

No. 1034

OCT. TERM 1967  
U. S. Supreme Court  
**RECORD**

(Original)

**United States Court of Appeals**

FOR THE EIGHTH CIRCUIT

**No. 18,642**

JOHN F. TINKER and MARY BETH TINKER, minors, by  
their father and next friend, LEONARD TINKER, and  
CHRISTOPHER ECKHARDT, minor, by his father and  
next friend, WILLIAM ECKHARDT,

*Appellants,*

vs.

THE DES MOINES INDEPENDENT COMMUNITY  
SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF  
THE DES MOINES INDEPENDENT COMMUNITY  
SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS.  
MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK,  
GEORGE CAUDILL, JOHN R. HAYDON, MERLE F.  
SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD  
JACKSON, MELVIN BOWEN, DONALD WETTER,  
CHESTER PRATT, CHARLES ROWLEY, RAYMOND  
PETERSON, RICHARD MOBERLY, VERA TARMANN,  
LEO WILLADSEN, DONALD BLACKMAN, VELMA  
CROSS, and ELLSWORTH E. LORY,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION

**FILED**

JAN 16 1967

RUBERT C. TURNER  
CLERK

tiffs, and Herrick, Langdon, Sandblom, and Belin for defendants, make the following Pre-Trial Stipulation pursuant to the order of the Court entered May 24, 1966.

## I

This action was commenced alleging jurisdiction conferred by 42 USCA 1983, plaintiffs contending they were suspended from defendant school district for participating in conduct privileged by Amendment Fourteen on the U. S. Constitution, to wit: wearing black cloth arm bands to express a political idea. Plaintiffs seek an order restraining defendants from disciplining them so as to deprive them of their rights to free speech; and seeking nominal damages.

## II

The following facts are hereby stipulated as true and undisputed in this action.

- a. Prior to December 16, 1965, defendant Peterson and defendants Rowley, Betz, Jackson, Bowen, and Wetter met in their capacities as officials of defendant district and decided that students of defendant district would be prohibited from wearing black arm bands while in school.
  - b. Prior to December 16, 1965, the aforesated prohibition was announced to students and employees of defendant district.
  - c. On December 16, 1965, plaintiffs Christopher Eckhardt and Mary Beth Tinker wore black arm bands while attending schools in defendant district and were told to leave school until such time as they removed the arm bands.
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On July 25, 1966, evidence was taken in the matter as follows:

#### PLAINTIFFS' CASE

JOHN FREDERICK TINKER, Plaintiff, testified as follows:

Direct Examination by Mr. Johnston.

My name is John Frederick Tinker, 704 Grandview; 15 years old. My parents are Leonard Edward Tinker and Mary Jean Tinker. My father is Peace Education Secretary for the American Friends Service Committee. He is a Methodist Minister, officially assigned by the Bishop to the American Friends Service Committee. I am in the 11th grade, at North High School in Des Moines, Iowa.

During the month of December, 1965, I decided to participate with several other people in a witness or demonstration of views that I have by wearing a black arm band over the holiday season. On Wednesday evening, December 15, I received a phone call from Ross Peterson, or Bruce Clark, I am not sure which one. Bruce and Ross were both members of the Liberal Religious Youth Organization at the Unitarian Church. They told me that some people had met and decided that they were going to wear arm bands during the holiday season to mourn the dead in Viet Nam and to hope for a Christmas truce that might be extended into an open ended truce. Wednesday evening they came over to my house and gave me copies of a document entitled "We Mourn" which I read and agreed with. They talked with mother and father and my sister Mary Beth and I decided to wear an arm band.

The idea of an indefinite truce was originally Robert Kennedy's and I hoped that such a truce would stop the killing and might lead to a peaceful settlement in the war. In addition to the wearing of the arm bands there was going to be a fast on New Years Eve and one other day and I did fast during those days. Also, there was a worship serv-

ice at the Unitarian Church on New Years Eve, but I am not sure if that was directly tied with the arm band demonstration.

I have been in several demonstrations against the war and several Civil Rights demonstrations. The subject of peace and the subject of the war in Viet Nam and the political and moral implications of it are discussed quite often in my home. These are concerns which I share with my parents and most of my brothers and sisters although I do not subscribe to all of the views of my parents.

I attend a Friends meeting and have been so attending for four years. The subjects of the conduct of war in Viet Nam and the roll of warfare and international relations and international policy are discussed at the Friends meeting quite frequently.

I had not attended any meetings concerning the wearing of arm bands prior to the one I discussed earlier on Wednesday night, but I attended most of the meetings concerning this after Wednesday.

Most of the others wore arm bands on Thursday December 16, 1965, 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. I believe I first learned they were opposed to wearing the arm bands on Wednesday night and so I didn't wear one on Thursday because I hoped we could try to talk to the school board. Thursday evening we had a meeting with the students who had worn them Thursday and other people who were interested and the President of the school board, Mr. Niffenegger, was called, to ask him if we could meet with the school board and talk to them about the arm bands. He said no not before the next regularly scheduled meeting of the school board. I first wore an arm band on Friday, December 17. That was a school day and I wore the arm band to school.

The first thing in the morning we had orchestra practice and I was almost late for that and was on a tight schedule, so I didn't have time to put my arm band on for that period. Nor did I have time to put it on when I went to home room, after orchestra. I put the arm band on after home room. I arrived at school around 7:30 A. M. and put the arm band on about 8:30 A. M.

The arm band was a strip of black cloth about 2 inches wide. I wore it on the left sleeve of my jacket the first part of the day and then on my shirt the second part of the day.

The instructor in the first class I wore the arm band was Mr. Thompson. I'm not sure Mr. Thompson saw me wearing the arm band. He made no comment about it. In his class we engage in group work and we were working out some sort of play and Mr. Thompson was out of the room much of the time.

I felt self-conscious about wearing the arm band. We students were talking about the play we were going to put on and some of the other students talked to me about the arm band and asked me why I was wearing it. I told them why and some of them didn't think I should do this, but they thought I should have the right to if I wanted to. This discussion took place on and off during the class period. There was no other activity about the arm band during this first class.

The next class I went to was algebra class. I got there about 10:30 and the professor was Mr. Worden. I don't believe he saw the arm band either; he made no comment about it and there was no discussion in his class at all about the arm band. I was on time for my algebra class. The next class I attended was gym during the third hour period. I wore the arm band on the way to gym class and

there was no discussion of that on the way to class. There was hardly no one around. I wouldn't say for sure whether there was any discussion about it in the halls on the way to the class or not. I did not wear the arm band when I had my gym clothes on, and there was no discussion of it in the gym class itself. There was some discussion before. After gym class some of the students were making fun of me for wearing it. Others, who were my friends, said they didn't want me to get in trouble. Two or three boys made remarks in the locker room that were not very friendly. This lasted for perhaps 3 or 4 minutes. They did not threaten me with any physical harm.

After gym class I had half an hour for lunch. I ate lunch in the student center with several other students with whom I eat frequently. These people warned me in a friendly manner to take the arm band off. There was one student with whom I had had a feud in the 7th grade who was making smart remarks for about 10 minutes. There were 4 or 5 people with him standing milling around. There were quite a few other students standing and milling around the lunch room. To my knowledge there were no threats to hit me or anything like that. At no time was I in fear that they might attack me or hit me in the student center because there were too many people there. I believe there were faculty members or school staff members there most of the time. No faculty member or staff member entered into any of this activity concerning the arm band in any way. A football player named Joe Thompson told the kids to leave me alone; that everybody had their own opinions.

