

Tinker v. Des Moines / Mini-Moot Court Activity

Tinker v. Des Moines (1969)

An Overview of a Mini-Moot Court

A moot court is a simulation of an appeals court or Supreme Court hearing. The court is asked to rule on a lower court's decision. No witnesses are called, nor are the basic facts in a case disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action or the interpretation of a federal statute).

Activities

- 1) **Review the facts of the case:** In pairs, read the facts, issues, and constitutional provisions and precedents of *Tinker v. Des Moines* (1969).

Useful Vocabulary:

- **Petitioner:** The person/organization/company who lost in the lower court and now appeals the lower court decision to a higher court.
- **Respondent:** The person/organization/company who won in the lower court and now argues that the lower court decision was correct.

Note: In some states, different terms may be used such as appellant and appellee.

With your partner, discuss the following questions:

- What happened in this case?
 - Who are the people/organizations/companies involved?
 - How did the lower court rule on this case?
 - Who is the petitioner? Who is the respondent?
 - What is the legal question that has to be resolved in this case?
 - How do precedents apply to this case?
- 2) **Identify the issue in this case:**
 - Who was the actor(s)?
 - What is the specific part of the Constitution involved?
 - Who was affected by the action(s)?
 - What caused the controversy?

3) **You will be assigned a role:** You will be assigned to be a petitioner, respondent, or justice for the mini-moot court. You will meet with others in the class who will play the same role to prepare.

4) **Prepare for your role in groups:**

Petitioner/respondent attorney group preparation:

Each group of students should consider:

- What does each side (party) want?
- What are the arguments in favor of and against each side?
- Which arguments are the most persuasive? Why? What counter arguments should you anticipate and how will you rebut them?
- How do the legal precedents influence this case? (A precedent is a previously decided case recognized as the authority for future cases on that issue. Using precedents allows for the development of more sophisticated arguments.)
- What might be the consequences of each possible decision? To each side? To society?
- Are there any alternatives besides what each side is demanding?

***Note:** Your team should consider all of the facts in the summary. You may not argue the accuracy of the facts. Your arguments do not need to only be rooted in legal technicalities. Any argument that is persuasive from a philosophical, theoretical, conceptual, or practical standpoint can be made. Teams should rely on principles found or implied in the United States Constitution.*

Justice/judge preparation:

You should meet with the other justices to discuss the issue involved and any case precedents. You should prepare at least five questions for each side that you need to have answered by the attorneys in order to reach a decision. The questions should not ask about the accuracy of the facts, but rather how the established facts, constitutional provisions, and precedents support each argument. Think about possible hypothetical problems to ask. How will the decision in this case affect other cases in the future?

5) **The mini-moot court:**

Move to a mini-moot triad. Each triad will have a justice, a petitioner, and a respondent.

The justice will run the mini-moot court. The justice should ask each side to present their arguments in the following order:

Initial Presentation	Petitioner	3 minutes
Initial Presentation	Respondent	3 minutes
Rebuttal	Petitioner	2 minutes
Rebuttal	Respondent	2 minutes

Each side gets three minutes for its basic argument and two minutes for rebuttal. Your teacher will be the official timekeeper of the proceedings.

The justice may ask questions at any time in an effort to clarify the arguments. Time continues to run as the justice interrupts to ask questions.

After all arguments have been presented, the justice should consider the arguments and reach a decision. Justices should write their decisions and a brief explanation of the reason they reached that decision including specific arguments and precedents.

- 6) **Handing down decisions:** Return to your original seats to listen to each justice hand down their decisions and the reasons behind them.

Your teacher will share the Court's decision in *Tinker v. Des Moines*.

Tinker v. Des Moines Independent Community School District (1969)

Argued: November 12, 1968

Decided: February 24, 1969

Facts

In 1966, in Des Moines, Iowa, five students ages 13–16 decided to show opposition to the Vietnam War. The students planned to wear two-inch-wide black armbands to school for two weeks. The school district found out about the students' plan and preemptively announced a policy that any student who wore a black armband, or refused to take it off, would be suspended from school after the student's parents were called.

Mary Beth Tinker, an eighth grader, and John Tinker and Christopher Eckhardt, both high school students, wore black armbands to their respective schools. All three teens were sent home for violating the announced ban and told not to return until they agreed not to wear the armbands. Their parents filed suit against the school district for violating the students' First Amendment right to free speech. The federal District Court dismissed the case and ruled that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit agreed with the District Court. The Tinkers asked the U.S. Supreme Court to review that decision, and the Court agreed to hear the case.

Issue

Does a prohibition against the wearing of armbands in public school as a form of symbolic speech violate the students' freedom of speech protections guaranteed by the First Amendment?

Constitutional Amendments and Supreme Court Precedent

- **First Amendment to the U.S. Constitution**

“Congress shall make no law . . . abridging the freedom of speech”

- **14th Amendment to the U.S. Constitution**

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law”

- *West Virginia State Board of Education v. Barnette* (1943)

The West Virginia Board of Education required that all public schools include a salute of the American flag as a part of their activities. All teachers and pupils were required to salute the flag. If they did not, they could be charged with “insubordination” and punished. Students

who were Jehovah's Witnesses and had a religious objection to saluting the flag sued the state board of education. The Supreme Court ruled that this mandatory salute was unconstitutional. The Court said that a flag salute was a form of speech because it was a way to communicate ideas. The justices ruled that, in most cases, the government could not require people to express ideas that they disagree with.

Handout I: Justice/Judge

Prepare at least five questions to ask each side (petitioner and respondent). The questions should not ask about the accuracy of the facts, but rather how the established facts, constitutional provisions, and precedents support each argument.

Call the case to order by saying, “We will hear arguments today in (case name).” After hearing arguments from both the petitioner and the respondent, decide whether you think the decision of the lower court should be upheld or overturned. Be prepared to share the reasoning behind your decision.

Case name:	
Constitutional question(s):	
Questions for petitioner:	
Questions for respondent:	

Questions for respondent (cont.):

Notes on the petitioner's argument:

Notes on the respondent's argument:

Notes on respondent's argument (cont.):

Decision:

Reasons for decision (opinion):

Consider the strengths of the arguments and how precedents should be applied. Be sure to consider the impact of your decision on other situations that may arise in the future. If there is a precedent that is directly on point (very similar to your case) and you decide NOT to follow that precedent, be prepared to explain why you are overturning an established precedent (this should only happen on rare occasions and for extremely compelling reasons).

Handout 2: Petitioner

Outline an argument for the petitioner using the established facts, constitutional provisions, and precedents. Predict what questions the justice/judge will ask. Take notes on the respondent's argument to help prepare your rebuttal.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court wrong?
- What decision do you want?
- What are the legal and policy arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?

Case name:	
Petitioner:	
Constitutional question(s):	
Precedents that support your argument:	

Argument for petitioner:

Possible questions from justice:

Respondent argument notes:

Rebuttal points:

Handout 3: Respondent

Outline an argument for the respondent using the established facts, constitutional provisions, and precedents. Predict what questions the justice/judge will ask. Take notes on the petitioner's argument to help prepare your rebuttal.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court right?
- What decision do you want?
- What are the legal and policy arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?

Case name:	
Respondent:	
Constitutional question(s):	
Precedents that support your argument:	

Argument for respondent:

Possible questions from justice:

Petitioner argument notes:

Rebuttal points: