

# Speak Up!



Mary Beth and John Tinker with armbands they created after 8th Circuit Court of Appeals ruling. March 4, 1968. Bettmann via Getty Images.

## The Case of Tinker v. Des Moines

A Reader's Theater

## Preparation

**Welcome to** our reader's theater presentation of *Tinker v. Des Moines*, a landmark Supreme Court case that highlights the importance of free speech in schools. This case revolves around a group of students who wore black armbands to protest the Vietnam War, leading to a significant legal battle over their First Amendment right to express their views.

**Background:** The Viet Nam War was a prolonged conflict that took place from 1954 to 1975. It primarily involved North Viet Nam and its communist allies, including the Viet Cong in South Viet Nam, fighting against South Viet Nam and its main ally, the United States. The war escalated in the 1960s, with significant U.S. military involvement. It was a highly contentious and costly conflict, resulting in the deaths of over 3 million people, including more than 58,000 Americans. The war also deeply divided public opinion in the United States and led to widespread protests.

In December 1965, a group of students in Des Moines, Iowa, decided to wear black armbands to school to protest the war and support a truce. Upon learning about the planned protest, the school administration quickly implemented a policy banning the wearing of arm bands, stating that any student who refused to remove them would be suspended. Mary Beth Tinker, her brother John, and their friend Christopher Eckhardt were among the students who participated in the protest. Despite the policy, the students wore their armbands to school and were suspended. The parents believed that their children's First Amendment rights were violated and decided to sue the school district.

**Purpose of the Mock Trial:** This mock trial aims to:

- **Educate** students about the historical context and significance of the case.
- **Develop** reading fluency and listening comprehension skills
- **Encourage** critical thinking and public speaking skills as students take on various roles in the court proceedings.
- **Foster** an understanding of the judicial process, the First Amendment, and the importance of civic engagement.

**Roles and Preparation:** Students will be assigned roles of significant parties in this case. Each participant will read their parts with expression and conviction, bringing the historical figures and courtroom drama to life. Teachers are encouraged to guide students in reading their roles and understanding the arguments presented during the trial.

During your visit to the courthouse, we will perform this readers' theater in an actual courtroom. We hope this readers' theater will be an enlightening and inspiring experience for all participants. Let's step into the shoes of these historical figures and explore Mary Beth Tinker's courageous fight for student rights.

## Cast of Characters

Narrators 1, 2, & 3\*

Deputy Clerk 1 & 2\*

Bailiff\*

Court Reporter

US District Court Chief Judge Roy Stephenson\*

Mary Beth Tinker (Plaintiff)\*

John F. Tinker (Plaintiff)\*

Christopher Eckhardt (Plaintiff)\*

Dan Johnston (Plaintiff's Attorney)\*

Raymond Peterson (Defendant)\*

Allan Herrick (Defendant's Attorney)\*

Philip Lovrien (Defendant's Attorney)\*

Jury Foreperson\*

Jurors (will deliberate as a group)

Eighth Circuit Chief Judge Vogel, U.S. Court of Appeals\*

7 Additional Eighth Circuit Judges

Associate Justice Fortas, U.S. Supreme Court\*

8 Additional Supreme Court Justices

\*Indicates Speaking Part

## ACT I

### Scene 1 – Introduction

[All three narrators and Mary Beth, John, & Christopher stand in front of the audience.]

Narrator 1: The First Amendment says that Congress shall make no law abridging the freedom of speech. The writers of our Constitution believed this freedom was an essential foundation for our democracy. In 1943, the United States Supreme Court said that it was not just a right for grown-ups. They said that students in public schools also have First Amendment rights.

Narrator 2: In 1965, Mary Beth Tinker and her brother John lived in Des Moines, Iowa. She was an 8th grader, and John was a Junior in High School. Our country was in a terrible war in Viet Nam. The evening news was filled with pictures of U.S. soldiers burning homes.

