

ARM BAND TRIAL

July 25-July 26, 1966

Federal District Court

Des Moines, Iowa

Judge Roy Stephenson, Presiding

Judge Roy Stephenson: I have examined the excellent briefs submitted. If so desire, may make opening statements. But there is no need for such.

Dan Johnston: John Tinker is called first

JOHN FREDERICK TINKER

John Frederick Tinker
714 Grandview , D.M.

What is your name?

Where do you live?

What is your age fifteen

Please give the names of your

parents Leonard E. and Lorena Jeanne Tinker

What is the occupation of your

father? Peace education secretary, American Friends' Service Committee

His profession? He is a Methodist minister

Is this the religious

corporate body of Methodists? Yes, he is appointed by the Meth. Bishop

Where are you a student? at North High School--a Junior Grade? 11th.

John, I want to direct your attention to the month of Dec., 1965. During this period of time, ~~xxx~~ did you decide to take part in a demonstration--a witness? Yes

What form? I was going to wear a black arm band during the holiday season.

You only? No--several.....

How did it come to your attention?

Wednesday night--Dec. 15--I got a phone call from either Ross Peterson or Bruce Clark-- I'm not certain. ~~They are members of Liberal Religious Youth.~~

How did you get acquainted? I don't know. They went to Boone Camp-- members of L.R.Y-- Liberal Religious Youth.

Do they go to your church? No--to Roosevelt.

What is your school? North.

How did you find out about arm bands? This phone call. They explained some people had decided they were to wear them to mourn the dead--hopefully, to get a truce and get it extended.

Just to mourn for one side? No--all the dead. They came to ~~my~~ our house Wed. night and gave me copies of "We Mourn". I agreed. They talked to Mom and Dad. I decided to wear an arm band.

This indefinite truce--whose idea was it?

I believe it was Senator Kennedy's.

What did it hope to accomplish? To stop the killing, and it might lead to a peaceful settlement.

Anything else? Two days of fast--I did fast--a lot of others did too.

Anything else? Was there a worship service?

Oh--at the Unitarian Church--New Year's Eve-- I don't know if it was tied to arm bands.

~~xxxxxx~~ Which Unitarian Church? First Unitarian Church-- in Des Moines?

At Bell & Cassady--Yes.

John, is this the first time in your life you took part in this

kind of activity? No, it isn't. ~~xxxxxx~~ I was in several demonstrations against war and several ~~against~~ civil rights.

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Is war and peace discussed in your home? Yes it is. Not so much discussion across the table--just general interest and concern.

Do you share with your parents, with Yes.
brothers and sisters common interest? ~~Yes~~ Well, with most.

Do you ever differ with your parents? Yes.

Do you ever have any violent disagreements with your parents? I wouldn't pop them in the mouth,
What are they? (Answer lost)

Do you attend church? At Friends' Meeting.

How long? About 4 years.

Do you discuss war and peace in groups there? Yes.

~~How~~ Frequently? Yes--quite frequently.

Did you attend any meetings Ross Peterson and Bruce Clark did? Not before Thursday. After ~~the~~ ~~Thursday~~ Wednesday, I attended most of them.

What was the first day you decided to wear an arm band? Most were going to wear one Thursday. I didn't feel I should wear it without--it seemed I'd be openly defying the principals' ruling without talking to them or anything.

When did you first learn of principal's decision? Wednesday night. I didn't wear one Thurs-- I thought we could talk to principals and school board. Mr. Niffenegger was called at the meeting Thursday we had. He said ~~we~~ couldn't have a School Board meeting before the scheduled meeting. I thought we could still talk to them. In the paper Friday morning there was a statement by Niffenegger saying we couldn't wear them--I read it--seemed there was no chance to talk with them.

Objection from Herrick

What day was this? Friday, Dec. 17.

A school day? Yes.

Did you wear an arm band when you went to school? No--during orchestra rehearsal didn't--I was almost late--had a full schedule. Practicing for Christmas play. I ran to home room. No time to put it on there--none during home room.

What time did you put it on? About 8:30. In between home room and first period.

Where? Boys' rest room.

What is it? Black strip of cloth, about 2" wide. Wore it on jacket, then shirt after I took my jacket off.

First period? What is the class? Drama--Mr. Thompson.

Did he say anything? I'm not sure he saw it--he didn't say anything.

What project was your class doing that day? Plays--teachers were out of room most of time.

Did you talk to students (about arm band)? I don't know--I was self-conscious.

Talk about anything else? Plays.

Any other talk about arm bands? Yes. I told them I was wearing it to support Christmas truce and to mourn the dead in Viet Nam.

What was their response? Some didn't think I should--thought it anti-U.S. Other than that?

How long was this discussion? Off and on--probably whole class.

What was your next class? Algebra--10:30.
Professor? Mr. Worden.
Did he say anything? I sit in back of class. No--I don't think he or the other students even noticed it.

On the way to class, did anyone say anything else? Yes--but not much.
What was your next class? Gym.
Wear it there? Yes--on way.
Discussion? As I entered the gym, no. Don't know about in hall--not sure.
Any discussion? No. Had gym class. Not wearing during gym. Some mentioned it before it started. Some warned me I'd get in trouble. Some making trouble before.

Hostile? No--just didn't want me to get in trouble.
Comments? Some not so nice.
How many? Oh, two or three.
Where? At my locker.
For about how long? Two or three minutes.
Was there any physical violence there? Not that I know of.
Where did you go then? To lunch.
Did you take full time? No--went to locker. Sometime along the way I took off my suit coat--put the band on ~~xxx~~ shirt.

Where did you eat lunch? At the Student Center.
Alone? No--with several other students.
Eat with them frequently? Yeah.
Discussion of arm band? Mostly warnings I'd get in trouble.
What otherkind of discussion? Several kids I'd had feud with in 7th grade made smart remarks.

How long? About ten minutes.
Alone? Four or five people.
Other students milling around? Quite a few.
Threaten to hit you? Not to my knowledge.
Were you afraid? No--too many people.
Faculty members around? Yes.
Did faculty members enter in? Not faculty members. A football player told the kids everyone had own opinions, and to lay off.

Where did you go after lunch? English--Mr. Lorrie.
When? One o'clock.
Did you still have arm band on? Yes.
What happened? As I walked in, Mr. Lorrie said they were waiting for me in the office.

What did you do? I called home. Probably talked to Dad--don't remember for sure. He had told me to call home if I had trouble.
What did you say? Don't recall exactly, but probably that I had been called to the office.

Did you go to office to see any particular person? No. I believe Mr. Wetter, the principal, was busy. After I called, I walked into his office.

Private? Yes. Don't believe he has another.
What did you do? I can't say exact order. He said something like: "I suppose you know I have to ask you to take it off...I don't suppose you will?" I said, "No." He said, "I guess you know you can't wear it in school."

Did he give a reason? Hierarchy. He said he was taking orders from higher up.

What happened? He told me I'd have to leave the school but I was not to be suspended. He said this was pretty nice because it wouldn't go on school record. He said I could return as soon as I'd take it off, or the school administrators made a different rule. He asked me ~~in~~ his own personal ~~in~~ reason wanted to know why I wore it--He told me how he was in WWII. One statement I don't know what he meant. Said he supposed I'd call the newspaper. I told him I didn't, but that the school board did. Dad. Had a discussion with Mr. Wetter.

Who came in then? Yes.

Were you there too? Yes.

When? December 17.

When returned to school? Jan. 4.

Any official notice of suspension? No.

How long have you been in the D.M. schools? Since about 2nd grade.

Any other time you were suspended? No--except for being sent home for being sick, I suppose.

How do you feel about the philosophy that caused you to wear the arm band? Same moral beliefs now.

If return to school in the fall, would you still demand the right to express these views? Yes.

Dan Johnston: That's all

Lovrien:

As I understand you, Wednesday night Ross and Bruce came over to your home? Yes.

