

## UVA LAW | “Free Speech and Youths,” With Mary Beth Tinker

MICAH SCHWARTZMAN: Welcome, everyone. My name is Micah Schwartzman, and I'm the director of the Karsh Center for Law and Democracy, which is one of the sponsors of this conference, with the *Virginia Law Review*, along with an impressive range of student groups. I'll just read you the list, the American Constitution Society, Black Law Students Association, Child Advocacy Research and Education, the Federalist Society, Latin American Law Organization, Law Innovation Security and Technology, the Middle Eastern and Northern African Law Student Association, the Minority Rights Coalition, and the Rex E. Lee Law Society.

It's notable, I think that such a diverse group of student groups, which often represent very different viewpoints, agree on the importance of our topic today, which is the status of student free speech rights 50 years after the Supreme Court's landmark decision and *Tinker v. Des Moines*. Let me say a word about the Karsh Center's support for this event. The Karsh Center is a nonpartisan legal Institute, whose mission is to support the understanding and appreciation of principles and practices that are necessary for a well functioning, pluralistic democracy.

These include civil discourse and democratic dialogue, civic engagement and citizenship, ethics and integrity in public service, and respect for the rule of law. In her actions as a student in the 1960s, and in her work on behalf of student rights since then, Mary Beth Tinker has exemplified these democratic values. In December 1965, when she was a 13-year-old junior high school student, Ms. Tinker and her family decided to protest the Vietnam War by wearing black armbands. This was a peaceful protest, consistent with a long tradition of civil dissent in our country.

But when the principles of the Des Moines public school system learned of the plan to wear armbands, they enacted a policy to prohibit the protests, what first Amendment scholars sometimes call a prior restraint. Mary Beth Tinker and her brother John Tinker, and as I understand it, their siblings, wore their armbands anyway and were suspended for the duration of their protest, which ended in early 1966.

Of course, you know that in subsequent litigation, the Supreme Court affirmed the First Amendment rights of the students in *Tinker v. Des Moines*. Writing for a 7-2 majority justice, Abe Fortas declared, quote, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." That might be the most famous line from the opinion.

But he also continued, and here let me quote him at some length, "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students"-- even though some of US law professors might wish

otherwise.

"Students in school, as well as out of school, are persons under our Constitution. They are possessed of fundamental rights, which the state must respect, just as they themselves must respect their obligations to the state. In our system, students may not be regarded as closed circuit recipients of only that which the state chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved." The court's decision in *Tinker* raises many questions, and the panels this morning have explored some of the difficult issues raised by the case and by the First Amendment doctrine that has developed in the years since *Tinker* was decided.

In those years, Mary Beth Tinker has been a forceful advocate for the rights of students and for the importance of civic education. As a pediatric nurse with master's degrees in nursing and public health, she's spoken to thousands of students about their Constitutional rights and about the great importance of exercising them, particularly in the areas of health and education.

In 2013 alone, during a nationwide tour, Ms. Tinker spoke to more than 20,000 students. And as her presence here today makes clear, her work continues. Before turning things over to Ms. Tinker, I want to add a final thought, which is that in reading *Tinker v. Des Moines*, it's worth remembering how difficult dissent can be-- and this was a subject, or one of the subjects of our last panel-- how difficult it can be and how much courage it takes to stand up for one's rights.

Mary Beth Tinker wore her black armband to school knowing she was going to be subject to criticism, to ridicule, to ostracism, and to punishment by officials from her school. But following her conscience, and with the support of her family, she persisted and made her way into our Constitutional canon as a hero of the freedom of speech, and perhaps, as importantly, as a champion of the idea that students and teachers have much to learn from each other, even and especially when their ideas are critical and controversial. Would you please join me in welcoming Mary Beth Tinker?

[APPLAUSE]

**MARY BETH  
TINKER:**

Thank you. Thank you, Dr. Schwartzman. Thank you so much. And thank you to everyone for inviting me here today. The *Law Review* editors, thank you. That took a lot of emails.