Mary Beth: We saw pictures of children and adults who had been burned by a U.S. weapon called napalm. I could not sit by and watch this happening to kids thousands of miles away on the other side of the world. In November, we went to Washington DC with Christopher and his family to attend a peace rally.

Narrator 3: When they returned home from the rally, there was a meeting at Christopher's house. The college students were planning to hold a peace rally in Iowa and the high school students wanted to show their support. They planned to wear black armbands to school to show respect for those who had died on both sides in the war. The armbands were also to support Senator Kennedy who was calling for a truce

on Christmas Day. The students made fliers to get the word out to other students in the community.

Narrator 1: People around the country held very different opinions about the Viet Nam War. When the schools in the area learned about the armband protest, the principals had a meeting. They were worried that the armbands would cause students with different opinions about the war to start fighting in the classrooms. Together, the principals decided to create a rule. The new rule said that anyone in Middle or High School who wore the armbands would be suspended from school until they returned without the armband on.

John, Mary Beth, & Christopher (*together*): We wore the armbands.

Narrator 1: They wore the armbands and were sent home from school. Their parents felt like the rule violated their First Amendment rights and decided to sue the school. Let's see what happened next.

## Scene 2 – The Trial

[Narrator 1, Deputy Clerk 1, Judge Stephenson, the lawyers, the plaintiffs and defendants, and the jury take their places according to court personnel instructions]

Deputy Clerk 1: All Rise. (*everyone stands*) The United States District Court for the Southern District of Iowa is now open. All persons having business before this Honorable Court may now draw near and be heard. God save the United States and this Honorable Court.

Judge Stephenson: (*Enter and sit down*) You may be seated. (*everyone sits*)

Reader's Theater: *Tinker v. Des Moines* (October 2024)



Judge Stephenson: The clerk will call the first case.

Deputy Clerk 1: The case of Tinker versus Des Moines Independent Community School District, Your Honor.

Judge Stephenson: Are the lawyers ready?

All Lawyers: We are, Your Honor.

Judge Stephenson: The Clerk will swear in the Jury

Deputy Clerk 1: *(Stand)* The Jury will stand and raise their right hands.

Jury: *(All Stand)*

Deputy Clerk 1: Do you solemnly swear that you will listen carefully and decide a verdict according to the law and evidence?

Jury *(all)*: I do.

Deputy Clerk 1: You may be seated *(Jury and Deputy Clerk sit down)*

Judge Stephenson: Do the lawyers for plaintiffs have an opening statement?

Dan Johnston: *(Standing)* Yes, Your Honor. *(Move to stand in front of the Jury)*

Members of the Jury, we are asking you to give these students only what every citizen is guaranteed by the United States Constitution. The idea of Freedom of Speech is fundamental to our community and unless that idea is taught to people when they are young, it will not matter when they are adults. Today, we will prove that when the principals made a rule against wearing black armbands, the schools unfairly punished my clients for speaking out and violated their First Amendment rights. We are asking the court to tell the schools that they cannot enforce this new rule. *(Return to your seat)*

Allan Herrick: *(Move to stand in front of the Jury)* Members of the Jury, my clients, the principals and teachers at the schools in Des Moines have a job to do. Imagine that you are sitting in a classroom trying to learn math. Suddenly a fight breaks out and you can't hear the teacher. How are students supposed to learn? How are teachers supposed to do their jobs? My clients make rules every day. They have to make sure that every student is safe. They have to make sure that every child has a chance to learn. We will prove that this rule is reasonable and necessary, and we are asking you to let these educators do their job. *(Return to your seat)*

Judge Stephenson: The lawyers for the plaintiffs may call their first witness.

Mr. Johnston: *(Standing)* Thank you, Your Honor. We call Christopher Eckhardt to the stand.

Deputy Clerk 1: *(Standing. Christopher moves to the witness stand)* Raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Christopher: I do.

Deputy Clerk 1: You may be seated. *(Both sit)*

Mr. Johnston: *(Moves to the podium)* What is your name?

