

TIMES PAST
1969

The Tinkers:

Mary Beth and her brother John display the black armbands that got them suspended from school.



The Teens Who Fought for Free Speech

A Supreme Court ruling 50 years ago ensured students' First Amendment rights—and paved the way for today's student protests BY JOE BUBAR

Thirteen-year-old Mary Beth Tinker and her 15-year-old brother, John, felt that they had to do *something*. It was 1965, and thousands of U.S. troops were fighting in the Vietnam War—a war that Mary Beth and John both opposed.

“All the time, we were seeing on the news: war, war, war,” Mary Beth Tinker, now 66, says. “The bombings, the kids running from their huts screaming—it seemed like everything was on fire.”

In December of that year, Mary Beth Tinker walked into Warren Harding Junior High School,

in Des Moines, Iowa, wearing a black armband to protest the war. That didn't go over well with the school principal, who suspended her for violating school rules. John, their friend Christopher Eckhardt, and three others who also wore the armbands to high school were suspended too.

BETTMANN/GETTY IMAGES

The question was: Did suspending the students violate their First Amendment right to free speech? The Tinkers, Eckhardt, and their parents thought so. They sued the school district with the backing of lawyers from the American Civil Liberties Union (A.C.L.U.).

The case made it all the way to the Supreme Court, which in 1969 ruled 7-2 in favor of the students. The Court famously stated that students and teachers don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The landmark case clarified that public school students have the right to voice their opinions, as long as they're not interfering with the ability of the school to function or disrupting the right of other students to learn.

Fifty years later, *Tinker v. Des Moines Independent Community School District* is considered the most important case regarding students and freedom of expression. It set the standard by which all subsequent students' rights cases are judged and paved the way for the school walkouts last year, when students across the country protested to demand stricter gun laws following the school shooting in Parkland, Florida.

Youth in Revolt

The *Tinker* case "was almost like a Declaration of Independence for students," says Stephen Wermiel, a professor of constitutional law at American University Washington College of Law, in Washington, D.C. "It wasn't that anybody was uniformly saying that students have no rights. But more that it was unclear what rights they had, and when, and under what circumstances."

When the Tinkers were growing up, students were at the forefront of protests from Birmingham, Alabama, to Berkeley, California.

"Kids today say they're woke," Mary Beth Tinker says. "So many young people through history have been woke."

"So many young people through history have been woke."

In the South, young people were among those leading the charge in the civil rights movement—staging sit-ins at segregated lunch counters, helping organize voter-registration drives, and boycotting businesses that discriminated against blacks.

In the spring of 1963, thousands of students marched in the "Children's Crusade" in Birmingham to demand an end to segregation. Police officers released dogs on them and knocked them to the ground with high-pressure hoses. Many of the young protesters were thrown in jail. But their courage would help lead to federal laws outlawing segregation.

In the mid-1960s, college campuses also erupted with protests against the Vietnam War. The U.S. began sending

combat troops to Vietnam in 1965 to try to halt the spread of Communism in Asia. Though most Americans at that time supported the war, a small but loud antiwar movement was forming among people who believed that the war had no clear objective, especially college students and young people.

Mary Beth Tinker and her brother were inspired by seeing news of other teens protesting.

"We saw other young people speaking up and standing up for the things they taught us in school and in church but weren't reality, like fairness, equality, justice, and peace," she says. "That was a turning point for us."

A 'Small Action' Against War

The Tinker siblings and a group of other students came up with the idea to wear black armbands as a symbol



More than 2.7 million Americans served in the Vietnam War. Back home, many students protested.

of mourning not only for the American soldiers who'd been killed in the war, but also for the Vietnamese.

But before the students' protest, school district officials found out about their plan and implemented a ban on armbands, threatening to suspend anyone who violated the rule.

The Tinkers decided it was important to stand up for what they believed in anyway. They didn't think a suspension was that big a price to pay compared with what teenagers protesting for civil rights in the South faced—and they certainly never imagined their symbolic display would lead to a Supreme Court case.

"I had no idea that our small action was going to turn into such a big thing," Tinker says.

When the Tinkers appealed the suspension to the school board, about 200 people showed up at the meeting. Some came to support the students, but others viewed the message of mourning for the dead Vietnamese as "un-American" and praised the schools for punishing them.

The school district upheld the suspensions, so the Tinkers sued. The first court to hear the case dismissed the complaint, allowing the school

Key Students' Rights Cases

Here's how the Supreme Court has ruled on student speech since *Tinker*

<i>Bethel School District v. Fraser (1986)</i> Ruling: Schools can discipline students for lewd speech. Senior Matthew Fraser was suspended from Bethel High School in Washington State for using lewd language in a speech at an assembly. The Court sided with the school district, stating that although a school can't prohibit speech because of the viewpoint it expresses, it can prohibit speech because it's vulgar and offensive.	<i>Hazelwood School District v. Kuhlmeier (1988)</i> Ruling: Schools can censor student newspapers. Three juniors at Hazelwood East High School in St. Louis wanted to publish articles in their school paper about divorce and teen pregnancy. The school pulled the articles, saying the topics were too sensitive. The Court sided with the school, ruling that a school paper is a supervised learning experience, not a public forum.	<i>Morse v. Frederick (2007)</i> Ruling: Schools can prohibit student speech advocating drug use. Joseph Frederick, a senior at Juneau-Douglas High School in Alaska, held up a sign with language related to marijuana use at a school event. The principal suspended him, saying the sign could be seen as promoting illegal drug use. The Court sided with the principal, stating that schools may take steps to protect students from this type of speech.
--	---	---

district's decision to stand. But the students and their lawyers from the A.C.L.U. didn't stop there; they continued to appeal the case until it made it to the Supreme Court.