Were your parents there? Yes.

What decision was made that night? They told me about the arm bands. John, that wasn't the first time you'd heard of idea of arm bands relating to Viet Nam War. To my knowledge.

Was there a meeting at Eckhardts? Yes--I could have heard of it from that.

Your mother attended it? I'm not sure.

Could have discussed it at home? I'm not sure.

This didn't come to you as a bolt out of the blue? No--if I heard of the general subject--I learned details Wednesday night.

Was black ribbon available in your home? I didn't use it. Found some black cloth. Ironed it neatly.

Didn't your mother buy it? Dan--object

Judge: may answer
I think she or someone must have bought it sometime. To my knowledge, she didn't go out and buy hund of black ribbon to make arm bands.

Thursday--your sister wore an arm band and got sent home? Yes.

You knew this? Yes.

You have other brothers and sisters? Four

You had some at home younger? Yes, Hope and Paul.

How Old? Paul, 8, Hope 11.

What grade is Paul in? X second.
Your sister--how old? 11. 5th grade.
Did Hope wear it Thursday too? Believe so.
X~~XX~~ I believe you testified you had
previously taken part in other demonstrations
against the war in Viet Nam and civil rights. Yes.
Did your father or mother take part in them? Most of them.
You testified about the meeting Thursday night.
Who was there? People who wore bands Thursday and other
interested people. I was--my sister, Chris
Eckhardt, Chris Singer, Ross Peterson, Bruce
Clark--don't know others by name.

X~~XXXXX~~ Chris, Mary Beth-
Bruce--all had worn arm bands
that day? Not sure about Bruce.
Chris had. Did you know he had
been sent home? People sent home told us what happened. They
called Mr. Niffenegger and talked to him--tried
to talk to him.
Who called? Either Ross or Bruce. The oldest of them.
Did they talk to him? Not sure. Believe talked to him personally,
not to his secretary.
What was the purpose? To see if could have meeting of the school
board to see if could change decision of the
administration.

Wasn't there an attempt to
get a special meeting called? Yes.
Didn't ~~xxx~~ Mr. Niffenegger say there
would be a meeting in a few days? Yes. But it was going on Christmas
vacation. If waited for School Board, would
give us only one day. If no special meeting,
we'd be out of school three days.

In other words, if no special
meeting, only one day--not long
enough? Well, we had decided to wear them through Christ-
mas vacation. If take out three days, take out
most of time.

Didn't anticipate rule would
keep from wearing out of school? That's right. I didn't see anything
wrong with wearing it or bad.
Did you understand that? Wanted to
wear it as many days in school~~x~~ as
possible in spite of rule? Let me explain. I still didn't wear it by
Friday morning. We still couldn't reach Mr.
Niffenegger for a special meeting. I read
the paper Friday morning. Mr. Niffenegger
said no meeting--said something about the arm
bands being trivial. I thought, you know, he
could at least listen to us and hear what we
had to say.

Where was the Wednesday night meeting
held? Wednesday?
Thursday? At Eckhardt's home.
Who called it? It was not called. Kids interested decided.
How did you know? Don't know exactly.
Were Chris~~x~~ Eckhardt's parents there? ~~W~~ I assume. But didn't partici-
pate in the meeting.

How far do Eckhardts live from you? 7½ miles.
How did you get there? Father or mother, I assume. This is pure assumptio
Going back to day you wore black arm band:
Any remarks from children in bym about
fact you wore ? Yes.

More than one? Yes.
Complimentary or uncomplimentary? Friends were. Those who weren't friends weren't.
Did it attract some attention? Yes.
Is this what you wanted? I don't suppose I was saying "Here I am."
You wore it for this purpose? I wanted people to know why.
I take it you and your parents are against the war in Viet Nam? Yes.
Want to influence other people to this point of view? I don't know if influence is the right word.
You hope to influence Hope more people would believe it.
Comments were made during lunch? Yes.
Uncomplimentary remarks? Yes.
Some referred to you as a commie? Yes.
One boy quieted down the others? Yes.
Afterwards went to English? Went to locker to get book.
Who was teacher there? Mr. Lorrie.
He sent you to office? Yes.
You called father? In deposition, I had the idea of a pay phone, but now I remember didn't use ie.
You talked to father? Talked to clerk in office and asked if I could use the phone.
You eventually talked to Mr. Wetter? Yes.
He called your father? Yes.
About time he did, your father came in? I think that's what happened.
That's all.

Dan Johnston:

John, are you the same John T. plaintiff in this law suit? Yes.
Your understanding is that Pres. Niffenegger considered it a trivial matter? Yes.
Did you consider it trivial? No. I guess I think its wrong when people get killed, and when people are getting killed its important to me. I think its morally wrong.
Why exhibit your feelings this way? I don't know how to explain.
How many hours do you spend in school? 6½ hours.
Are most of the people you associate with school friends? Well, I guess the majority, yes.
These questions about mother and father and Eckhardts

Objection

Dan: Haven't heard my question yet.

Judge: May make question

Was it your own or mother and father's view? My own view.
Was there any argument when you said you'd wear it--Did you say you ought not and parents said you ought? It was the other way around. My father opposed it.

Why?

~~XXXXXXXXXX~~

Objection

Overruled

He thought it would be defying authorities and I shouldn't.

The situation in the lunch room: Has it been your experience ~~for~~ that students talk there? Yes.
Do they have arguments? Yes.

On this occasion

uncomplimentary remarks, were there any
faculty members who intervened? Not that I know of. Not that I'm
aware of. No.

That's all.

Herrick: Just a moment:
John, when eating lunch, what faculty
member was present? I don't recall. Sometimes Mr. Hildreth, Mr.
Wetters.

Recall seeing any? No. I know someone--maybe the clerk--some adult--
couldn't place him.

So far as you know, any staff member
within hearing? Couldn't say for sure. I myself was not aware of any.

MARY BETH

Dan Johnson:

Mary Elizabeth Tinker
704 Grandview, D.M.

Also known as Mary Beth ? Yes.
Same person as in action? Yes.

How old are you? 13.
Parents? Leonard Edward and Lorena Jeanne Tinker.
You have a brother John? Yes.
How long have you been in school in D.M.? Since kindergarten.
During Dec., 1965, did you decide to
engage in some kind of witness to the
views you had? Yes.
What form? Decided to wear black arm band.
Any other parts of the demonstration
you would be involved in? Fast--Dec. 16. There was Christmas Eve service,
Unitarian Church.
Purpose?X To mourn the dead in Viet Nam and hopefully
have a Christmas truce continue.

Who did you think would accomplish this? Johnson.
Johnson who? President Johnson.
What was to be accomplished? To have a Christmas truce.
When did you first hear about it? Wednesday night. Ross Peterson and Bruce
Clark came over, talked to John and Mom and Dad.
When did you decide? Thursday morning.
Dec. 16? Yes.
Did either your mom or dad try to
convince you? No.
Your own decision? Yes.
The first time you engaged in
demonstration or witness of ideas? No.
When? I don't remember. Off and on--civil rights--peace.
What church do you attend? Des Moines Valley Friends Meeting.
Are these subjects discussed in your
presence there? Yes.
Do you participate? Yes.
How long have you held these views? I don't know.
First time considered seriously? Fourth, fifth, or sixth grades.
Are they discussed at home? Yes.
Who takes part? My brothers--other sisters, parents.
Mary, did you in effect wear an arm band? Yes.
When? Thursday, Dec. 16.
Where did you get it? Had ribbon around. I got it--cut it--everything
like that.
Was Thurs. Dec. 16 a School Day? Yes.
Did you wear it when first went to school? Yes.
Where? To chorus.

