesson.

Move on to the *Tinker* case handout. You can either have students read the material silently and circle main ideas, read it with a partner and circle main ideas, or you may choose to deliver the material yourself in a discussion format. If you choose the discussion format, use leading questions and allow students to answer, then look at the handout to find what happened in the case. An example of this would be to ask the following:

- Do you know what a war is? Is the U.S. involved in any wars right now? What other wars have we been involved in?
- Hopefully the students will eventually name Vietnam. If not, continue to question and help them out. Once they name Vietnam, ask the students if everyone in the U.S. supported the war in Vietnam. What time period was the Vietnam War? Was there anything else going on at that time in the U.S.? (civil rights movement, etc.) Are we involved in a war today? Does everyone support the war?
- Then ask them whether someone doesn't support the war should be allowed to say so. Should they be permitted to protest? Should protests be limited? How? Why?
- Explain the facts of *Tinker* and how/why the students in *Tinker* protested. Use the handout to reinforce the information.
- Ask the students what should have happened to the students in *Tinker*. Did the school act too hastily? Should they have waited to see if the armbands caused any disruptions? What is the role of the school/principal? Was the punishment too harsh?
- Once the students have a grasp of the *Tinker* basics, relate this discussion to the first activity. How did the students' activities in *Tinker* compare to things they listed as possible protests? Would the students have chosen to wear armbands as a protest? How are armbands considered "speech"? Is there anything on the list that they would be willing to be suspended for if they protested? Was there really a disruption, or just the belief that one may happen? Should it matter whether there is a disruption?
- Does the decision make it clear how the court will rule in later cases? Is it unclear?

Question students about the case – reinforce that they have the basic concepts and facts clear in their minds.

3. **"Take a Stand" Group Activity**

For this activity, it will again depend on your comfort level, the teacher's input, and how the class has responded so far to the activities. The students enjoy moving around the room; it keeps them engaged and they tend to participate more when active.

**See the tip following the lesson.

Activity: "Take a Stand"

This is a great way to get high school students, and even middle school students, engaged and thinking about some of the constitutional issues that may affect them in their own schools, asking them to "take a stand" on real cases that affect students' free speech rights.

For the “**Take a Stand**” activity, the team reads short scenarios from real cases about student First Amendment rights (e.g., Bong Hits 4 Jesus, obscene speech, gang symbols, gay and anti-gay messages, etc.).

- One side of the classroom is labeled “Protected” and the other side is labeled “Not Protected.” (Either place a poster or paper w/ large print on each side of the room – one that says “Protected” and the other that says “Not Protected”.)
- After they hear a scenario about student speech, the students are asked to decide whether the speech was protected or not in that case by moving to the appropriate side of the room.
- Then the instructors ask a couple of students from each side why they came out the way they did and engage the students in a discussion of the issues involved in the case before telling them the actual outcome. (Other suggested questions -- ask one or two students on each side to explain why they think the Court was correct/incorrect; ask other follow-up questions such as how this is like/unlike the facts in *Tinker*; did this follow what the Court decided in *Tinker*; if it was a different outcome, what in this specific case made it different?)

For this activity, it is important for the instructors to keep the discussion under control, calling on students individually (including those who have not voluntarily spoken up in the class) to ask their opinions on the scenarios. You may find that several students will seek to dominate the discussion and/or move it away from the constitutional issues in a given case (for example, by inserting unrelated personal experiences about school policies, law enforcement, etc.). But the quieter students may have very thoughtful answers, and you will find that some of the students can very effectively analyze the issues and make well-reasoned distinctions between protected and unprotected speech.

****Tip****

This activity is something you should talk over with the teacher beforehand and ask whether the students will be able to handle the freedom and the fact that this activity can get a little louder than they may be used to. It is also important that you read the cases and decisions prior to teaching them, and you should discuss the content of the cases with the teacher. While the topics are current and relevant, some students may not be able to handle the specific topics, and you should allow the teacher to make the decision about whether the students will be able to discuss the content maturely. If the teacher is uncomfortable with too much activity/talking or with the topic of a specific case, then try the alternative scenario and/or leave out the case. **Many of these cases are controversial topics. Please determine beforehand whether the teacher is comfortable having them discussed in his/her classroom and obtain their permission to have these topics discussed.**

Alternative scenario – If the class has not handled itself well in the beginning activities, you may want to change the “Take a Stand” activity slightly. Instead of having the students move around the classroom freely, have them remain seated while you go over the case and then they can raise their hands for Protected/Not Protected. You can follow up with the same questioning/discussion as above.

