*Overview*

*Tinker v. Des Moines***Applied to a School Dress Code and Student Walkout**

The landmark decision in *Tinker v. Des Moines* is widely considered the watershed of students’ free speech rights at school. Apply it to a contemporary scenario in which students stage a school walkout to protest a new dress code that bans messages on clothing.

**How to Use These Resources**

1. **Start Here**. The Activity Download is the place to find the web resources formatted as courtroom- and classroom-ready handouts that can be mixed and matched.
2. **Modify**. Choose from the optional [civil discourse activities](https://edit.uscourts.gov/file/27357/download) that can be incorporated into the agenda.
3. **Read**. Participants read the facts and case summary.
**They also read** thefictional scenario about a student walkout in protest of a dress code that bans messages of any kind on clothing worn at school.
4. **Analyze**. Student attorneys are assigned to two sides of the case and the issues listed in the talking points.
5. **Deliberate**. All other students are jurors who deliberate in a courtroom fishbowl activity. The judge, volunteer attorneys, and student attorneys observe as the jurors deliberate in a large group or smaller groups. Due to time constraints, the verdict doesn’t have to be unanimous.
6. **Reflect.** Students can respond verbally or in writing to the discussion questions.

**What Happened After Tinker v. Des Moines**

In *Tinker v. Des Moines*, the Supreme Court of the United States ruled that the First Amendment applies to public schools. By deciding that school officials cannot censor student speech unless it materially and substantially disrupts the educational process the court set a precedent that is still cited in student free speech cases, including [*Hazelwood v. Kuhlmeier*](https://www.uscourts.gov/educational-resources/educational-activities/hazelwood-v-kuhlmeier) and [*Morse v. Frederick*](https://www.uscourts.gov/educational-resources/educational-activities/morse-v-frederick).

*Agenda When Students Serve as Judges*

*Tinker v. Des Moines*  **Applied to a School Dress Code and Student Walkout**

**8:30 – 9:00 Students Arrive at the Courthouse and Go Through Security**

*(30 minutes)* They get settled in the courtroom and fill out the civility self-reflection sheet.

**9:00 – 9:15** **The Facilitator Welcomes the Students.**

(15 minutes) **The Attorney Volunteers Introduce Themselves** – *Why I Chose the Law.*

**9:15 – 9:25 The Facilitator Leads a Discussion of a Few Points from the Self Reflections.**

*(10 minutes)* The Facilitator guides students through a brief discussion of the ground rules for civil discourse. *(See handouts.)*

**9:25 –9:35 Attorney Coaches Present Facts and Case Summary of Tinker v. Des Moines** *(10 minutes)*  **and the Fictional Scenario**

**9:35 – 10:20 Attorney Coaches Prepare Four Student Attorneys for Oral Arguments**

*(45 minutes)*  **Attorney Discussion Leaders Prepare All Others as Student Judges** 1. Arguments Worksheet: Students Fill Out/Attorneys Facilitate Discussion

 2. Question-Asking Activity: Attorneys Facilitate

**10:20 – 10:25**  **Everyone is in Place for the Oral Arguments**

*(5 minutes)* First panel of student judges takes the bench before the Judge arrives.

 All others are judges who sit in the gallery.

**10:25 –10:30 The Judge Takes the Bench**

*(5 minutes)*The Judge welcomes the students.

**10:30 – 10:40 1. The Judge Opens the Oral Arguments**

*(~10 minutes)* **Panel #1: Dress Code. Six Student Judges. Two Student Attorneys.**

 **Issue #1: Dress Code.** Student lawyers argue, and student judges ask questions

**10:40 – 10:50**

*(~10 minutes)* **2. The Judge Calls the Second Panel of Student Judges to the Bench**

 **Panel 2: Walkout. Six Student Judges. Two Student Attorneys.**

 **Issue #2: Walkout.** Student lawyers argue, and student judges ask questions

**10:50 – 11:10 The Judge Leads All Students in Judicial Deliberations**

*(20 minutes)* The Judge facilitates the discussion on Issue #1 Dress Code **and takes a vote.**

 The Judges facilitates a discussion on Issue #2 Walkout **and takes a vote.**

**11:10 – 11:20 Q/A with the Judge**

*(10 minutes)* Students ask the Judge questions on any topic.