Did you go to chorus with an arm band? ~~Yes~~ Can't remember. Think so.
Describe the arm band. Strip of ribbon 1" wide, pinned with safety pin.
Do you have it now? Mrs. Tarman took it when she suspended me.
Did anyone in chorus mention it? No.
Any discussion in there. At no time.
Any other action involving the arm band? No.
What was your next class? Home room.
On the way, was any mention made? Not that I can remember.
Who was your teacher? Mrs. Ketch.....
Were you near her? I sit by her desk.
Did she make any sign she saw the arm band? Not that I remember.
Any students mention it? No.
Where did you go then? Science, Mr. Figoroli.
Were you on time? Yes.
On way did anyone say anything? Don't think so.
Did science teacher say anything? No.
Anyone else? Girl next to me. I told her (what I told before as reason)
Anything else happened? Had a petition.
In science class? Girl next to me signed it--another person signed. It said should have the right to wear arm bands, crucifixes, things like that. Outside of class ~~xxxxxxx~~ they signed.
You tho ght should have the right.
Was it questioned? Already. In morning paper said principals had decided.
Where was next class? Homemaking.
Teacher? Mrs. Bell.
Did she say anything? No--just pointed to it.
Students? Didn't say anything--just noticed it. Saw looking at it. Several girls at my table talked about it.
is this unusual to talk at that time? No, everyone talks. Started to say I'd better take it off or get into trouble.
Did they threaten? No--just thought would get in trouble.
Anything else? No.
Next class? History
Discussion? No.
Teacher? Mrs. Dickinson
What did she say? If noticed, didn't say anything.
Students? Boy behind me thought I'd better not wear it--~~xxxx~~ would get into trouble.
Next class? English, Mrs. Corrie
What happened? Kids kept telling me I'd better take it off or I'd get in trouble.
Any disruption? No
Objection.
Overrules as "description".
On time for English? Yes.
Teacher of that class make any mention? No.
Students? Don't think so.
What time was that?" About lunch --11:30 or so.
What time did you leave? 7 after 11 for lunch.
Cafeteria? Yes.
Arm band on? Yes.
In all classes? Yes.
Wear to cafeteria? Yes.

Did students discuss at cafeteria? The girls at my table said I'd better take it off--some of the teachers would get me in trouble.

Anything else happen in cafeteria? There's a table of boys who sit behind us. They make some remarks about us--they always tease us--about anything.

What did they say? Said they wanted a black arm band for Christmas but didn't think they would get one.

Is it common for students to speak in cafeteria? Yes.

Between tables? Yes.

Any experience of school trying to stop students? Teachers give passes lots of time to boys who try to bother us.

Teacher there? Yes.

Did you see her give any passes? No.

Where did you go next? second half of English

Mrs. Corrie still teacher? Yes.

Any discussion? No.

What time was that? One oclock.

Where did you go next? Math.

Professor? Mr. Moberley.

Were you on time? Yes.

On day before that--any discussion about arm bands in that class? Yes. We spent the whole time speaking about demonstrations and arm bands.

Substance? He said something about protests--didn't have anything better to offer. If demonstrate in his class, would be kicked out. I asked about arm band and he said yes.

Did you have an arm band on when you went to his class? Yes.

What happened? He stands at the back. Laid pass to office on my desk when I went by. Says where to go.

Where? To office.

Whose? Mrs. Tarman's.

Why? It was blank.

Anything else? The time--was signed by Mr. Moberley. I picked up my books. Walked in to main office. Asked for Mrs. Tarman. Not in. Waited 10 minutes. Mr. Willotson came in. Asked why I was in office. Said I was not sure, but thought it because of arm band. Asked if I would take it off. I did. Went back to math. 10 minutes later Mrs. Tarman came in. Said I was wanted in office.

Arm band on? No, think Mr. Willotson had it.

Did you go to office? Yes. Mrs. Tarman said she was sorry she had to do it. Her grandparents were Quakers--but had to do it.

Reason? Said she had to follow orders, but was sympathetic with my opinion.

What happened? Gave me a suspension thing. Says suspended and have to give to parents to sign to get back in school.

Did You leave? Yes. Went home and gave it to parents.

When was Christmas Vacation? Suspended Thursday and to start the next Wednesday.

How could you get back? Mrs. Tarman said normally they were mailed out but she would give it to me so could get back quicker.

Did she tell you what you'd have

Grade 9 HR 242
Address 704 Grandview
Birth Date 9/8/52
Signature J.

to do to get back? When suspended supposed to have 2 detentions for each period missed.

Parents have to come back? Yes.

Ever suspended before? No.

Have your ideas, feelings about Viet Nam changed substantially? No.

Still hold same? Yes.

When did you return to school? Think the day after Christmas vacation~~x~~ ended. Think went back the 5th.

One day before Yes.

Did you wear arm band? Not after went back.

Did your parents talk to school officials? Friday, day after I got suspended, they talked to Mrs. Tarman.

If school started tomorrow, would you still want the right to wear arm band? Yes.

If the war continues, want to wear arm band? Not sure I would wear it, but would like the right to wear it.

Lovrien:

Have you heard any discussion in your home prior to that Wed. nite about arm band? Heard parents talk about college students.

General discussion? Yes.

Any other brothers and sisters go to school with bands? Hope and Paul.

Age? 5th and 2nd.

Did parents explain to them why wearing arm bands? Didn't have to tell them.

Understood perfectly well? Yes.

Who put them on? Whoever they asked.

Who got arm bands? Had ribbon. just around.

You testified 2 weeks ago-- said Mom had bought it. Yes.

Prior to Wednesday? Yes.

'Where did she get black arm bands? She went to store and ... (quotes from depositions)

~~XXXXX~~ 'Mom got it when first had idea of arm bands.' Is this in your recollection? No--I think that's not how we got it.

What were you wearing the arm band on? Black sweater.

Do you remember Mr. Moberley said if students were going to demonstrate, it would have to be about math. ~~XXXXX~~ Don't remember him saying anything like that.

He took most of the math. class talking about what? Demonstrations and protests in general.

What started that? Principals' decision to ban arm bands.

Was there a general discussion among teacher and pupils? Not really. Not that many students interested.

You did? Asked a few questions.

How many? Not many.

Did you ask him if he would consent to wearing of black arm bands.

Would they be forbidden by him? Asked if ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ wearing black arm bands was demonstrating.

He said yes, and you wore one? Yes.

What did ~~youxxxxx~~ he say? Would be kicked out of ^{his} class.

Mary Beth, you made an answer--
how old are you? 13, Sept. 8.
You were just 13 when you
wore the arm band? No--not in December.
You will be 14 in September Yes.
What grade were you in? 8th.
9th this fall? Yes.
That will be all.

~~EMX~~ Dan:

Was it possible to see arm band in
spite of band and sweater both black? Yes.
Did you wear it over black sweater to
make it invisible? No.
How much of the time in math.
class was taken up with arm band
discussion? Whole time.
Did he attempt to stop it? No.
He talked mostly? Yes.
Any students disagree? Me.
By asking questions or making
statements? Both.
What did he say? Mostly about student protestors. Students
protest to be doing something. ~~They~~ Said the
thing wrong was they protest but didn't have
anything better to offer.

That's all.