After lunch I went to 4th period which is English with Mr. Lory. I still had the arm band on and when I arrived at the class Mr. Lory said "they are waiting for you at the office." I went down to the office; it was Mr. Wetter's office. Before arriving there I made a phone call to my

home. I think it was my father who answered. My parents had told me if anything went wrong or I got in trouble to call. They knew that I would be wearing the arm band. Mr. Wetter is principal of North. I walked into his office and he said "I suppose you know I have to ask you take it off," and I said yes I do. He said "I don't suppose you will" or something like that and I said "no" and he said "well, I guess you know you can't wear it in school". I can't remember exactly. He said it was something about a hierarchy, and that he was following orders from higher up. When I told him that I was not going to take the arm band off he told me I would have to leave school but wouldn't be suspended. He said that as soon as I took the arm band off or there was a different ruling on it that I could come back to school.

Mr. Wetter said for his own personal reasons he wanted to know why I was wearing the arm band so I told him the same thing; mourning the dead, and hoping for a Christmas truce. I guess he was in World War II and he told me about that and he made one statement that I am not sure what he meant. He said "I suppose as soon as you leave that you'll call the newspaper" and I told him that we didn't call the newspaper to begin with; that it was the school board that had made the newspapers.

My father arrived at the school and talked to Mr. Wetter for quite awhile, in my presence. We left and it was Tuesday, January 4, 1966, when I returned to school. I never received a notice of official suspension.

I had been in school in Des Moines about 8 years before this suspension and had never been suspended or been sent home before for any purpose except being sick.

I hold the same philosophies and moral beliefs now that caused me to wear the arm band and if I were to return

to school this fall or tomorrow I would still desire to have the right to wear an arm band to express those views.

Cross-Examination by Mr. Lovrien.

It was Wednesday night when Ross Peterson and Bruce Clark came over to my house to discuss the situation. My parents were present. Ross and Bruce told me about the arm bands and I am not sure if there was a definite decision whether or not to wear an arm band. I can't remember for sure but to my knowledge it was the first time I had heard about the idea of wearing arm bands relative to the war in Viet Nam. I hadn't made a definite decision to wear an arm band on Wednesday evening. There had been a meeting at the Eckhardt's on a Saturday night before; I believe that would have been the 11th. I couldn't say for sure whether my mother attended that meeting or not. There could have been a discussion about it in my family before Wednesday, but I can't remember.

I used a piece of black cloth. I don't know where I got it. But I ironed it neatly. Mother must have bought it, somebody bought it, but it was probably a long time prior to that. I know she didn't go out and buy black ribbon Wednesday night or whenever it was, just for the arm bands.

Thursday morning my sister Mary Beth wore a ribbon, but I didn't, and Mary Beth got sent home from school.

Also at home in December of 1965 I had a younger sister, Hope, and my younger brother, Paul. Paul is 8 and wore a black arm band to school Thursday morning. He is in second grade. Hope is 11 and in the 5th grade and I believe she wore an arm band on Thursday morning, too.

I suppose my mother and father have participated in most of the demonstrations against the war in Viet Nam and Civil Rights demonstrations that I have participated in.

The meeting Thursday December 16 was attended by people who had worn the arm bands on Thursday and other interested people. My sister was there, Chris Eckhardt, Chris Singer, Ross Peterson, and Bruce Clark, and others whose names I do not know. Bruce didn't wear an arm band but I am sure that Chris had worn his, and I knew on Thursday evening that he had been sent home. At the meeting we called Mr. Niffenegger and tried to talk to him. It was either Ross or Bruce one of the two who called, because they were the oldest of the group. I can't remember exactly what was said. The purpose for calling Mr. Niffenegger was that we were going to ask him if we could maybe have a discussion with him and talk to him before the school board meeting. We thought if it was brought to the school board's attention, what had happened, I really thought that they would change their decision. We recommended a meeting ahead of the regular meeting and he said no that he would not call a special meeting. He said the regular meeting would be in the next week, Tuesday, but we went on Christmas vacation Wednesday and that would have meant 3 days that we then would have been either out of school or unable to wear the arm bands.

I didn't anticipate the rule would forbid me from wearing the arm bands outside of school. I was concerned about being able to wear it to school because I didn't see anything wrong with it. I didn't think it was all that bad. In fact, I thought it was kind of good. That's why I was going to wear it. I wanted to wear it as many days in school as I could.