**11:20 – 11:30** **Group Photo** **in the Courtroom**

*(10 minutes)* Students talk with the Judge and attorneys. They fill out the feedback form.

**11:30 Adjourn**

*Agenda When Students Serve as Jurors*

*Tinker v. Des Moines* **Applied to a School Dress Code and Student Walkout**

**8:30 – 9:00 Students Arrive at Courthouse and Go Through Security**

*(30 minutes)* While Waiting in the Courtroom, Students Take Quizzes:

1. Civility Self Reflection Quiz (Facilitator Leads Discussion After the Welcome. **Note:** A Brief Ground Rules-Setting Conversation is Included.)
2. Reality Check Quiz (Judge Leads Discussion at End of Program)

**9:00 – 9:30 Facilitator Welcomes and Gives Orientation**

*(30 minutes)* Facilitator Leads Discussion on Civility Quiz and Takes Students Through

 Activity on Setting Ground Rules for Civil Discourse.

**9:30– 9:45 Four Attorney Volunteers Introduce Themselves** – *Why I Chose the Law*

*(15 minutes)* 1.One Attorney Presents Facts and Case Summary: *Tinker v. Des Moines* 2. One Attorney Presents the Fictional Scenario: School Walkout

**PREPARATION**

**9:45 – 10:25 Student Attorneys Prep: Two Atty Coaches Prepare Two Student Teams**

*(40 minutes)* **One Coach for Each Team**. They leave courtroom to prepare their arguments.

 **Student Jurors Prep: Two Atty Discussion Leaders Prepare All Jurors**

1. Students Fill Out Arguments Worksheet and Attorneys Facilitate Discussion
2. Volunteer Attorneys Lead Question-Asking Activity

**10:25 --10:30**  **Students Return to Courtroom and Get Settled**

*(5 minutes)* Student attorneys and coaches are seated at counsel tables. Student jurors are seated in the gallery.

**SIMULATION**

**10:30 – 10:35 Presiding Judge Takes Bench and Welcomes**

*(5 minutes)*

**10:35 – 11:00 Opening Protocol – Judge and Student Attorneys**

*(25 minutes)*Talking Points Arguments – Student Attorneys Argue Before the Judge

 Judge Asks Questions of Each Student Attorney After Each Speaks

**11:00 – 11:20 Facilitator Guides Jury Deliberations**

*(20 minutes)* When Deliberations Wind Down, Facilitator Takes a Show-of-Hands Vote

**11:20 – 11:40** **Reality Check Quiz: Judge Discusses Social Situations with Students**

*(20 minutes)* Then Answers Questions on Any Topic

**11:40 – 11:50** **Group Photo** **in the Courtroom**

*(10 minutes)* Informal Socializing with the Presiding Judge and Volunteer Attorneys.

**11:50 Adjournment**

*Quiz and Discussion Starter*

**Reality Check: Sometimes There Are No Do-Overs**

Today’s Decisions Can Have Legal and Long-Term Legal Consequences

*Students take this quiz while waiting for the program to start.*

*At the end of the program, the Judge leads a conversation on the situations.*

1. Because I’m 18, any federal crime I’m convicted of won’t have an impact on the rest of my life.

 **True False**

2. My parents know that my friends and I are going to drink and they want to keep us off the road, so they buy the beer and take us to a federal park where we party and camp overnight. Law enforcement will definitely get involved even if we have parental supervision.

 **True False**

3. I’ve been driving for two years. I’ve never been caught speeding and I’ve never had an accident. I do have quite a few parking tickets in my glove compartment that I’ve never paid. If I ever got stopped, say, on a federal parkway, the worst that could happen is that my insurance rates would go up.

 **True False**

4. When I go to a bar, I use the fake ID that I bought on the Internet. I have heard that the site could be part of a national ring, but I’m not going to get caught. Even if I do, the worst that will happen is that they’ll take my I.D. and kick me out of the bar.

 **True False**

5. I don’t drink or do drugs, but I go to parties where other guys do. Last Saturday, my best friend’s uncle bought us a keg and brought it across state lines to the party. I may have a problem even though I’m not actually doing the distributing or drinking.