Christopher: Christopher Eckhardt.

Mr. Johnston: Where do you go to school?

Christopher: I am a Junior at Roosevelt High School.

Mr. Johnston: Can you tell us about what happened at the meeting at your house on December 11, 1965?

Christopher: Yes. My parents said –

Mr. Lovrien:           (*Standing*) Objection! Your Honor, Christopher was not at the meeting.

Narrator 1:           In court, witnesses are only allowed to testify to things that they actually saw or heard. Usually, they are not allowed to testify about what someone *else* told them about the event. The judge has to make a decision about whether or not to allow the question. If he says “overruled” that means he will allow Christopher to answer the question, but if he says “sustained” it means that Christopher cannot answer the question Mr. Johnston asked.

Judge Stephenson:       Sustained.

Mr. Johnston:       I will withdraw the question, Your Honor. Christopher, what happened on December 16, 1965?

Christopher:       Like usual, I went to school at 8:00 AM. I wore a black armband that day.

Mr. Johnston:       Why did you wear the armband?

Christopher:       I knew that there were some college students who were protesting the Viet Nam war. I wanted to protest also because I want the war to end. I also knew that Senator Kennedy had called for a Christmas Truce like in World War I. I was hoping that if I wore the armband to school, I could convince more people about my views of the war.

Mr. Johnston:       Were you aware of the rule against wearing the armband?

Christopher:       Yes. There was an article in the newspaper about the principals’ decision. That is why I went straight to the principal’s office that morning.

Mr. Johnston:       What happened when you got there?

Christopher: I saw Mr. Blackman, the Vice Principal. He asked me to take the armband off.

Mr. Johnston: What happened next?

Christopher: I told Mr. Blackman that I would not remove the armband. He said that he would have to suspend me. He called my mother and I went home.

Mr. Johnston: I have no further questions, Your Honor.

Judge Stephenson: Does the Defense wish to cross-examine this witness?

Philip Lovrien: *(Standing and moving to the podium)* Yes, Your Honor. Christopher, you participated in a Civil Rights demonstration in Ames two and a half years ago, and then another demonstration in Des Moines more recently, correct?

Christopher: Yes, sir.

Mr. Lovrien: Did the police or the school stop you in any way from participating in these protests?

Christopher: No, sir.

Mr. Lovrien: I have no further questions, Your Honor. *(Returns to seat)*

Judge Stephenson: Thank you. You may step down Mr. Eckhardt. *(Christopher returns to his seat).* Does the plaintiff have any other witnesses?

Mr. Johnston: *(Standing)* Yes, Your Honor. We call Mary Beth Tinker to the stand.

Deputy Clerk 1: *(Standing. Mary Beth moves to the witness stand)* Raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Mary Beth: I do.

Deputy Clerk 1: You may be seated. *(Both sit)*

Mr. Johnston: *(Moves to the podium)* What is your name?

Mary Beth: Mary Beth Tinker.

Mr. Johnston: Where do you go to school?

Mary Beth: I am in 8<sup>th</sup> grade at Harding Junior High School.

Mr. Johnston: What happened to you on December 16, 1965?

Mary Beth: I wanted to participate in the witness or demonstration by wearing the black armband. I was going to wear the armband from December 16 until New Years, fasting one day and Christmas eve. Then I was going to attend New Year's services at my Church. So, on December 16, I went to school with my armband on.

Mr. Johnston: And what happened when you got to school?

Mary Beth: One of the students in my sewing class asked about it and told me that I better take it off or I would get in trouble.

Mr. Johnston: Did you have any more conversation about what it was for or about?

Mary Beth: No. Class started and that was the end of it.

Mr. Johnston: What happened next?

Mary Beth: I went to English class.

Mr. Johnston: Did anyone mention your armband in English?

Mary Beth: Yes. Some kids told me that the teachers were going to start getting me in trouble, but there wasn't any other discussion about it.

Mr. Johnston: Then what happened?