As the Tinker case was winding through the court system, more and more men were being drafted into the armed forces, and the antiwar

movement was growing. In 1967, 100,000 people gathered on the National Mall in Washington, D.C., to protest the war.

However, many people still supported the fighting in Vietnam and the Tinkers became the focus of a lot of anger. They were accused of being Communists, and their house was



smeared with red paint. They received hate mail and death threats, and their car window was smashed with a brick.

The Tinker Standard

At the center of the Tinker case was the First Amendment, which guarantees the right to free speech and the right to peacefully “assemble, and to petition the Government.” It was unclear how the First Amendment should apply to students.

“Students were supposed to go to school and do what they were told,” says Wermiel, the law professor. “So I think *Tinker* changed the paradigm. It changed the way we thought about what kids were supposed to do . . . to think critically for themselves and to express themselves and voice their views.”

The Tinker ruling ensured that students have free speech rights in public school—but only up to a point. It doesn’t mean you can do or say *anything*. The justices said that school officials must balance students’ First Amendment rights with the school’s need to maintain order, so as long as an act of expression doesn’t cause a “substantial disruption” or infringe upon the rights of others, it’s allowed. Legal experts often refer to this as the Tinker standard.

In three cases since Tinker, the Supreme Court has grappled with how to strike that balance between allowing free speech and maintaining order in school. In each one, the Court has sided with the schools (*see “Key Students’ Rights Cases,” facing page*).

“The Supreme Court has pretty consistently since 1969 limited the scope of Tinker,” says Wermiel.

Still, courts at all levels continue to apply the Tinker standard when ruling on student speech (*see “Can Your Instagram Post Get You Suspended?”*). *Tinker v. Des Moines* has been cited in court decisions at the local, state, and federal levels more than 2,000 times.

From Tinker to Parkland

Last March, thousands of high school students across the country followed

Can Your Instagram Post Get You Suspended?

Courts are grappling with how to apply the Tinker standard in the age of social media

One of the biggest debates regarding students’ rights today is whether schools should be allowed to punish students because of something they post on social media while off campus. The Supreme Court has yet to weigh in, but federal courts have ruled on a handful of these cases in recent years.

In some, the courts have sided with schools. In 2016, for example, a court ruled that a Pennsylvania high school had the right to suspend a student for posting about a bomb threat on Facebook.

But in other cases regarding social media, the courts have sided with students. In 2015, for instance, a court ruled that an Oregon eighth-grader’s Facebook rant about a teacher was protected free speech.

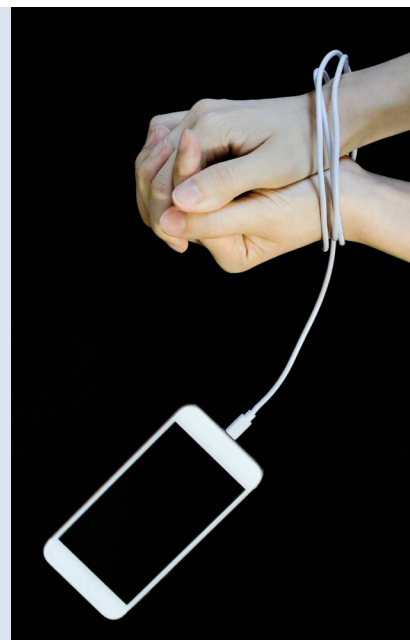
Tinker set the standard for what is acceptable student speech within the

in the Tinkers’ footsteps when they walked out of their classes to demonstrate for stricter gun control.

Schools wrestled with how to respond to the walkouts. Some supported and even helped their students protest. Others threatened to punish students with suspensions.

Before the protests, the A.C.L.U. posted a guide on its website for students. It said that schools could discipline students under attendance guidelines. But what schools couldn’t do, the legal experts said, was “discipline you more harshly because of the political nature of or the message behind your action.”

The idea that school officials can’t



“schoolhouse gate.” But many people think that social media has changed what it means to be on and off school grounds. After all, a student who posts a comment on Instagram for everyone at school to see has the same effect as a student who makes a comment in class. So even though the courts are coming to different conclusions in these cases, they’re still going by the Tinker standard, says Stephen Wermiel, a professor at American University Washington College of Law.

“Their results vary,” he says, “based on whether there was a reasonable perception that the tweet, or Facebook post, or Snapchat might cause disruption at school.”

punish students simply because they don’t agree with a certain viewpoint comes directly from the Tinker case.

On the morning of the walkouts, Mary Beth Tinker, now a retired pediatric nurse who continues to speak out about First Amendment rights, joined students in McLean, Virginia, who’d stepped out of class to protest. In a park near McLean High School, she encouraged them to continue standing up for what they believe in.

“When you find an issue that you care about, that affects your life, and you join up with a group of others to take action,” she says, “then life becomes so meaningful.” •

Students have First Amendment rights—but only up to a point.