

# STUDENT HANDOUT, COURT CASES

## Tinker vs. Des Moines School District

School District (1969) [http://www.oyez.org/cases/1960-1969/1968/1968\\_21](http://www.oyez.org/cases/1960-1969/1968/1968_21)

### Court Case

**Summary:** Several students planned to wear black armbands to school to protest U.S. involvement in the Vietnam War and mourn the dead on all sides. School officials learned of the impending protest and quickly adopted a no-armband rule (even though they allowed students to wear other symbols). The students nonetheless wore the armbands to school. School officials suspended them for violating school policy. The students sued, claiming violation of their First Amendment rights. Court held that school officials cannot censor student speech unless school officials reasonably forecast that the speech will cause a material and substantial disruption of school activities or collide with the rights of others.

### Implications:

#### Arguments in Favor of Expression

“In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint...It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Student expression may not be suppressed unless school officials reasonably conclude that it will “materially and substantially disrupt the work and discipline of the school”

“In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.”

### Other Findings:

#### Arguments in Favor of Censorship

This case will help usher in “a new revolutionary era of permissiveness in this country fostered by the judiciary...I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students.”

“The crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech...”

“I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that

is, took the students’ minds off their classwork

and diverted them to thoughts about the highly emotional subject of the Vietnam

war...[D]etailed testimony by some of them shows their armbands caused comments,

warnings by other students, the poking of fun at them, and a warning by an older football player that other, non-protesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically “wrecked” chiefly by disputes with

Mary Beth Tinker, who wore her armband for her “demonstration.” Even a casual reading of the record shows that this armband did divert students’ minds from their regular lessons...”

#### **Other Findings:**

“The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order.”

#### **Other Findings:**

### **Bethel School District No. 403 v. Fraser (1986)**

[http://www.oyez.org/cases/1980-1989/1985/1985\\_84\\_1667](http://www.oyez.org/cases/1980-1989/1985/1985_84_1667)

#### **Court Case**

**Summary:** At a school assembly of approximately 600 high school students, Matthew Fraser made

a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. Bethel High School enforced a rule prohibiting conduct which “substantially interferes with the educational process . . . including the use of obscene, profane language or gestures.” Fraser was suspended from school for two days. The Court found that it was appropriate for the school to prohibit the use of vulgar and offensive language. Chief Justice Burger distinguished between political speech which the Court previously had protected in *Tinker v. Des Moines*

#### **Implications:**

##### **Arguments in Favor of Expression**

“It does seem to me, however, that if a student is to be punished for using offensive speech, he is entitled to fair notice of the scope of the prohibition and the consequences of its violation. The interest in free speech protected by the First Amendment and the interest in fair procedure protected by the Due Process Clause of the Fourteenth Amendment combine to require this result.”

“[The] record now before us yields no evidence that Fraser’s use of a sexual innuendo in his speech materially interfered with activities at Bethel High School. While the students’ reaction to Fraser’s speech may fairly be characterized as boisterous, it was hardly disruptive of the educational process. In the words of Mr. McCutcheon, the school counselor whose testimony the District relies upon, the reaction of the student body ‘was not atypical to a high school auditorium assembly.’ In our view, a noisy response to the speech and sexually suggestive movements by three students in a crowd of 600 fail to rise to the level of a material interference with the educational process that justifies impinging upon Fraser’s First Amendment right to express himself freely.”

## **Arguments in Favor of Censorship**

“Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. ...The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board.”

“The marked distinction between the political ‘message’ of the armbands in Tinker and the sexual content of respondent's speech”

“Fraser's speech was plainly offensive to both teachers and students—indeed to any mature person. By glorifying male sexuality, and in its verbal content, the speech was acutely insulting to teenage girl students. The speech could well be seriously damaging to its less mature audience, many of whom were only 14 years old... Unlike the sanctions imposed on the students wearing armbands in Tinker, the penalties imposed in this case were unrelated to any political viewpoint.”

## **Other Findings:**

**Cases** [http://www.oyez.org/cases/2000-2009/2006/2006\\_06\\_278](http://www.oyez.org/cases/2000-2009/2006/2006_06_278)

**Morse v. Frederick (2007)**

### **Court Case**

**Summary:** At a school-supervised event, Joseph Frederick held up a banner with the message “BONG HiTs 4 JESUS,” a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued under 42 U.S.C. 1983, the federal civil rights statute, alleging a violation of his First Amendment right to freedom of speech. The U.S. Supreme Court rules that officials can prohibit students from displaying messages that promote illegal drug use.

### **Implications:**

#### **Arguments in Favor of Expression**

The majority opinion was “[...] deaf to the constitutional imperative to permit unfettered debate, even among high-school students [...].”

“...this is plainly not a case about political debate over the criminalization of drug use or possession...he just wanted to get on television...can hardly be said to be advocating anything...”

### **Other Findings:**

#### **Arguments in Favor of Censorship**

“...although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. The majority held that Frederick's message, though “‘cryptic,’” was

reasonably interpreted as promoting marijuana use - equivalent to “[Take] bong hits” ‘ or “bong hits [are a good thing].”].”

“...detering drug use by school children is an ‘important—indeed, perhaps, compelling’ interest... evidence suggests that it has only grown worse.”

**Other Findings:**

## **Hermitage School District v. Layshock (2007)**

<http://www.citmedialaw.org/threats/hermitage-school-district-v-layshock#description>

### **Court Case**

**Background:** In December 2005, high school student Justin Layshock posted a fake MySpace page parodying his high school principal, Eric Trosch. Layshock posted a picture of Trosch and answered the questions asked by the site's profile template by riffing on the word “big” and offensive language. Layshock created the profile from a computer at

his grandmother's home. School officials discovered the profile, and the school district suspended Layshock for 10 days, ordered him to finish high school in an “Alternative Education Program,” and forbid him from attending graduation. The school backtracked on part of this disciplinary action, however, and Layshock was allowed to return to regular classes. He graduated in spring 2006. In July 2007, the district court granted summary judgment to Layshock on his claim that that the school’s punishment violated his First Amendment rights and ordered a trial to determine whether he is entitled to compensatory

### **Implications:**

#### **Arguments in Favor of Expression**

“It would be an unseemly and dangerous precedent to allow the state in the guise of school authorities to reach into a child’s home and control his/her actions there to the same extent that they can control that child when he/she participates in school sponsored activities.”

“...the District does not now challenge the district court’s finding that Justin’s conduct did not result in any substantial disruption. Moreover, when pressed at oral argument, counsel for the School District conceded that the District was relying solely on the fact that Justin created the profile of Trosch. We have found no authority that would support punishment for creating such a profile unless it results in foreseeable and substantial disruption of school.”

### **Other Findings:**

#### **Arguments in Favor of Censorship**

“it is now well established that Tinker’s ‘schoolhouse gate’ is not constructed solely of the bricks and mortar surrounding the school yard.”

“The School District did not violate the First Amendment by punishing Justin for engaging in conduct which interfered with the School District’s ‘highly appropriate function...to prohibit the use of vulgar and offense terms in public discourse.’”