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- Mary Beth: I went to lunch. At lunch some boys at the table behind me made some smart remarks about the armband, but nothing more.
- Mr. Johnston: Up until this time, had any of your teachers or your principal said anything to you about the armband?
- Mary Beth: No.
- Mr. Johnston: What happened after lunch?
- Mary Beth: I went to my math class with Mr. Moberly. After the bell rang, he went by my desk and gave me a pass to go to the office. I went to Mrs. Tarmann's office because she is the girl's counselor. She wasn't in, so I talked to Mr. Willadsen.
- Mr. Johnston: And what was your conversation with Mr. Willadsen?
- Mary Beth: I told him that I thought I had been sent to the office because I was wearing the armband. He said that all that was left to do was for me to take it off. I took it off and he gave me a pass to go back to math.
- Mr. Johnston: So you went back to math without the armband?
- Mary Beth: Yes.
- Mr. Johnston: OK, then what happened?
- Mary Beth: Mrs. Tarmann came to my math class. She told Mr. Moberly that I was wanted in the office. When we went back to the office, she gave me a suspension notice.
- Mr. Johnston: Did she say anything else to you?
- Mary Beth: Yes. She said that she sympathized with me, but she had to suspend me because that was the rule. She was clear that I was not allowed to return if I was wearing the armband.

Mr. Johnston: I have no further questions, Your Honor. (*Returning to his seat*)

Judge Stephenson: Does the Defense wish to cross-examine this witness?

Philip Lovrien: (*Standing and moving to the podium*) Yes, Your Honor. Ms. Tinker, do you recall what happened in math class on December 15?

Mary Beth: Yes.

Mr. Lovrien: Isn't it true that Mr. Moberly spent a significant amount of *math* class discussing the matter of the arm bands, a discussion that dragged on to different demonstrations around the country.

Mary Beth: Yes. We did.

Mr. Lovrien: And isn't it true that Mr. Moberly said that if there was going to be a demonstration in his class, it would be for something for or against something in mathematics.

Mary Beth: Yes, sir.

Mr. Lovrien: And isn't it true that you specifically asked Mr. Moberly if he considered the armband a demonstration that would result in getting kicked out of his class, and he said yes.

Mary Beth: Yes. He was clear about it.

Mr. Lovrien: I have no further questions, Your Honor. (*Returns to seat*)

Judge Stephenson: Thank you. You may step down Ms. Tinker. (*Mary Beth returns to her seat*). Does the plaintiff have any other witnesses?

Mr. Johnston:       *(Standing)* Thank you, Your Honor. We call John Tinker to the stand.

Deputy Clerk 1:   *(Standing. John moves to the witness stand)* Raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

John:                 I do.

Deputy Clerk 1:   You may be seated. *(Both sit)*

Mr. Johnston:       *(Returns to podium)* What is your name?

John:                 John Tinker.

Mr. Johnston:       Where do you go to school?

John:                 I am a Junior at North High School.

Mr. Johnston:       Did you also wear a black arm band to school on December 16?

John:                 No, I didn't feel that I should just wear it against the will of the principals of the high schools without even trying to talk to them first.

Mr. Johnston:       Did you try to talk to the principal?

John:                 Well, after Christopher and Mary Beth were sent home, a group of us called Mr. Niffenegger who is the president of the school board. We asked him to convene a special meeting of the board to discuss what had happened that day at school.

Mr. Johnston:       What did he say?

John:                 He said that he would not hold a special meeting, but that the matter would be taken up at the next regularly scheduled school board meeting.

Mr. Johnson: What happened next?

John: Since they would not meet with us, I decided to go ahead and wear the arm band to school the next day.

Mr. Johnson: Did anything out of the ordinary happen that day?

John: During the morning, some of the students made unfriendly remarks to me. But they weren't threatening and they didn't bother me.

Mr. Johnson: Were there any disruptions during the day or any troubles in the classroom or otherwise?

John: No, not at all. I welcomed questions because I wanted to talk to other students and persuade them to my way of thinking. But there was no disruption of any school activities.