CHRISTOPHER PAUL ECKHARDT

Dan Johnson:

Christopher Paul Eckhardt.
16.
Parents? Margaret and William Eckhardt.
Profession of father? clinical psychologist and associate ~~XXXXXX~~
professor at College of Osteopathic Med. and
Surgery, D.M.
What school do you attend? Roosevelt.
Part of D.M. Ind. Sch. Dist. Yes.
How long have you been a student
here? Since about 5th grade.
Grade ~~XXXXXX~~ Junior this fall--11th grade.
Grade point? About b plus.
What do you intend to do after
high school? Attend college.
During Dec., 1965 did it come to your
attention about a demonstration on
Viet Nam? I believe I heard it from parents, Sat. night,
Dec. 11.
What did they say? College students and interested people would be
wearing arm bands from Dec. 16 to Jan.1--mourn
dead in V.N. and get Christmas truce.
Where? Meeting at my home Sat. afternoon . Group of
people met there and discussed it.
What was your reaction? Not a lot at the moment. Sounded like nice thing
to do.
Right away you decided to do it? No.
What church do you attend? First Unitarian.
How lone? Three years.
What yough group? L.R.Y. I attend.
Are war in V.N. subject of discussions

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at your church? Sometimes
In your youth group? Sometimes.
Do you participate? Sometimes.
How long have you had views
on ~~xxx~~ subject of war and peace? Since 8th grade.
Are these matters discussed in your
home? Now and then.
With your mother and father? Now and then.
Ever try to dissuade you from your
views? No.
Before December, any other political
demonstration you participated in? Well, like civil rights you mean?
I marched from Ames to D.M. 3 years ago--civil
rights. Went to Washing in Dec. for Viet Nam
end the war demonstration--Nov.-Dec., 1965.
Was that the meeting Dr. Spock
was in? Yes.
When did you decide to become involved
in the arm bands? Announced to parents Wed. night.
Their reactions? Don't know.
Try to persuade you? No.
Try to dissuade you? No.
When was first you wore it? Dec. 16.
You attend Roosevelt High School? Yes.
Did you take the arm band off when
you got there? No.
Where did you go--when? At 8 o'clock. To my locker.
Have arm band over coat? Had on this coat, and coat over this.
Arm band not visible? Visible when went to locker, and then I took
coat off.
First comment? Down hall. People noticed. Someone said some-
thing near office. Asked why and if I knew rule
against it.
Did you go to first class? No. Went to office.
Did you have reason to know
school was opposed to arm band? In Wed. morning paper. Principals
got together. Decided to prohibit it.
Did you expect disciplinary action? What? Yes--suspend me.
Had you thought out what you'd
do? No.
See anybody at office? Bruce Clark was with me. Had a black suit on.
He asked to see Dr. Rowley, principal at Roosevelt.
Anyone else? Didn't talk to Dr. Rowley. Mr. Blackburn came
~~in~~ out of Dr. Rowley's office. When he saw me,
asked me to go to his waiting room. Waited 45
minutes, and then told me to go to his office.
Bruce with you? No. He went to class. Mr. Blackburn asked which
instructor told me to take it off. I told him
none. He asked me to take it off and I said no.
His response? Said would have to suspend me.
Why? Both understood principals decided against policy
of wearing bands.
Describe the arm band. 3" or 4" wide.
On what did you wear it? This coat.
Did you in response to Mr. Blackburn
remove it? No.
Did he suspend you? Talked awhile. He called my mother. Said would
have to suspend me. Told me to remove it

because it would bring ~~x~~ bad publicity to the school. Mrs. Cross came in--girls advisor-- He said to her that student here has an arm band and doesn't want to remove it. She said it would look bad on my record. Mr. Blackman asked if I was looking for a busted nose-- it would look like that on my record. Mrs. Cross said colleges don't accept demonstrators. Mr. Blackman said suspension notice would come in the mail, and I'd get all 5's for classes I'd miss. I asked if I took arm band off tomorrow could I come back and they said don't do anything until notice. Mrs. Cross said I could call my mother. I said I'd informed them of wearing it. I signed out and walked home.

Any asking of reason for wearing? I believe so.

Any comment of what they ~~they~~ thought of your views? Said I could wear it after school or before it began.

Any reference to your age. Can't remember. Think he asked my age. He thought you were too young to have any views?

Any other comments? Objection Mrs. Cross had mentioned I was too young and immature to have any views of my own. Told me while out of school could have plenty of time to look for a new school, and if ~~xxxxx~~ did anything more like this, I could not come back to Roosevelt.

Because it would affect school publicity? Would make school look bad (according to Mrs. C.)
Way? Can't remember if they did or not (L.J.?)

When did Christmas vacation begin at Roosevelt? Right after school, Wed., Dec. 23.

When you were suspended by ~~xxx~~ Mr. Blackman and Mrs. Cross, did you return at any time? No.

When did you return? Jan. 5.
How many days were missed? 6 days missed.

Condition of suspension? How could you return? I was to go home. Parents were to call back to the school. I would not be able to return to school.

Have you changed your mind about the war in Viet Nam? No.
How do you feel about the war now? Believe the United States is trying to be too aggressive. They talk about peace and at the same time escalate the war.

Do you anticipate a change in your view between now and fall? No.
Anticipate you want to express your views to fellow students still? Yes.
Would like the right to wear arm bands? Yes.
Have you been allowed at all to wear a black arm band since returned? No.
Do you know if W.Harding and North High part of De.M. independent school district? I suppose so.

Lovrien:

Do you recall deposition on July 19? Yes.

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Recall substance of conversation
with Mrs. Cross and Mr. Blackman? Yes.

I will reread:

Objection--Dan
Judge: not allowed.

Blackman asked ~~xxx~~ what teacher sent
you to the office. Blackman asked you to
take black arm band off. He said would
have to suspend you. Can't remember.
He said he called my mom and would have
to suspend. I think he said susped.
Did he send not home. Gave not. I'm
skipping some of the rest. I ask you--
Don't you remember they told you you
could come back anytime you didn't wear arm
band? No.

'Pretty should could' That's
what you said at deposition
Did you get all 5's? No.
You came back on 4th of Jan.? Yes.
One day after school started? Yes.
Flunk any subjects? No.
B+--that was your average? Around that.
Penalized in any way? No.
Said on way down to office met student? Yes.
Who? Don't know.

You came to school and went to administration
office without going to class? Yes.

Why?

~~Did you go to locker?~~

Go to locker?

No. Why go to office?

I knew I was breaking a rule. Was going to
office to tell them I was and intended to wear
it through Christmas vacation.

With the idea of suspension? The idea was there.

Did you mention the meeting Sat.

Dec. 11 at parents? Yes.

You ~~xxx~~ there?

No.

At all?

Shoveled snow, came in briefly, went out again
I was there at very beginning.

How many there?

About 15.

Your parents?

I think so.

Who sponsored it?

I don't know.

Your mother?

Pretty sure.

Did your mother hold some office
in Women's International League? Yes.

Did that organization have something
to do with the meeting? Not to my knowledge.

Know some of the people? Mother and father; ; Bruce and Ross.

Another meeting at your house?

Believe you went to Wash. Nov., 1965. Purpose? March in Wash. to end war
in V.N. From White House to Wash. Monument.

Parents there?

My mother.

People at Dec. 11 meeting who had
been there?

Not sure.

What did you do when got to Wash? Went to Hotel. Mom and few went there--
adults. Some went to individual homes.

How long?

Week-end.

Marching?

Yes.

Carry banners?

Yes.

Protest war in Viet Nam? Yes.

Are these your sentiments now, and
were they then? Yes.

When you wore arm band to protest the war? To mourn the dead in Viet Nam.
What did you plan to accomplish? If you want to call it a demonstration--
it wasn't much of one--to mourn the dead in
Viet Nam and get a Christmas truce.

You hoped to influence public
opinion to your view?

Who called meeting in Washington

Objection

Overruled

How did you happen to go? Don't know. I knew a busload was going from
Grinnell College. I heard about it and decided
to go.

Another meeting was held Dec.

12. Was Bruce Clark--Ross Peterson,

John Tinker there? Think so.

Discuss the arm bands?

Any decision Sunday night? Decided as a group would not do it, but as
individuals. Could do as he or she wished.

Lovrien: Want to show defense exhibit 1--We Mourn

Who made up the text of this? Something to the effect of this was read
at the Unitarian Church Dec. 11 or 12 and students
added more on. Think Bruce or Ross.

Who? Probably Ross.

It was mimeographed. Who did it?

Where? At Marjory Smith's house.

What was done? (with them)

You had any? A couple

Does this express your purposes? Yes it does.

Any discussion with parents after
decided to wear it?

Judge: recess until 1:45.