 **True False**

6. I’m on vacation in Colorado, where pot is legal. I bring some home to Florida. If I get caught with it, there is no problem because I bought it in a state where it is legal.

 **True False**

7. Putting graffiti on a government building – like a Post Office – is my First Amendment right, even if some people consider my message politically incorrect speech. If I ever did get caught, I would just have to clean it off.

 **True False**

8. I order nutritional supplements off the Internet that I get in the mail. I use them to improve my athletic performance. I need every edge I can get to win a college scholarship. These are pharmaceuticals and not illegal drugs that I’m getting from some street dealer, so I’m okay.

 **True False**

9. I like to take videos at parties and share them on social media. One time we staged a food fight that was a takeoff on the World Wrestling Smack Down. The parents thought we were really fighting. We called the video “Food Fight Club.” I may have legal troubles.

 **True False**

**10.** If I ever did get convicted of something in federal court, I would just get probation. Probation in the federal system is just a matter of meeting with my probation officer and, maybe, doing drug testing for a few weeks.

 **True False**

*Civility Self-Reflection Tool*

*Students Fill Out This Quiz While Waiting for the Program to Start*

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**12. I have side conversations that distract the person I’m talking with – and others – from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**13. I listen for what people mean – not just what they say – when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**16. I roll my eyes or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

*Civility Self-Reflection -- Discussion Prompts for Volunteers*

Self-Reflection Tool: Discussion Starter

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Would people say you, typically, are an inflamer, an informer, an inquirer, an influencer, a good listener, a comedian? What other roles do people take in heated conversations?***

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Why do you tend to remain silent? Can that be a good thing? What makes you comfortable enough to speak?***

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What do you say and do?***

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***When people are really listening to you, what difference does that behavior make to you? What difference does it make in the conversation?***

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What do you say to yourself so that you really listen, not just wait for your turn to speak?***

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What does that mean? How does it work?***

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you use silence? How effective is it?***

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never
***Why? Give an example of what you can say or do/not do when someone is disrespectful to you.***

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Give examples of clarifying questions.***

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What limits do you put on yourself to keep from talking too much? On the other hand, what do you do/say when you can’t get a word in edgewise?***

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***When you feel strongly about a subject, how do you monitor yourself so that you don’t interrupt?***

**12. I have side conversations that distract the person I’m talking with – and others -- from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you feel when someone is whispering while you’re talking, even when they’re trying not to be disruptive?***

**13. I listen for what people mean – not just what they say -- when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

***What do people do/say when they are listening just to the words? What do they do/say when they are listening for what the person means?***

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What are some phrases you can use to bridge the gap when you are trying to find common ground?***

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you feel when someone repeats a point that already has been made?***

**16. I roll my eyes or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do nonverbals detract from civility, even when the speaker doesn’t see you rolling your eyes, etc.?***

**Setting Ground Rules – Briefly**
Because students do this kind of activity at school, it won’t be new to them. The facilitators ask students about their pet peeves when they are trying to have a serious conversation about an emotional/controversial subject with their peers. The facilitators use these pet peeves to have the students set ground rules for their interactions in the courtroom, e.g., no interrupting.

*Facts and Case Summary*

*Tinker v. Des Moines*
491 U.S. 397 (1989)

**FACTS**

At a public school in Des Moines, Iowa, students planned to wear black armbands at school as a silent protest against the Vietnam War.

When the principal became aware of the plan, he warned the students that they would be suspended if they wore the armbands to school because the protest might cause a disruption in the learning environment. Despite the warning, some students wore the armbands and were suspended.

During their suspension, the students' parents sued the school for violating their children's right to free speech. The U.S. District Court for the Southern District of Iowa sided with the school’s position, ruling that wearing the armbands could disrupt learning.

The students appealed the ruling to the U.S. Court of Appeals for the Eighth Circuit but lost and took the case to the Supreme Court of the United States.

**Decision and Reasoning**

In a 7-2 decision, the Supreme Court’s majority ruled that neither students nor teachers “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The Court took the position that school officials could not prohibit only on the suspicion that the speech might disrupt the learning environment.

The dissent argued that the First Amendment does not grant the right to express any opinion at any time. Students attend school to learn, not teach. The armbands were a distraction. School officials, acting on a legitimate interest in school order, should have broad authority to maintain a productive learning environment.