Mr. Johnson: What happened in English class?

John: My teacher told me to go to the principal's office. The principal told me to remove my armband upon orders from higher up. I refused to take it off and he dismissed me from school saying that I could only return when I took off the armband.

Mr. Johnson: Thank you. No further questions, Your Honor. (*Return to seat*)

Judge Stephenson: Does the defense wish to cross-examine this witness?

Mr. Lovrien: (*standing*) Yes, thank you, Your Honor. Mr. Tinker, you went to lunch on December 17, correct?

John: Yes, I did.

Mr. Lovrien: Isn't it true that during lunch you had a very unpleasant encounter with some students?

John: I suppose.

Mr. Lovrien: And isn't true that they called you names including "commie"?

John: Yes, but -

Mr. Lovrien: *(interrupting John)* I have no other questions, Your Honor.

Judge Stephenson: Thank you. You may step down Mr. Tinker. *(John returns to his seat)*. Does the plaintiff have any other witnesses?

Mr. Johnston: No, Your Honor. We rest our case.

Judge Stephenson: Then the defense may begin its case. Please call your first witness.

Mr. Lovrien: We call Raymond Peterson to the stand.

Deputy Clerk 1: *(Standing. Dr. Peterson moves to the witness stand)* Raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Dr. Peterson: I do.

Deputy Clerk 1: You may be seated. *(Both sit)*

Mr. Lovrien: *(Moves to the podium)* What is your name and your position?

Dr. Peterson: Raymond Peterson. I am Director of Secondary Education in Des Moines, Iowa.

Mr. Lovrien: Dr. Peterson, can you tell us what happened on December 14, 1965?

Dr. Peterson: I had heard about some planned protest. I gathered the High School principals together so that we could respond to the situation.

Mr. Lovrien: And what was the plan?

Dr. Peterson: For a number of reasons, we decided that any student who came to school with a black armband would be sent home until they removed the armband.

Mr. Lovrien: What reasons were those?

Dr. Peterson: For the good of the school system we don't think that this should be permitted. Schools are no place for demonstrations. One of our former students was killed in Viet Nam and some of his friends were still in school. We thought it might evolve into something which would be difficult to control. Also, we were just following standard procedure for what is considered appropriate dress. One of the principals reported that a student wore a Nazi armband to school several weeks ago. When asked to remove it, he did.

Mr. Lovrien: Were you trying to target a particular student or group of students?

Dr. Peterson: No, we were trying to prevent distractions and interruptions to the educational procedure of the school.

Mr. Lovrien: Thank you, I have no further questions, Your Honor. *(Returns to seat)*

Judge Stephenson: Does the plaintiff have any questions for this witness?

Mr. Johnston: *(standing)* Yes, thank you, Your Honor. Dr. Peterson, are you aware of any disruptions or fights that occurred on December 16 at Harding Junior High involving Mary Beth Tinker?

Dr. Peterson: No.

Mr. Johnston: Any disruptions or fights at Roosevelt High School involving Christopher?

Dr. Peterson: No.

Mr. Johnston: Any disruptions or fights at North High School involving John Tinker?

Dr. Peterson: No.

Mr. Johnston: So to your knowledge, the wearing of these armbands did not cause any major fights or disruptions at any of the high schools in Des Moines?

Dr. Peterson: Not to my knowledge.

Mr. Johnston: Thank you, I have no further questions.

Judge Stephenson: Thank you. You may step down Dr. Peterson. (*Dr. Peterson returns to his seat*). Does the defense have any other witnesses?

Mr. Lovrien: No, Your Honor. We rest our case.

Judge Stephenson: Are there any closing arguments?

Mr. Johnston: (*Stand*) Yes, Your Honor. (*Move and face the Jury to speak*). The Constitution guarantees citizens the right to speak freely. The students who come to you today are also citizens! They are paying attention to what is happening in the world around them. They are thinking and making thoughtful decisions about serious events. Don't we want them to be engaged? Schools are exactly the places where they should learn how to discuss and debate important topics. You heard from multiple witnesses today that this protest caused no real disruption to the learning environment. We ask you to decide for these students and find the school's actions to be unconstitutional.