Cases:

- Bong Hits for Jesus - *Morse v. Frederick*, 551 U.S. 393 (2007)
- Gang Symbol Tattoo - *Stephenson v. Davenport Community School District*, 110 F.3d 1303 (8th Cir. 1997)
- School Dress Code - *Jacobs v. Clark County School District*, 526 F.3d 419 (9th Cir. 2008)
- Internet Speech - *O'Brien v. Westlake City Schools Board of Education*, No.1:98CV647 (E. D. Ohio 1998) and *J.S. v. Bethlehem Area School District*, 807 A.2d 847 (Pa. 2002)
- Offensive Speech - *Bethel School District v. Fraser*, 478 U.S. 675 (1986)
- Teachers' Strike - *Chandler v. McMinnville School District*, 978 F.2d 524 (9th Cir. 1992)
- School Newspapers - *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)
- Election Related Speech - no case filed

CASE SUMMARIES FOR "TAKE A STAND" ACTIVITY

It is suggested that you find the case decisions and read them prior to teaching. The information below is condensed and meant to be used as a cheat sheet when you're teaching.

Speech Promoting Illegal Drug Use

Facts: A high school student stands across the street from campus during a school-organized outing to watch the Olympic Torch relay pass through town. When the torch goes by, he holds up a joke sign, "Bong Hits 4 Jesus," and is suspended for his behavior.

Decision: The Supreme Court ruled that the school did not violate the student's First Amendment rights. The student's sign promoted illegal drug use, and speech promoting illegal drug use is an exception to *Tinker*. A school can discipline such speech at school or at a school-sanctioned event even without showing it substantially disrupted school. (*Morse v. Frederick*)

Gang Symbols

Facts: A high school created a new policy that said, "gang-related activities such as display of 'colors,' symbols, signs, etc. will not be tolerated on school grounds." A student had a small cross tattoo on her hand, which school officials ruled was a gang symbol. She is suspended and recommended for expulsion under the new policy and eventually has laser surgery to remove the tattoo so she can return to school.

Decision: The Eighth Circuit Court of Appeals ruled that the school district's policy was unconstitutional because it was too vague. The policy did not tell students exactly what conduct or expression was prohibited and it permitted school officials to determine on a case-by-case basis what colors or symbols violated the policy. (*Stephenson v. Davenport Community School District*)

School Dress Codes

Facts: High school students challenge a dress code that limits students to wearing khaki-colored slacks and solid-colored tops, with no logos except the school logo. They argue that the restrictions interfere with their First Amendment right to free expression.

Decision: The Ninth Circuit U.S. Court of Appeals ruled that the dress code is not subject to the *Tinker* standard because the school in *Tinker* singled out certain viewpoints. The Clark County school regulation was not aimed at any particular student’s message; it applied to everyone regardless of what message they wanted to deliver, so it was constitutional. (*Jacobs v. Clark County School District*)

Internet Speech (Two cases)

Facts: A high school student creates a website which criticizes his band teacher. When school officials see the site, they suspend him for violating the Student Handbook. The Handbook states “students shall not physically assault, vandalize, damage, or attempt to damage the property of a school employee or his/her family or demonstrate physical, written, or verbal disrespect/threat.”

Decision: The district court ruled that the school policy violated the student’s constitutional rights because school officials do not have the authority to regulate speech made by students off campus grounds and unrelated to school activities. (*O’Brien v. Westlake City Schools Board of Education*)

Facts: A middle school student is suspended and then expelled after he publishes a website from his personal computer. The website contained vulgar and derogatory information about several teachers, including statements like, “Why should she [his algebra teacher] die? . . . Take a look at the diagram and reasons I give, then give me \$20 dollars to help pay for the hitman.”

Decision: The Commonwealth Court of Pennsylvania rejected the student’s First Amendment claim. It found that the student’s website “materially disrupted the learning environment” because students were discussing the site at school, and the teacher was affected when she had to take medical leave as a result of the site. (*J.S. v. Bethlehem Area School District*)

Offensive Speech

Facts: A high school student delivers a nominating speech for a student government election at a school-wide assembly. The speech contains vulgar language and sexual innuendo. The student is suspended under a school policy that prohibits “obscene, profane language.”