*Fictional Scenario*

*Tinker v. Des Moines* **Applied to a School Dress Code and Student Walkout**

In a closed-door meeting during spring break, the West School District adopted a new dress code. Created without student input, the dress code was scheduled to go into effect the week after spring break. The dress code banned apparel with messages and slogans of any kind – commercial, political, social, or humorous/ironic. The school board chair said the rationale was twofold:

1. To maintain an orderly learning environment, and
2. To avoid conflict and disruption about inappropriate, offensive, or triggering messages that could be worn on clothing while at school.

In an open letter to the students and the community, the school officials explained that in an increasingly polarized society, the message-free clothing policy would reduce the potential for distractions and disruptions in favor of an orderly learning environment. The school board sought to avoid any disruptions that might arise from students wearing clothing with offensive or controversial logos or slogans**.** The school officials reported in the letter that class time had recently been taken up in heated discussions around T-shirts with messages such as:

* Don’t Be My 13th Reason
* We Call BS
* Believe in Something, Even if it Means Sacrificing Everything.
* Black Lives Matter
* Confederate Monuments Forever
* #Me Too

In response, the West High School Student Government Association (SGA) announced on social media that the first day back from spring break would be *Free Speech Day* with a walkout staged by the students. The walkout was scheduled during the first lunch period, when half of the student body would be at lunch and half would be in class. Students were to wear their free speech T-shirts under their clothes so that the only time the messages would be visible was during the protest. The plan was to meet off campus at the public parking lot across the street from the school.

Other students commented on social media that they agreed with the dress code because racist or other discriminatory messages on clothes are disruptive, as are student walkouts, especially with important tests scheduled in the coming weeks.

The school administration learned about the walkout and the principal sent out a robocall, warning that students who walked out of school would face consequences for disrupting the learning environment. The principal explained in the robocall that students were expected to remain in class and those on lunch break may not leave campus because the school’s policy requires students to stay on school grounds during the school day for their own safety. Approximately 75 students – almost half of the student body – came from the cafeteria and the classrooms to meet in the public parking lot as part of the walkout.

Some students carried signs that read: “Civic Action Isn’t Disruptive, It **IS** my Civics Education.” Many wore T-Shirts that read: “We Don’t Shed Our Rights at the Schoolhouse Gate” a reference to the Supreme Court’s 1969 decision in *Tinker v. Des Moines*, long considered the landmark case defining students’ free speech rights at school. The principal gave detention to all of the students who participated in the walkout – the same consequences students receive when they skip classes or leave the school grounds during the school day.

Some of the students who were given detention filed a lawsuit against the school district and the principal, claiming that the message-free policy violated their First Amendment rights and that the walkout was protected speech under the Constitution.

The school district and the principal argue that their actions did not violate the First Amendment and were necessary to maintain a safe and orderly learning environment.

*Arguments Worksheet Blank for Students*

*Tinker v. Des Moines* **Applied to a School Dress Code and Student Walkout**

Put an **ST** next to the arguments the students might make.

Place an **SO** next to the arguments the school officials might make.

1. Students don’t lose their constitutional rights to free expression at the schoolhouse gate.
2. The dress code was not based on a **prediction** of harm, but rather was in response to **actual disruptions** of the learning environment. The T-shirts sparked heated discussions that took up class time.
3. The dress code policy is overbroad because it prohibits apparel with messages or slogans **of any kind.** The ban would apply to a T-shirt that says: I love my school.
4. The fear -- or anticipation -- of disruption is not a valid reason to restrict speech on campus. There was no evidence that learning was substantially disrupted.
5. Certain messages, regardless of how they are conveyed, can distract students or even make them feel unsafe. Students of the right to learn in a safe and positive environment.
6. The students were passive and silent during the walkout. They wore the protest T-shirts only during the walkout and did not infringe on the rights of others.
7. Schools officials are obligated to maintain an orderly learning environment.
8. When speech is thought-provoking it can improve students’ critical thinking skills.
9. In troubled times like these, walkouts are a security risk. When students leave the school grounds, the school can’t protect them.
10. The walkout was not disruptive. It was scheduled during a lunch hour so that students had the option to participate when they were not in class. Students who were scheduled to be in class could choose to remain in class.
11. Just because some people find some speech offensive doesn’t mean it should be banned. The best remedy for offensive speech is more speech – not less.
12. Even a silent walkout causes major disruption. It breaks up the structure and routine of the school day that is the foundation of creating a productive learning environment.