Mr. Herrick: *(Move and face the Jury to speak)* Members of the Jury. No one here is arguing that students do not have the freedom granted by the First Amendment. What we are saying is that there is a time and a place for protest. These students have every right to protest outside of school or to attend rallies as these families did. Our teachers and administrators work hard to create an environment that allows all children to learn. Every day, they have to make and enforce rules to minimize disruptions. Are the plaintiffs suggesting that the school should allow Nazi armbands at school? The Des Moines school district made a completely reasonable decision to prohibit this protest on school grounds and we should not interfere. *(return to seat)*

### Scene 3 – Jury Deliberation

Judge Stephenson: Member of the Jury, it is now time for you to make your decision. Your decision should only be based on what you heard in court today.

Jury: *(Quietly discuss the case and vote for which side should win. Give the judge a thumbs up when ready to announce your verdict)*

Judge Stephenson: *(When the jury is ready)* Has the Jury reached a verdict?

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### IF THE JURY DECIDES FOR MARY BETH, JOHN, & CHRISTOPHER

Foreperson: Yes, Your Honor. We, the Jury, find that the Des Moines School System unconstitutionally restricted the freedom of speech of the plaintiffs.

Judge Stephenson: The Jury has made a decision. The Schools may not enforce the blackarm band rule. This court is adjourned.

Deputy Clerk 1: *(Stand)* All rise

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### **IF THE JURY DECIDES FOR DES MOINES SCHOOL DISTRICT**

Foreperson: Yes, Your Honor. We, the Jury, find that the Des Moines School System acted reasonably and did not deprive the plaintiffs of their constitutional right of freedom of speech.

Judge Stephenson: The Jury has made a decision. The request of the plaintiff's is denied. This court is adjourned.

Deputy Clerk 1: *(Stand)* All rise

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Narrator 1: In real life, Mary Beth, John, and Christopher lost the trial. Here is Judge Stephenson's decision.

Judge Stephenson: Officials of the defendant school district have the responsibility for maintaining a scholarly, disciplined atmosphere within the classroom. These officials not only have a right, they have an obligation to prevent anything which might be disruptive of such an atmosphere. Unless the actions of the school officials in this connection are unreasonable, the Courts should not interfere. Case dismissed!

Narrator 1: Even though they lost, the students did not give up!

## ACT II

### Scene 1 - The Eighth Circuit

*[Narrator 2, the lawyers, Eighth Circuit Judges, Deputy Clerk 2 take their places according to the instruction of court personnel.]*

Narrator 2: After they lost in the District Court, Mary Beth, John, and Christopher filed an appeal. The Court of Appeals is in St. Louis, so their families traveled from Des Moines to the courthouse in St. Louis for the hearing. Let's hear what happened.

Deputy Clerk 2: *(standing rap the gavel loudly twice and clearly announce. The Honorable... (pause) (everyone stands, the judges enter) The Judges of the United States Court of Appeals for the Eighth Circuit. (wait while the judges enter and stand behind their chairs. Once the Chief Judge is in place rap the gavel three times and continue) Hear Ye, Hear Ye, Hear Ye; The United States Court of Appeals for the Eighth Circuit is now in session. All persons having business before this Honorable Court may now draw near and they will be heard. God save the United States and this Honorable court. (rap the gavel once and be seated)*

Chief Judge Vogel: *(Judges sit down)* Please be seated. *(everyone sits)* Madame/Mister Clerk, I believe we have one case on the docket this morning. Will you please call the case.

Deputy Clerk 2: *(standing)* The first case for argument is Tinker, et. al v. Des Moines Independent Community School District et al. *(be seated)*

Chief Judge Vogel:       Ok, counsel you may proceed when ready.