Decision: The Supreme Court held that school officials may prohibit vulgar, lewd, or offensive student speech at a school function because public school officials have a responsibility to foster values in students. The speech was not protected under the First Amendment because it was not purely political speech as in *Tinker*. (*Bethel School District v. Fraser*)

Teachers' Strike

Facts: During a teachers' strike at a public high school, several students wear buttons to school that criticize substitutes who are replacing the striking teachers as "scabs." School officials say the insults are offensive to the substitute teachers and they punish the students who refuse to remove the buttons.

Decision: The Ninth Circuit U.S. Court of Appeals ruled that the *Tinker* standard applies to the buttons, and the buttons could not be banned unless they substantially disrupted school. The fact that some substitute teachers found the words on the button offensive was not enough to cause a substantial disruption. (*Chandler v. McMinnville School District*)

School Newspapers

Facts: High school students produce a school newspaper in their journalism class. One issue includes articles about teen pregnancy and the impact of divorce on kids. The principal says the stories are inappropriate and invade the privacy of other students, and he deletes them from the publication. The students sue, claiming their First Amendment rights were violated.

Decision: The Supreme Court ruled that school officials can censor school-sponsored student publications if they have a valid educational reason for doing so. The school has broad control over publications that are part of the school curriculum because the contents could be viewed as representing the views of the school. Since the decision in *Hazelwood*, several states have passed so-called "anti-Hazelwood laws," which give greater protection to the free expression of student journalists. (*Hazelwood School District v. Kuhlmeier*)

Election-Related Speech

Facts: Two students are removed from a school bus in Mississippi the day after the election in November 2008 when they made statements about Obama's victory, including "Obama is our president." Several other students at the school are threatened with suspension for discussing the election.

Decision: These events actually took place last fall in Pearl, Mississippi, but no court case was filed. The school recognized that the students' free speech rights had been infringed and the teachers who were responsible were disciplined for their actions. However, similar incidents were reported elsewhere in Mississippi and in Louisiana, among other places.

4. Wrap Up Activity

. . . [S]tudents and teachers don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" *Tinker v. Des Moines*

In *Tinker*, what was the "speech" that the Court said was protected? Was it actually "speech"?

What did the Court think needed to be shown/argued in order to limit free speech for students?

*****Make sure you leave about five minutes at the end for the students and teacher to fill out the evaluation forms!!!! And collect them!**

Supplementary Elementary/Middle School Lesson Plan Materials

Students at this age can have a wide range of knowledge and ability to understand complex topics. You should touch base (several times) with the classroom teacher to go over what you plan to do, ask whether the material is too complex, and allow the teacher to offer suggestions specifically for the students.

1. Introductory Activity

For younger students, you need to get them involved in the facts first -- not so much the facts about *Tinker* specifically, but you need to help them identify an issue at school about which they feel strongly and might want to express their opinion.

- Older elementary students could feel strongly about a number of school related issues, although with some directed questioning, younger elementary students can express opinions on a range of topics as well.
- Pass out a piece of plain white paper to each student. You will also need several either crayons or markers. (Check with the classroom teacher first before you buy anything – he/she may already have what you need.)
- Ask the students if there is something at school that they would like to change -- this can include wanting more tater tots at lunch, longer recess time, more books in the library, additional classes in art/music, or even less standardized testing. Who knows what they'll come up with?
- Tell the students that each of them needs to come up with their OWN idea and then draw something on their paper to symbolize that idea. (For the younger students, you may need to explain what symbolize means and give them an example.) Allow each student plenty of time to come up with their idea, figure out a symbol, and draw it on their paper. While they are working, go around the room and give positive comments and feedback on their work and if a student is struggling, ask leading questions to help them along.
- After each student has completed his/her drawing, he/she should affix the “symbol” to the front of his/her shirt -- use either safety pins or strong tape. Once it is affixed, call on each student to explain what it is that they want to change and how their picture symbolizes that idea.
- Once that is completed, lead into a discussion of “what if...”
- Ask the students to pretend that the school principal is worried that there are other students who don't agree with them or the way they feel about their chosen issue. Tell them that the principal is worried that there might be controversy so the principal told them they can't wear the symbol on their t-shirts anymore to avoid controversy.
- This will now pose the *Tinker* issue of whether they should be able to wear the t-shirts, and you can go from there on the conflict between their rights to express themselves and the school's right to anticipate some sort of controversy and prevent it.
- Ask the students leading questions such as:

- Isn't it the principal's job to make sure the days go smoothly and that people don't get angry with each other?
- Isn't the principal supposed to help everyone get along?
- Is there a way for people to get along, even if they don't agree with each other?
- Should students be allowed to express their opinions about different topics?