*Arguments Worksheet – Answer Key for Volunteer Attorney*

 *Tinker v. Des Moines*

**Applied to a School Dress Code and Student Walkout**

Put an **ST** next to the arguments the students might make.

Place an **SO** next to the arguments the school officials might make.

1. Students don’t lose their constitutional rights to free expression at the schoolhouse gate. **ST**
2. The dress code was not based on a **prediction** of harm, but rather was in response to **actual disruptions** of the learning environment. The T-shirts sparked heated discussions that took up class time. **SO**
3. The dress code policy is overbroad because it prohibits apparel with messages or slogans **of any kind.** The ban would apply to a T-shirt that says: I love my school. **ST**
4. The fear -- or anticipation -- of disruption is not a valid reason to restrict speech on campus. There was no evidence that learning was substantially disrupted. **ST**
5. Certain messages, regardless of how they are conveyed, can distract students or even make them feel unsafe. Students of the right to learn in a safe and positive environment. **SO**
6. The students were passive and silent during the walkout. They wore the protest T-shirts only during the walkout and did not infringe on the rights of others. **ST**
7. Schools officials are obligated to maintain an orderly learning environment. **SO**
8. When speech is thought-provoking it can improve students’ critical thinking skills. **ST**
9. In troubled times like these, walkouts are a security risk. When students leave the school grounds, the school can’t protect them. **SO**
10. The walkout was not disruptive. It was scheduled during a lunch hour so that students had the option to participate when they were not in class. Students who were scheduled to be in class could choose to remain in class. **ST**
11. Just because some people find some speech offensive doesn’t mean it should be banned. The best remedy for offensive speech is more speech – not less. **ST**
12. Even a silent walkout causes major disruption. It breaks up the structure and routine of the school day that is the foundation of creating a productive learning environment. **SO**

*Instructions for Attorney Discussion Leaders*

*Question-Asking Activity* **Suitable for Almost Any Courtroom Simulation – Appellate or Jury Programs**

**Each small group has two attorney discussion leaders.**

The groups are numbered and are identified as even-numbered groups or odd-numbered groups.

1. In each small group, the discussion leaders take the students through the Arguments Worksheet and have students identify the arguments for each side – the school officials or the student protesters.
2. The discussion leaders then guide the students through this question-formulation activity.

**Role of Discussion Leaders in the Question-Formulation Activity**

* One discussion leader facilitates the students in brainstorming questions. The other discussion leader manages the sticky notes on the flipchart.
* The discussion leaders reinforce the rules of the activity and the rules of civil discourse.

**Flip Chart**

 Each attorney team of two has a flip chart and markers. Students write their questions on sticky notes and give them to one of the discussion leaders to put on the flip chart.

**How the Questions are Used**

**Jury Simulation:** The facilitator selects a couple of questions and gives them to the Presiding Judge to choose from when he/she asks questions of the student attorneys.

**Appellate Simulation:** The questions that come out of the activity are prioritized by the students from #1 to #6 – questions for student judges to ask student attorneys representing the school officials and another set of #1 to #6 questions for student judges to ask student attorneys representing the student protesters.

Step by Step in the Small Groups: Discussion Leaders Facilitate

1. **Facilitators Go Over the Rules**
* List as many questions as you can.
* Do not stop to discuss, judge, or answer the questions.
* The note taker writes the questions as they are stated.
* Change any statement into a question.
1. Students Talk to the Person Next to Them

To prime the pump and to give quieter students the opportunity to speak, start by having students turn to their neighbor and write a list of questions that come to mind without judging them – just brainstorm as many questions as possible and write each one on a sticky note.

1. **Students Share with the Group**

The discussion leader calls the group back together. When called on, students give their question (written on a sticky note) to the scribe who puts it on the flipchart. If a question comes up in conversation that has not been put on a sticky note, the student who raised the question writes it on a sticky note and gives it to the scribe to put on the flipchart.

**Odd-Numbered Groups Write Questions on Both Sides of Issue #1.
Issue #1**: Develop questions on both sides of the first issue: Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?

Write questions addressed to:

* Counsel for the students: Brainstorm a list of questions. Select the best and number them. Total of six questions.
* Counsel for the school officials: Brainstorm a list of questions. Select the best and number them. Total of six questions.

Even-Numbered Groups Write Questions on Both Sides of Issue #2

**Issue #2**: Develop questions on both sides of the second issue: Do students have a reasonable expectation of privacy at school?

Write questions addressed to:

* Counsel for the students: Brainstorm a list of questions. Select the best and number them. Total of six questions.
* Counsel for the school officials: Brainstorm a list of questions. Select the best and number them. Total of six questions.

 **The discussion leaders** in each group collect the top six questions on numbered sticky notes and give them to the program facilitator. **In the** **jury simulation**, the facilitator gives them to the Presiding Judge. **In the** **appellate simulation**, the facilitator puts them on the bench at the places of the six student judges – three on each side of the Presiding Judge. There are two panels of student judges.

*Scripted Opening for the Judge and the Student Attorneys (for Both Types of Hearings)*

*Tinker v. Des Moines*
**Applied to a School Dress Code and Student Walkout**

**The Judge is announced, takes the bench, and welcomes the group.**

**Judge: Are Counsel for the students ready?**

**Counsel for Students**  *(Attorney #1 stands at counsel table)*

Yes, Your Honor.

 **Judge: Are Counsel for the school ready?**

**Counsel for the School District** *(Attorney #1 stands at counsel table)*

 Yes, Your Honor.

 **Judge: Please go ahead and introduce yourselves. We’ll start with the attorneys for the students.**

**Attorneys for the Students**

**Participant Attorney #1 for the Students** *(Stands at the podium)*

Good afternoon and may it please the Court. My name is \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(first and last names).* I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(your city and state).* My colleague and I are counsel for student Sandy Simms. I will be handling **Issue #1** asking if the students’ First Amendment rights were violated by the administration when it prohibited students from wearing clothes with messages at school. My colleague will be handling **Issue #2.** He/she will come to the podium, then our Attorney Coach will introduce himself/herself. *(Sits down)*

**Participant Attorney #2 for the Students** *(Stands at the podium)*

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*first and last names)*

from\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(your city and state)* and I will be handling **Issue #2:** Were students’

First Amendment rights violated by the school when it disciplined students for staging a walkout to protest the school’s new dress code?

**Attorney Coach introduces himself/herself.** *(Sits down)*

*Scripted Opening for the Judge and the Student Attorneys*

*Tinker v. Des Moines***Applied to a School Dress Code and Student Walkout**

**Attorneys for the School**

**Participant Attorney #1 for the School** *(Stands at the podium)*

"May it please the Court.

My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(first and last names).*

I am from *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (your city and state).* My colleague and I represent the school. I will be handling **Issue #1** asking if the students’ First Amendment rights were violated by school officials when they adopted a new dress code prohibiting students from wearing clothes with messages at school. My co-counsel will handle **Issue #2.** At this time, my colleague will come to the podium to make an introduction. Our Attorney Coach also will introduce himself/herself.

**Participant Attorney #2 for the School** *(Stands at the podium)*

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(first and last names).*  I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(your city and state).* I will be arguing the **Second** **Issue** on behalf of the school. Were students’ First Amendment rights violated by school officials when they disciplined students for staging a walkout to protest the school’s new dress code?

*(Sits down)*

**Attorney Coach introduces himself/herself.** *(Sits down)*

**Note to Participating Attorneys:**

* When talking to the Judge, address the Judge as “Your Honor.”
* The first time each attorney addresses the Judge, say: *“May it please the court.”*
* Always stand and use the microphone when speaking to the Judge.

*Talking Points When Students are Jurors* ***and*** *When Students are Judges*

*Tinker v. Des Moines* **Applied to a School Dress Code and Student Walkout**

**Presiding Judge: We have two issues before us today.**

1.Are students’ First Amendment rights violated when school officials establish a dress code prohibiting students from wearing clothing with messages or slogans at school?