(after recess for lunch) July 25, 1966, 1:45. Federal District Ct.

Lovrien resumes questioning of Chris Eckhardt:

You testified you had previously participated in demonstrations. Went to Washington; walked from Ames to D.M. When? Others?

Yes.

2½ years ago--about.
Demonstrated at Hotel Ft. D.M.--
about 1½ years ago.
Civil rights--racial--

What about?

These demonstrations: had your parents--either or both--taken part?

Yes. In some--not in the walk.
No.

In Walk--neither?

You carried a placard in Wash? What did it say?

Yes.
I believe something to the effect
'Follow Geneva Accord of 1954'

Where did you get it?

Objection by Dan Johnson
Overruled by Judge Stephenson

People there--on corners of streets--
could take them if you wanted one.

Any meeting with other students Thursday night of the day the other students were dismissed? Who were there?

In afternoon at my house.
Ross Peterson, Chris Singer, and maybe John and Mary Beth. Other students--I can't remember. Maybe Bruce there too.
Yes.

Bruce wore an arm band Friday? Anybody call Mr. Niffenegger from your place? Two phones in your house? Extension phone?

Ross and Bruce maybe both called. No--well, yes, an extension, but only one call at a time on it. Two different calls. Wanted to see if a special Board meeting could be held. Didn't want to defy orders. But none was held.

Can you report your version of what Mr. Niff. said?

As I recall, said not to bother him with this stuff. He didn't talk very long.

Did they know the regular Board meeting was scheduled for the next Tues?

Yes--he said the next Tues. was regular Bd. meeting, and that it may or may not be on the agenda. Yes. Thursday night.

Any meeting later that day? The night of the afternoon meeting at your house? Where?

Yes.
Friends' House, 4211 Grand. The American Friends' Service Com.
is? Yes.

Leonard E. Tinker is connected with Who called the meeting? Your parents, the Tinkers, you and John & Mary Beth there? Others?

I think our parents.

Yes.

Mrs. Singer, Mrs. Hutchinson. I

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think the Griffins (Dr. Griffin).
I think more Roosevelt students.
I think Phil Kehoe, Bruce & Ross,
Sandy Jones. May have been few others
I guess around 20, I think.
About how many? Girl.
Chris Singer boy or girl? Girl.
Suspended for wearing arm band? Yes.
What was discussed at that meeting? Wanted to see exactly what could or
should be done.
Any decision? No. I think the other students
decided to wear arm bands--figured
the School Board was not going to
hold a special meeting.

Not going to hold a special meeting? Yes.
Said three going to wear arm bands. Who? Chris Singer, Bruce Clark, John
Tinker.
That's all--Lovrien.

Dan Johnson:
Chris, do you remember when you went
to Mr. Lovrien's office to take the
disposition? Yes.
Where had you been? On a trip.
Since that time, if I said deposition
taken on Tuesday--does that refresh your
memory? That means a couple of days (after
trip)

The things you testified to in
deposition that occurred in December,
did you keep any record? Yes, a scrapbook.
Did you look at that after the
deposition? Yes.
Have you recalled better what happened? Yes.
You did not go back to school the
first day after vacation? Yes.
My folks got the notice of suspension
Friday to call the school on Monday.
Dad called Friday. Mr. Blackman
said I could come back as soon as
I took off arm band. Dad said ~~xxxx~~
I would when I could practice my
constitutional rights; and Mr.
Blackman said I would have to wait
until after School Board meeting.

The reason you went back was the
decision of the School Board? Yes.
Do you think the arm band hurt you any
at school? No.
Did it hurt your baseball arm? No.
That is all

DONALD WETTER

Dan Johnson:

Donald M. Wetter, 6000 College Ave., D.M..
employed by D.M. Independent School
District, Presently, principal at
North High School.

You are a principal in this law suit? I am
Is North High part of D.M. ind.sch.dist? It is.

I want to direct your attention to events that happened in December, 1965. Do you remember the encounter between yourself and John Tinker?

I ~~xxxxxx~~ recall the encounter at North.

Is he enrolled as a student there? What contact?

Yes, and in good standing. The teachers were advised to refer to the office any students wearing arm bands. This order originated with me as the principal.

Any instructions from anywhere else?

This rule was adopted by the council of principals and director of secondary ed. on Wed. morn (error it was Tues. morn--L.J.)

Did any wear it prior to that time? That is all.

Prior to that time, none had worn it.

Lovrien:

What took place when John came to your office?

When I came in the office, John was there wearing an arm band which was visible to him and to me. In essence, I asked John if he was familiar with the policy which I assumed was general knowledge by then. He said he was. Since he was, he knew I had the obligation to either ~~xxxxxx~~ ask him to remove it and return to classes or do my duty to call his parents and ask them to pick him up, and ~~xx~~ he could not return til removed arm band. I advised him that the policy had been made with my knowledge and concurrence.

He advised me his purpose was to protest action in Viet Nam, particularly the deaths, and influence people toward a truce. He said he would not remove it. I told John to give

me ~~xxxxxx~~ his home phone number. Did so. I dialed several times. No answer. I was at that time advised by my secretary that John's father was in the outer office. I called him in and advised his father of the policy adopted in concurrence with other principals, and if John decided not to wear a black arm band, could return whenever he saw fit. He would not suffer from grades. I would do everything to protect his rights and personal welfare.

Any observance about personal rights?

Yes. I reminded John about a short time before when I had had a program on Armistice Day--now Veterans'--Day. I had personally expressed my concern for war dead. I personally feel there are times to mourn the dead, and did not feel this was the appropriate time. I told him I am a veteran of W.W.II and the Korean War.

After visit with John and his father, ~~xxxxx~~ what happened? Did they leave?

Yes. Father was advised to take John home, and return to school at some specified date.

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What about his school record? I don't have it with me, but have no reports he failed anything. I'd say he was an average student.

What kind of a personality? An average student. I don't have a personal record of it.

Any previous time called before you? No.

Anyone else referred him to you? Not to my office--no.

Is it a customary procedure for you to send student home rather than

suspend? When? Yes. When I feel it is something which can and should be resolved by personal conference.

Witness excused

DONALD BLACKMAN

Dan Johnson:

Don Blackman, 5920 Waterbury Circle, D.M.
2 years principal at Roosevelt High School.

I want to call your attention to the middle of December--Dec.16.

Do you remember any occurrence with Chris Eckhardt?

Yes.

What caused it?

When I came to my office, Chris was there with Bruce Clark.

Anything unusual?

He had a black arm band on.

Who spoke first?

I don't know.

You took this occasion to take action against Chris?

I suspended Chris--official.

What does this mean?

He was sent home. Told not to come back until with his parents. Sent to Dept. of Pupil Adjustment. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
(Notice of suspension) also sent to Supt. of Schools.

Why was Chris suspended?

Suspended because of breaking a school rule. The rule asked students not to wear black arm bands. The rule was established by school administrators earlier in the week, as acting policy.

Were you acting in official capacity? Yes.

Lovrien:

Any conversation with Chris E.

about why he was wearing the arm band? Yes. We discussed it quite thoroughly. Same reason stated by Mr. Wetter and Chris. He was protesting the Viet Nam war and the dead.

What did you respond?

Don't remember. My response was what what he believed I wasn't concerned about. I was concerned he was not supposed to wear the arm band in school, and for that would be suspended.

Did you say you did not believe in demonstrations in school?

That was the idea.

Did Dr. Rawley talk to Chris?

I really don't know.

Anyone else present?

Mrs. Cross. I asked her to come in.

Were you present with her?

Yes.

What was the substance of the discussion?

Mrs. Cross, in talking with Chris, attempted to get him to take off the arm band. She told him that the matter of suspension goes

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on his school record. In relation to the young man's future, so far as it is concerned.

Was any mention of college made? Yes. Colleges are asking about each of our students.

If suspension is on record, it will show on personal record? That's right.