There are obviously lots of spins on the facts that you could use in this activity.

- What if the principal bars the shirts AFTER they wear them a few times without anyone getting upset?
- What if the principal bars the shirts based on a parent's phone call saying she doesn't think an elementary school is the place for politics?
- What if the principal bars the shirts, but allows other kids to wear shirts with some other messages like "support our troops"?

2. Explaining the *Tinker* Case Activity

This is another chance for you to get creative in how you present the information. Depending on the grade level, you may be limited to explaining the case yourself rather than having students read the material. When you speak with the teacher before your teaching day, you may want to ask about the reading level of the students and if there are any students who have reading trouble, in case you decide to include student readings as part of the activity. Again, have a backup plan for delivering the information just in case.

Handout the background/summary on the *Tinker* case, as well as the one page handout on the First Amendment. Briefly review the First Amendment handout and make sure the students understand that the First Amendment protects a number of rights, and that today we are focusing on the right of free speech. You may want to include a quick explanation of the Bill of Rights, although this is not the main point of the lesson.

Now move on to the *Tinker* case handout. You can either have students read the material silently and circle main ideas, read it with a partner and circle main ideas, or you may choose to deliver the material yourself in a discussion format. Even if you choose to have the students read it on their own, you will need to have some discussion in order to assess their understanding of the case. If you choose the discussion format instead of having the students read it themselves, use leading questions and allow students to answer, then look at the handout to find what happened in the case. An example of this would be to ask the following:

- Do you know what a war is? Is the U.S. involved in any wars right now? What other wars have we been involved in? Does everyone support the war today?
- Explain briefly the Vietnam War and the current events at that time (civil rights movement, etc.) Vietnam was a war that the U.S. became involved in,

not everyone supported the war, and some people protested to show that they didn't support the war in Vietnam.

- Then ask them if someone doesn't support the war, should he or she be allowed to say so? To protest? Should the protest be limited? How? Why?
- Explain how/why the students in *Tinker* protested. Use the handout to reinforce the information.
- Ask the students what should have happened to the students in *Tinker*. Did the school act too hastily? Should they have waited to see if the armbands caused any disruptions? What is the role of the school/principal? Was the punishment too harsh?
- Once the students have a grasp of the *Tinker* basics, relate this discussion to the first activity. How did what the students in *Tinker* compare to things they listed as possible protests? Would the students have chosen to wear armbands as a protest? How are armbands considered "speech"? Is there anything on the list that they would be willing to be suspended for if they protested? Was there really a disruption, or just the belief that one may happen? Should it matter whether there is a disruption?
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3. **“Take a Stand” Group Activity**

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For the “**Take a Stand**” activity, the team reads short scenarios from real cases about student First Amendment rights (e.g., school dress code, obscene speech, school newspapers and internet speech.).

- One side of the classroom is labeled “Protected” and the other side is labeled “Not Protected.” (Either place a poster or paper w/ large print on each side of the room – one that says “Protected” and the other that says “Not Protected”.)
- After they hear a scenario about student speech, the students are asked to decide whether the speech was protected or not in that case by moving to the appropriate side of the room.

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Alternative scenario – If the class has not handled itself well in the beginning activities, you may want to change the “Take a Stand” activity slightly. Instead of having the students move around the classroom freely, have them remain seated while you go over the case and then they can raise their hands for Protected/Not Protected. You can follow up with the same questioning/discussion as above.

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Internet Speech (Two cases)

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Decision: The district court ruled that the school policy violated the student’s constitutional rights because school officials do not have the authority to regulate speech made by students off campus grounds and unrelated to school activities. (*O’Brien v. Westlake City Schools Board of Education*)

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Decision: The Commonwealth Court of Pennsylvania rejected the student’s First Amendment claim. It found that the student’s Web site “materially disrupted the learning environment” because students were discussing the site at school and the teacher was affected when she had to take medical leave as a result of the site. (*J.S. v. Bethlehem Area School District*)

4. Wrap Up

- Ask the students to explain what they learned about today
 - o Free Speech
 - o Supreme Court
 - o Students in *Tinker*
 - o Protest
 - o Protected and Not Protected Speech
 - o Speech doesn’t always mean spoken words
- Other closing questions for them to consider:
 - o Should people be allowed to say whatever they want, no matter what?
 - o If not, how should we decide how to limit their speech?

*****Make sure you leave about five minutes at the end for the students and teacher to fill out the evaluation forms!!!! And collect them!**