2. Are students’ First Amendment rights violated when school officials punish students who walk out of school to protest the policy?

|  |  |
| --- | --- |
| **Presiding Judge: We will start with Issue #1.**Were students’ free speech rights violated by the school when it prohibited certain clothing from being worn at school because messages on the clothes may be disruptive or offensive to other students? **Because the students brought this action, their attorney will go first.** | **Presiding Judge: Now we will hear from counsel for the school officials – on Issue #1.** Did school officials violate students’ free speech rights when they prohibited certain clothing from being worn at school because messages on the clothes may be disruptive or offensive to other students?  |
| **Students’ Attorney #1** | **School Officials’ Attorney #1** |
| **YES*** Students don’t lose their constitutional rights to free expression at the schoolhouse gate.
* Schools are the ultimate “marketplace of ideas.” The best antidote to offensive speech is more speech – not less.
* Civil discourse is vital to a well-rounded education. Some speech is disturbing and thought-provoking in a way that furthers critical thinking skills that schools promote.
* Free speech on campus is not confined to teacher-supervised discussions in classrooms.
* At minimum, the dress code policy is overbroad because it prohibits apparel with messages or slogans **of any kind.**

**When Students are Jurors****The Presiding Judge asks questions.****When Students are Judges**1. **The Presiding Judge asks the first question.**
2. **He/she allows students on the bench to ask questions.**
3. **The Presiding Judge has the option of asking the last question before moving on.**
 | **NO*** Schools officials are obligated to maintain an orderly learning environment.
* Certain messages, regardless of how they are conveyed, can be disruptive and can deprive students of the right to learn in a safe and positive environment.
* The dress code was not based on a **prediction** of harm, but rather was in response to **actual disruptions** of the learning environment. The open letter to students and the community referred to specific examples of clothing that had been worn at school and sparked heated discussions that took up class time.
* In light of the Supreme Court’s recent decision that federal law cannot prohibit registering “immoral or scandalous” trademarks, the school must enforce a strict dress code to prohibit clothing with such disruptive slogans or logos from being worn by students.

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| **Presiding Judge: We turn our attention now to****Issue #2, starting with the Students.**Were students’ free speech rights violated when they were punished for engaging in a walkout to protest the dress code during the school day?  | **Presiding Judge: Issue #2 for the School is the same:**Did school officials violate students’ free speech rights when they punished students who protested the dress code by engaging in a walk out during the school day? |
| **Students’ Attorney #2** | **School Officials’ Attorney #2** |
| **YES*** The fear -- or anticipation -- of disruption is not a valid reason to restrict speech on campus. There was no evidence that the silent walkout disrupted the learning environment at the time the administration made the decision to punish the participants.
* Speech cannot be prohibited unless it materially and substantially interferes with appropriate discipline and the operation of the school. The silent walkout did neither.
* The walkout was scheduled during a lunch hour so that students had the option to participate when they were not in class. Students who were scheduled to be in class could choose to remain in class.
* Students were passive. They wore their protest shirts only during the walkout and did not infringe on the rights of others.

**When Students are Jurors**The Presiding Judge asks questions. **When Students are Judges**1. **The Presiding Judge asks the first question.**
2. **He/she allows students on the bench to ask questions.**
3. **The Presiding Judge has the option of asking the last question before moving on.**
 | **NO*** Schools officials are obligated to maintain an orderly learning environment.
* Walkouts, although silent, cause major distractions. They disrupt the structure and routine of the school day that are fundamental to creating a productive learning environment.
* Walkouts divert students from their studies and pull them into class discussions about the protest and the school administration’s reaction to it.
* Walkouts can become a slippery slope. They can set an expectation that students can walk out of class anytime.
* In troubled times like these, walkouts are a security risk when students leave the school grounds to participate.  The school cannot keep students safe if they are off campus.  Also, the disruption caused by a walkout may be taken advantage of by an active shooter or someone else seeking to harm members of the school community.