Did you call either of Chris' parents?

Mrs. Eckhardt. We discussed the situation. She didn't agree. Mrs. Eckhardt realized Chris would be sent home.

You didn't agree?

In relation to the wearing of the arm band. She said Chris was acting on his own volition. She said he had the Constitutional right to wear an arm band if he so desired.

Dan Johnson:

Did Mrs. Cross participate in the suspension with you? No.

She was just there? That's right.

Was this the first time you had heard of the wearing of political and religious symbols in school? Yes, so far as I know.

Do you recall seeing students wearing crosses to school? I suppose they have.

What about political buttons--buttons for the President? I never noticed.

Are there any regulations against these? No.

Did you make Princ. Rawley aware of your decision? Yes.

Did he ratify it? Yes.

That's all. Witness Excused.

LEO E. WILLOTSON

Leo E. Willotson, 20 Arthur Circle
vice-principal (nearly a year), Warren
Harding Junior High. Principal, Chester
A. Pratt.

Do you recall on or about Dec.16 an encounter with Mary Beth Tinker? Yes.

What prompted it? When I walked into the office, she was seated there. I asked why. She indicated apparently because of the black arm band. She indicated she had been sent there.

What did you say? I said would she give me her black arm band. She said 'I suppose if you want it' and gave it to me. I told her she could return to class until such time as the girls' advisor would want to talk with her.

Did it later come to your attention she had been suspended from school? Yes. Later on that afternoon. In a casual way--nothing formal. I did hear in a round about way she had been sent home.

As vice principal, are these matters generally under your supervision? Yes.

Did you act in your official capacity? Yes.

Lovrien--no cross examination

VERA TARMAN
Dan Johnson:

Vera Ann Tarman, 1017 56th St., D.M.
Employed by D.M. Ind. Sch. Dist.,
Girls' Advisor, 2 years at W. Harding

Did you have occasion to meet
Mary Beth Tinker Dec. 16, 1965? When I was in lunch, I found later that
Mary Beth had come in to see me, and
then returned to class. I went to her
class and told her to return to the office.

Did you notice anything unusual? Think I was told why. No.
Any conversation with her? We walked back to the office together. We
talked about why she had worn it. At that
time (when got to office) the arm band
was given to me by Mr. Willotson.

Did you have occasion to suspend
Mary Beth? I will not use that term. She was not re-
ferred to Pupil Personnel. I called her mother
and told her she would be home until I had
an opportunity to talk to her parents.

Why was she not returned to school? I'm not sure. She could have.
Could she have returned with an
arm band? Not with my consent. She would have to remove
the arm band or go home.

Did you send any notice home? A copy of it was sent to Dept. of Pupil
Personnel. The Principal has a copy, and
Mary Beth had a copy. She got it because
all I wanted to do was talk to her parents,
and in the mail it would have taken longer.

Is it a customary procedure you
exercised in sending Mary Beth home? Not for this reason. However,
occasionally it is used for disciplinary
reasons.

Except for wearing of arm band,
it was the same procedure as other disci-
plinary action? Yes.

You were acting as girls' advisor? Yes.

You knew of the arm band regulation? Yes. By that time it was acting
policy. It became effective prior to Mary
Beth's wearing it.

Were any other arm bands at Harding? No.

Other symbols? I haven't been aware of them.

Did Mary Beth indicate if she would
put it back on? I didn't ask.

Could she have gone back? I wanted to talk with her parents.

You were acting in your official role? Yes.

Had you talked with Mr. Pratt? I think so.

You received no criticism from him and
other administrative authorities? I hope not.

Witness excused--no cross examination

Dan--wanted recess for precedural matters. Granted

E. RAYMOND PETERSON

Dan Johnson:

Ewing Peterson, Dr. of Secondary Ed.
5 years.

Do you recall incidents of Dec., 1965? Tues morning, Dec. 14, I called

a meeting at the direction of the Supt. of Schools and Associate Supt. of Schools (L.J.-- Bob Keck said Supt. later said he had not known of the meeting) It was attended by Mr. Jackson, Mr. Wetter, Mr. Betts, Mr. Bowen, and myself.

It was concerned with the prohibition of arm bands? Yes. Concerned with a policy as a group. You called it in your official capacity as princ. of ind. school district?

The principals as principals, and I as director of secondary ed.

Does this group meet regularly, formally?

Regular meetings once a month. Others during month often on call in whole or in part.

At the time the policy was enacted, was it written down?

No. It was only a broad policy regarding conduct of students.

Was it codified?

I wrote it down and it went to the Board then to the Superintendent. We previously agreed this was the direction to take, but it was not told to the principals prior to the meeting. The principals were not aware of this.

Who is the Superintendent? Dwight Davis.

Assistant?

Paul Mitchum.

That's all.

Excuse me:

Can you read to us a copy of the regulations?

I don't have one.

Can you state it?

The student, if attended school wearing arm band, a demonstrating type of approach, student would be asked to take it off. If refused, stu. would be sent to office and asked to remove it. If student still refused, parent would be contacted and asked if would ask student take off arm ~~xxxxxx~~ band. The student had that privilege. If refused, the student would be sent home until such time as the black arm band was removed, or the Board reversed the policy.

Are you aware of any decisions about religious symbols?

It is not necessary to write out things word for word. Certain administration decisions are made within the school building involved.

No indication of demonstration because of religious reason?

Not in ~~anytime~~ my time (with the schools here). It was the principle of the black arm bands. Those who might go against regulation. It was the principle involved ~~xxxxxxxxxxxxxxxxxxxx~~ of demonstration.

Was the regulation as promulgated specifically referring to black arm bands?

Yes, at this time.

Anything about the purpose? Objection to government policy in Viet Nam as being carried out by American government.

Was this decision correctly reported in the press "E. Raymond Peterson--

.....(in Wed., Dec. 15 ~~xxxxx~~ D.M.Reg.) Yes Sir.

Is this it? Yes.
Exhibit 3: proposed policy for
2ndary principals for school
conduct? Promulgation about terms
of arm band wearing? Is this the
~~xxxxxx~~ report Mr. Johnson asked you
about? Yes.

Dan Johnson: no objection to exhibits 3 and 4, ~~xx~~ but do object
to exhibit 2 as not the best evidence.

Judge: ~~they are~~ ^{it is} merely offered as an appearance in the press--
not a true statement. ~~XXXXXXXXXX~~

Lovrien: Correct

In regard to general rule regarding
demonstrations: Do you have general
rule about demonstrations in class-
rooms? General rule and procedure. Anything which
disrupts general order of school. As long
as part of curriculum, it is allright.

Witness to remain on call.

ORA NIFFENEGGER
Dan Johnson

Ora Niffenegger
2019 46th St, D.M.
Professional Person ! Attorney !

You are the president of the D.M.
School Board. How did you come to
that position? By the free and popular election of Board
members.

How were you put on the Board? I was elected by the people of D.M.
Who else serves with you? Mrs. Roland Greffe, Art Davis, Dr. Caudill,
Rev. Keck, John Hayden.

Are you the same Niffenegger named
in this suit? Yes!
Others on Board? They are !

Did this matter of suspension
of the students come to your attention? -----Thurs, Dec.16, 1966
Did the Board have occasion to act on that
policy? Not on at that date. First, Tues. following,
following Friday, Dec. 17, whatever that date
was. Did not reach decision in order to
get advice from legal counsel, further study.

Did you have an occasion to
meet again? Regular meeting, first Monday in January.
Which Board members were present? All.
What action was taken? By a majority vote of the Board, voted to
uphold the administration policy of school
officials.

Prohibition of Arm Bands? That's right.
Acting in official capacity? That's right.

That's all
Lovrien:

Dec. 16, 1965: How was this
matter called to your attention? I had 4 telephone calls. First 2,
Ross Peterson and Bruce Clark, as I recall.

Two women, I don't know their names.