Mr. Johnston:       *(standing at podium)* Thank you, Your Honors and may it please the Court. We are here today to ask the Court to reverse the decision of the District Court and find in favor of the plaintiffs in this case. For years, this court has held that the First Amendment protects the rights of public school students to free speech in their schools and classrooms. Just creating the rule against wearing arm bands to school was unconstitutional. The plaintiffs were then suspended just for exercising their First Amendment rights. The trial record established that the wearing of the arm bands caused no disturbance. For these reasons, we ask the court to reverse the decision of the District Court and grant relief to the plaintiffs. *(returns to seat)*

Narrator 2:       Normally, Mr. Johnston would have been interrupted many times with questions from the judges. He would have to use his limited time for making his case to answer the judges' questions. But now, we are going to hear from the defendants.

Chief Judge Vogel:       Mr. Herrick, you may proceed.

Mr. Herrick:       *(standing at podium)* Good morning Your Honors and may it please the court. The regulations put in place by the school district did not deprive the students of their constitutional rights under the First Amendment. We must give school officials the authority to make decisions discipline in their schools. Given that there is bitter disagreement in this country about the Viet Nam War, it was reasonable for the principals to predict that this protest could create a disruption in their school. Disturbances in schools cannot be compared to disturbances on the street. It is not necessary for a physical fight to break out – a long

conversation about the protest in math class is enough to disrupt the learning of math. This rule should be upheld as constitutional because it was a reasonable way to promote school discipline. Thank you. (*returns to seat*)

Chief Judge Vogel: Thank you, counsel. The argument has been submitted and we will issue an opinion in due course.

Narrator 2: Normally, the judges would take several months to talk to each other and come up with their opinion. Majority rules, so whichever side gets two of the votes will win the case. Here is Chief Judge Vogel to announce the court's opinion.

Chief Judge Vogel: It is the opinion of this panel of judges that this case is so important that we order a rehearing *en banc*.

Narrator 2: All cases that are heard before the District Court have a right to an appeal and be heard by a three-judge panel. It is rare for a case to be heard by all the judges of the Eighth Circuit. When that happens, it is called a rehearing *en banc*.

*All the remaining judges enter the courtroom.*

Narrator 2: The attorneys all returned to St. Louis for another hearing where they made the same arguments. On November 3, 1967, the Court issued this opinion.

Chief Judge Vogel: The judgment below is affirmed by an equally divided court.

Narrator 2: Neither side got a majority! There were eight judges that heard the case. Four of them sided with the students and four of them sided with the school. When this happens, it means that the decision of the trial court stands. The school won again. But the students didn't give up!

## ACT III

### Scene 1 - The United States Supreme Court

*[Narrator 3, the lawyers, Supreme Court Justices, & Bailiff take their places according to the instruction of court personnel.]*

Narrator 3: Even though they lost again, Mary Beth, John, and Christopher believed that this was such an important question that they asked the United States Supreme Court to think about it. It is very rare for the Supreme Court to take a case. Every year, they get thousands of requests from all over the country. They only take about 1% of the cases. But they took this one! On November 12, 1968, the families and the attorneys traveled to Washington DC to argue the case.

Bailiff: *(Standing clearly announce)* The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. *(Pause while the Justices enter and stand behind their chairs)* Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the court is now sitting. God save the United States and this Honorable Court. *(Everyone is seated)*

Narrator 3: The attorneys stood up and argued the case again, just like they did at the Eighth Circuit. On February 24, 1969, Mr. Justice Fortas delivered the opinion of the court. First, he wrote about the evidence and testimony from the District Court and then he talked about the cases that came before this one. Finally, he said:

Justice Fortas: It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. Wearing these

armbands is symbolic speech and is protected by the First Amendment. The students caused discussion outside of the classroom, but no interference with work and no disorder. In the circumstances, our Constitution does not permit State officials to deny this form of expression. We reverse and send this case back to the District Court.

Bailiff: All Rise! (*Justices leave*)