**When Students are Jurors**The Presiding Judge asks questions.**When Students are Judges** 1. **The Presiding Judge asks the first question.**
2. **He/she allows students on the bench to ask questions.**
3. **The Presiding Judge has the option of asking the last question before turning the program over to the facilitator for jury deliberations.**
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*Answer Key and Discussion Points*

**Reality Check: Sometimes There Are No Do-Overs**

*Today’s Decisions Can Have Legal and Long-Term Consequences*

**At the end of the program, the Presiding Judge discusses and answers questions about these situations.**

1. Because I’m 18, any federal crime I’m convicted of won’t have an impact on the rest of my life.

 **FALSE**

 **A felony conviction affects several important civil rights: you lose the right to vote, the right to hold public office, the right to serve on a jury and the right to possess any type of firearm.**

 **In addition, if you are not a U.S. citizen, you may be subject to deportation or exclusion from the United States and the conviction affects your ability to obtain U.S. citizenship. There are also collateral consequences that can affect your driving privileges and certain employment and business opportunities; deny access to government benefits, professional licenses in nursing, transportation or teaching, and program participation, such as receiving student loans or public housing.**

1. My parents know that my friends and I are going to drink, and they want to keep us off the road, so they buy the beer and take us to a federal park where we party and camp overnight. Law enforcement will definitely get involved, even if we have parental supervision.

 **TRUE**

 **Parents can be charged with contributing to the delinquency of a minor or hosting an “open house” party, both criminal offenses.**

1. I’ve been driving for two years. I’ve never been caught speeding and I’ve never had an accident. I do have quite a few parking tickets in my glove compartment that I’ve never paid. If I ever got stopped, say, on a federal parkway, the worst that could happen is that my insurance rates would go up.

**FALSE**

**Your license will be suspended until the tickets are paid and your car may be impounded.**

1. When I go to a bar, I use the fake I.D. I bought it on the Internet. I’ve heard that the site could be part of a national ring, but I’m not going to get caught. Besides, if I do, the worst that will happen is that they’ll take my I.D. and kick me out of the bar.

**FALSE**

**Possession of a fake ID is a third-degree felony and use of another person’s identifying information is a federal offense of aggravated identity theft that carries a mandatory 24 months in federal prison.**

1. I don’t drink or do drugs, but I go to parties where other guys do. Last Saturday, my best friend’s uncle bought us a keg and brought it across state lines to the party. I may have a problem even though I’m not actually distributing or drinking.

**TRUE**

**Travelling across state lines while possessing alcohol by a person under age 21 is not only illegal but triggers the FBI’s division of Alcohol, Tobacco and Firearms and subjects you to a possible conviction for the federal crime of illegal transport of alcohol across state lines**

1. I’m on vacation in Colorado, where pot is legal. I bring some home to Florida. If I get caught with it, there’s no problem because I bought it in a state where it’s legal.

**FALSE**

**The federal government and most states prohibit the possession of marijuana. Transporting**

**marijuana across state lines is a federal offense.**

1. Putting graffiti on a government building – like a Post Office – is my First Amendment right, even if some people consider my message politically incorrect speech. If I ever did get caught, I would just have to clean it off.

**FALSE**

**You do not have a first amendment right to deface public property, including government buildings. This constitutes a federal offense of trespassing, tampering and vandalism. It may also subject you to similar state charges, including criminal mischief.**

1. I order nutritional supplements off the Internet that I get in the mail. I use them to improve my athletic performance. I need every edge I can get to win a college scholarship. These are pharmaceuticals and not illegal drugs that I’m getting from some street dealer, so I’m okay.

**FALSE**

**The distribution and transport of a controlled substance is a serious criminal offense. Depending on the quantity of the controlled substance, there may be mandatory minimum penalties that will be imposed. A controlled substance includes any anabolic steroid, narcotic, hallucinogenic, stimulant or depressant drug.**

1. I like to take videos at parties and share them on social media. One time we staged a food fight that was a takeoff on the World Wrestling Smack Down. The parents thought we were really fighting. Come on. We called the video “Food Fight Club.” I may have legal troubles.

**TRUE**

**Recording videos of fights has serious consequences; it can lead to disciplinary action in school, including expulsion, and criminal consequences as evidence of violence or bullying.**

10. If I ever did get convicted of something in federal court, I’d get probation. Probation in the federal system is just a matter of meeting with my probation officer and, maybe, doing drug testing for a few weeks.

 **FALSE**

 **For most federal offenses, probation or supervised release is mandatory and limits your ability to travel, restricts employment opportunities and supervision is on a weekly basis and may be over the course of several years.**