What did Ross & Bruce inquire about

These young men explained they had been denied their constitutional rights to wear black arm bands. They wanted a special meeting of the School Board right away. I told them their first recourse was school officials. Had school officials to turn to.

I said as nice as I could--I have had considerable relationships and contacts with young people professionally for many years--I couldn't do this. Certain legal precedures were involved in calling a Board meeting. 1. It was common courtesy to poll board to make sure have majority present. And 2. by law needed 48 hours before meeting. When told the purpose of the meeting--opposition of U.S. policy in Viet Nam--I explained as best as I could, in this country, we had a way, and if we didn't like the way things were handled, could handle it at the ballot box and not in the schools.

Purpose?

They explained to me at that time they were in protest of the policy in V.N.

Did they mention limit to

Christmas truce?

Nothing was said at that time.

Mourn the dead?

Nothing was said at that time.

Did these students tell you

they were students at Roosevelt? Yes. Explained. Fairly courteous.

Two ladies also called? Yes. These ladies asked to call an emergency meeting.

What relationship did they have? One said was the mother of one of the boys wearing black arm bands but I don't know.

These meetings

represented by counsel

(L.J. some omission evidently) I explained anyone could speak on any cause ~~xxxxxxx~~ at regular Board meeting. If gave purpose far enough ahead of time, could print it on agenda. Couldn't this time--not enough time.

Was there any demonstration

at the School Board at same

time of the meeting?

Yes there was. The Board room was filled to capacity--overflowing. Several times, it was touch and go if I could keep order. But I succeeded. Some were apparently brought in from out of the city.

Was there a demonstration outside? Apparently there was. I saw pictures in the paper, but didn't see it myself.

Plaintiffs rest case, ~~xy~~ subject to rebuttal.

DICK MOBERLEY

Mr. Herrick:

Dick K. Moberly, Math. teacher at Warren Harding Junior High, 2 years.

Do you recall about middle of

December having a discussion in your

class about armbands?

Discussion on demonstrations. From report of school administrators. Evidently it was in morning Register, which I didn't happen to read. These are advance track group of students--sharp. Ask a lot of questions about things other than math. One of the things which came up was why the policy was as it was.

Did you spend considerable time on this?

5 or 10 minutes on this probably, it it dragged on into current demonstrations going on in the country. Probably 30 minutes of class time. Had time to wind up with math assignment, but pretty well wrecked math. lesson. Kind of wrecked class.

What did you say related to demonstrations in class?

In my class, they'd better demonstrate for or against math--it ended up this way.

That's all

Dan Johnson :

How long have you been at Harding? 2 years.

Is Mary Beth Tinker a member of the advanced track class?

Yes.

Was she present?

I'm sure she was. She is absent very little.

Any idea she would wear a black arm band?

No.

Do you know the Tinkers? I've known the Tinkers--the whole family--a long time.

Know who initiated the discussion? Two or three boys who visit in the hall with me. Think this is where it came from. Don't recall their names.

Did you give your opinion? I tried to give different opinions from the paper.

Did you express your views? I said I was against ~~the~~ demonstrations without proposing anything to do for it.

When arm bands came up: was this

the kind you were against? I hadn't given it any thought.

Did you have arm bands in mind? They started the subject. ...not complete (L.J.--missed some here)

Any other statements that you made?

I don't remember.

Was the discussion substantially

engaged in with your permission? It was led on by students. I usually think when students have questions, regardless of the subject, should be allowed to discuss them. I should have cut it off sooner.

Do you believe it a viable method to have these kind of discussions?

To answer questions.

Do you believe that the more students engage in these experiences, the more they learn?

Yes--but not in my classes. Sometimes I get led into them.

Does Mary Beth Tinker have an inquiring mind?

Yes.

Any trouble?

No.

Delight to have as a student? Always--both before and after this.

With and without an arm band? With and without.

Any other discussion in your class on symbols?

Recall ^{seeing} only simple crosses . X

Mary Beth wearing any? Don't recall.

~~Have you seen political buttons?~~

What about political buttons? Well, if would wear to extremes--like all down the front of a jacket--would be sent to the office for extremes in appearance.

Would one button with picture of

Goldwater not be disruptive? I'd hope not.

Johnson?--President Johnson? I'd hope not.

Was this policy about arm bands communicated to you? No. From students.

They had seen it in the morning paper. I didn't
happen to read the paper.
From your standpoint, would wearing a
picture of Johnson be objectionable? I don't know, yes or no. Whenever
I have questions, I ask my superiors.
Are you familiar with the symbol
of the iron cross? I was there.
Have you seen these? I have ridiculed these, but not in policy.
Not in policy? Never put out
of class any who wore them? Not that I know of.
Know if any students at W. Harding
subscribe to Judaism. It wouldn't surprise me.
Have you seen iron crosses at
Harding since the suspension of
Mary Beth Tinker? I believe so.
Nothing further--witness excused.

Lovrien entered as court exhibits ~~xxxxxx~~ four depositions
of Christopher Paul Eckhardt, Mary Beth Tinker, Leonard E. Tinker,
John ~~xxxxxx~~ Frederick Tinker.

Judge: Mark as exhibits and I'll read them. The truth is, I've
probably read them already.

Herrick: Defense offers in evidence deposition 5--Christopher
Eckhardt; exhibit deposition # 6--Mary Beth Tinker; exhibit #7, John
Frederick Tinker; exhibit #8--Leonard Edward Tinker, Jr.

Judge: They are received.

Lovrien. The defendants rest their case.

Judge: Do the plaintiffs have any rebuttal?

Dan Johnson: Plaintiffs have no rebuttal.

Judge: What is pleasure of lawyers--oral argument?

Plaintiffs (Dan Johnson speaking) preference for oral argument
first thing in morning.

Judge: Allright. Court recessed until 9:30 a.m. tomorrow morning.

ORAL ARGUMENTS

July 26, 1966, 9:30 a.m.

LOVRIEN

The first issue here--free speech must be considered in the light of talking about free speech in public school systems. The plaintiffs are really saying anytime a student decides to demonstrate on any subject, they have the right.

It has been suggested by the plaintiff that there is no show of overriding interest. Overriding interest is the right of the public school to operate public schools. It may be this is a very important subject--maybe should be in school curriculum--but that does not mean one can come to school and attempt to influence other students--a captive audience. They're there to obtain an education.

When talk about balancing danger--and clear and present danger is being sustained in this case--I'll take issue. Before rules and regulations can take place, must see how it works out. That isn't the issue here. The issue is whether school authorities can say what can or cannot be done in classrooms.

There has long been the authorization of the right of schools to administer and regulate. It is not peculiar that no free speech cases which have gone to Supreme Court involving right of authorities to control schools.

This is different than right of these students--veteran demonstrators--to demonstrate in school; to influence the opinions of other people. This is not what they were there for--were there to obtain an education.

The record shows more than three--fair inference that other students would have joined if school authorities had not laid down regulation.

Some inference that these ideas were not their own. Maybe they are their own to extent their parents have influences them. This is all right. Also fair to say that parents of these students are more than nominal plaintiffs. They sent 8 and 11 year old children to school wearing arm bands.

No one would say they have no right to demonstrate. School is not a forum for students or parents to promote their ideas or anyone else's. Invested in director's and administrator's right of discretionary authority.

The right of free speech is not allowed every day, every minute.

To say there is no show of overriding subordinate interest is not true. This gave the administrators discretionary authority.

Actually there is some evidence that a few people wearing the arm bands were stirring up trouble. The authorities didn't have to wait to see what would happen--to defend themselves in a lawsuit. This didn't involve absolute censorship.

The Barnette case said the school couldn't make students do religious act. It is no authority for the present case. The present case is----most of cases cited do not involve facts of the situation we have here. They were cited to show the course the Supreme Court has taken. The right of free speech is not an absolute right and never was.

The duty of the courts is to demand which of conflicting interests is the best interest. The right of the school to operate the school under reasonable discipline is ~~xxx~~ a right that has to be protected.

They say--anytime we want to demonstrate in school we have the right. Obviously, this is not true.

Immunity--so far as damages are concerned, there is no right of damage against the school system or the school officials.

Mr. Johnston suggests maybe not so important a case as he thinks. I think it important in that the school districts have the right to know what rights there are, or every time they issue an order, is some right of free speech involved.

Judge: If thought wearing campaign button ~~were~~ disruptive, would the school district forbid it?

Lovrien: I think so. If the school authorities think some of these things are not a part of the curriculum--they have a right to prohibit them.

Herrick:

The so-called constitutional right of free speech--it is not an absolute right at all times and all places.

If advocate against the war in Viet Nam, this should not be permitted. Wearing arm bands should not be allowed. The school should not be allowed to be used for spreading propoganda ~~wither~~ for or against war. Mr. Moberley spent 30 minutes in a discussion. He properly said no demonstration would be allowed in his class except related to math.

The arm band is not the innocent program the plaintiffs would have us believe. Mrs. Eckhardt, Chris, went to Washington during Thanksgiving. Carried placard from the White House to Washington Monument. This was followed by the Dec. 11 meeting at the Eckhardt home. Attended by 20 people--part of them belonged to (S.D.S.?), also went to Washington. Later that week the Women's International League, of which Mrs. Eckhardt is president, adopted resolution supporting arm bands. (Meetings Dec. 11 and next night--attended by Eckhardts and Mrs. Tinker.)

The ruling followed all of this. If the students wore arm band, (reads ~~r~~uling at this point)

This ruling, on Dec. 14, was made known Dec. 15. Each of these plaintiffs testified they knew of ruling and directly violated it.

Mary Beth wore over black sweater, where hard to see--and was not sent home until afternoon. The next day, John wore it. I don't know where there could have been more deliberate violation of a rule. Iowa Code (number) of Iowa gives the schools the right to temporarily dismiss or suspend students, and gives them discretion in deciding when conduct of teachers or students tend to disrupt orderly conduct of school. If conference with parents does not resolve--the school has the right to dismiss. Exhibit is before the court.

The report of Dr. Raymond Peterson underlined what occurred and the reason for the adoption of the rule. In the Iowa case, student forbidden to play football--denied him right to return. The Court should refuse to interfere with the right of the school to exercise ~~discipline~~ the ~~expression~~ expression of the School Board--what is reasonable and right.

The Supreme Court upheld the right of school to forbid fraternities in public schools. This is what, and all that is involved in this regulation. It was felt it would disrupt educational processes. Thought trouble would arise.

I feel there has been an attempt to utilize the schools as a vehicle for promulgation of propoganda and this regulation is reasonable and the school had a right to make it.

~~Rx~~ Dan Johnson--rebuttal: Last evening Rev. Tinker received latest

3. Expressions granted are not limited to outside the school.

We have found no cases limiting free speech to individual's own ideas. Rather, ideas can legitimately come from other sources.

In my view, rather than expression being something coercive from parents, the plaintiffs hold religious convictions which are some ideas very old in this country. They come from the Quakers--Friends. These are ideas very helpful. They hold their ~~own~~ ideas as their own.

Similarly, I know of no requirement, even assuming some groups which the Tinkers or Eckhardts may belong to--which we might hold repulsive--as related. This is not a reason.

The American Friends' Service Committee--with which the entire Tinker family is involved--has on its Board of Directors two United States Supreme Court Justices and the vice-president of the United States. It is a distinguished service organization and not a subversive organization.

I would agree that ~~the~~ wide expression of the school authorities is necessary for them to do their job with expertise. I would agree that by the legal code of the State of Iowa they be able to have expression to set up their rules and regulations.

In the Black Hawk County, Ia. case--football student married and then excluded from high school--Ronald Green v State of Iowa. If School Board has the right to make rules, it is provisional to a rational basis for the school's action. If the school makes wrong decision, this is not beyond the Court's jurisdiction.

Similar cases: U.S. Constitution limits authority and discretion of local school boards. Barnette v W. Virginia; Cooper v.

Problem in Barnette v. W. Va.--whether children of Jehovah's Witnesses had the obligation to salute the flag. Justice Jackson sets forth ably this: "The 14th Amendment protects citizen--against school authority itself...." So, not only as Justice Jackson sets forth, does Constitution limit authorities of school, but requires that schools provide for the expression of students' rights.

Two principles are applied to determine if there exists a subordinating interest: 1. Balance test and 2.

Conclusion: 2 tests essentially the same. Supreme Ct. Justice Brandeis said the Court has the right to suppress speech that is dangerous. The problem is to balance the danger with the probable result for the resulting freedom of speech.

It must be clear that free speech not be limited.

There has been no testimony in this case that any danger existed to subordinating interests.

The admonition of the Hayes case was born out in this case: restrictions placed on union organizers in Hays case, and these students dangerously near to same kind of restrictions.

Both Niffenegger and other school officials testified that other symbols are allowed such as iron crosses, and no ordinance has been passed against them.

Judge Stephenson: If same school officials came to conclusions about political buttons, what then?

Dan Johnson: Would have to come to court and prove they would endanger--in same manner as reasons in this case--and if court so ruled, then schools could regulate against them.

The problem as I see it primarily is that of prior restraints on speech. Applies to the facts of this case--facts not having occurred. The regulation was passed before the students engaged in wearing arm bands. Conjectures, ideas--non apparently born out in facts. The only testimony is to the effect of time length (L.J.?) worth arm bands (???)

~~Only~~ The only disruption in the school system was what Mr. Niffenegger said and in Mr. Moberley's class--this was caused by the regulation, not the arm bands.

I can understand the reluctance of schools to have demonstrations such as picket signs, chanting. We do not have that here. We have three students quietly expressing their own opinions. If they can't do it there (in school), have lost a very basic right of public expression.

The defendants, in their brief, cite a number of instances where expressions caused a problem. In this, like the Sellers v Johnson case, ~~only~~ the only violence which could come could come from reaction to the demonstration. In this, the state must do everything in its power to allow free speech.

Procedural Problems. Rollo v Hague (spelling?) holds if governing body.....(lists cases in Sch. Board Brief)....Individuals and public corporations, such as involved in this case, are proper subjects for equitable relief, leaving the individual acting in official capacity liable to damage.

Perhaps this case is not as important as I think. I suppose the education of Chris Eckhardt and the Tinker children will not be destroyed from this kind of action; I think they have the kind of families which will make them good citizens of a democracy. But profound, is the responsibility the public school has to promote thought, provide responsible citizens.

Apparently the Des Moines public schools think we should declare a moratorium on free speech during the present Cold War.

We need to teach methods of democracy. This is not a privilege for the speaker so much as the right of the rest of us to listen.

The kind of subject matters these students were involved in--the risks they were willing to undergo--what they have given us is more than (????lost this--L.J.).....school system.

(John says this referred to nominal damage claim against school system in the case)

in long list of calls from neurotics in the wider Des Moines area.

It seems that the School Board is joining with specious attacks on the School Board. (They rule to not) wait til disruption occurs.

We're suggesting there must be some evidence to show would be violence if arm bands worn, and there is no such evidence.

Their basic contention has no support. If the state of sub-division has right to override any Constitutional provision, this is violation of freedom of expression. The mere fact the School Board has passed the regulation does not abrogate the right of free expression.

They would have, in the midst of democracy and free expression in the wider society--a vacuum of the schools--they would exist as a Fascist system--no free speech and all around free speech. That is not our system.

Judge: You're not advocating demonstration in schools, are you?

Dan: I'm saying the School Board cannot show in this case any evidence of this.

There is no balance in this record whatsoever.

Arm Band Trial

July 25 - July 26 1966

From notes by

Lorena Jeanne Tinker,

& transcribed by her