[LAUGHTER]

Appreciate it so much. So we'll just make this kind of informal, and if anyone wants to chime in, just go right ahead anytime that you feel like it, or you have a question or comment. So on Tuesday, I was at Howard University in Washington DC, where I live, at the School of Education. And teachers were coming from all over, Virginia, Maryland, DC to prepare for Black Lives Matter in schools week, which is coming up February 3rd to February 7th.

And there, the dean of the school, Danielle Holly Walker, she was quoting from Martin Luther King and saying that education-- he said that education, it should be connected to also your values, your morals. It's good to be efficient and it's good to be intelligent, but you also have to think about how it applies to the current day and to the issues, the times that you're born into and the times that you're dealing with. You don't have a choice of when you're born, but we do have some choices about how we respond to the times that we're born into.

And we're living in mighty times, it seems to me, as a student told me recently in one of the schools. And so we have to really think about how we can most effectively respond and take our country and our world in the direction that we want it to go. If you do nothing, history will be made. This is what I tell kids in the schools. But it may not be the history that you want. So you have to think about how we're going to use our education.

And someone told me a long time ago when I was in nursing school, whatever you do, try to do something to help kids, because they really need us. Why do they need us? Well, first of all because kids are a discriminated group. And I've come to see our case, *Tinker Versus Des Moines*, in the context of human rights, children's rights, the international issue of the rights of teenagers. And children and teenagers all over the world are speaking up and standing up for their rights.

If you want to see how it is in our country, for example, you just have to look at one indicator, and that's the poverty level. What age group is most likely to live in poverty? Kids. And it's not just because they don't work, which a lot of them do, actually, it's because as soon as their parents have them-- and I know a lot of you have kids-- you are also a discriminated group.

And so anyone who associates with children, whether it's preschool teachers who are making the minimum wage, or whether it's teachers in general, or whoever it is that associates and devotes their life to children is also going to be having a rough time. You're not going to be

getting the big bucks or be really highly respected, necessarily. By some, yes.

Well, for example, people associated with children. Also, you can look at the maternal-- and I tend to look at the rights of kids in terms of health indicators a lot. But you can look at the maternal mortality rate, which is very high in Virginia and in Washington DC. In fact, it's high in the entire United States.

There's only 13 countries where the mortality rate for women having children has gotten worse in the last 30 years and has not improved, and we're one of those countries. So that has a lot of implications when you think about children and their rights and the families and what families are dealing with.

I was actually a trauma nurse, and so I started in the emergency room and I worked with children who had been shot, and teenagers. So there's a lot of trauma when a mother dies in childbirth, and there's a lot of trauma that children are dealing with and the kids are dealing with. And that's why they need the First Amendment, because the First Amendment has always been a tool that discriminated people can use to improve their status.

And children are certainly one of those groups. Not only children, but teenagers, students, college students. I go to a lot of colleges also. And young people are using the First Amendment to improve their status, and they should be. It's a good thing. It's good for our democracy.

And then, of course, when you look at these other groups that are affected even more, like people of color, low income people. As I said earlier during the first panel, when you look at Hazelwood, 75% of high school students don't have journalism. So you can just forget the free press right there. 25% of them do. Some kids even have broadcast-- I go to schools where they have television stations in the school, and maybe some of you had that in your high schools.

But most kids don't have journalism. And who are those kids that don't have it? Kids of color and low income kids. I go to schools where if you're wearing the wrong color of shoe string, you can be suspended. And who are those kids? They're not wealthy kids at some independent private school. Those kids are wearing like blue hair and earrings in their noses, and all this stuff. They're talking on their cell phone.

I'm serious. I went to a school in Los Angeles, very upper class school. Kids were on their cell

phone during art class. You know, this would not happen in Washington DC at most of the schools there. The majority of children and teenagers in public schools now live in poverty. The majority. Think about that. Most kids in public school in the United States live in poverty, and all of the ramifications that that has for their health, for their learning.

If you are traumatized, there's a very high chance that you're not going to be learning quite as easily as other kids. If you've been lead poisoned, like almost 10,000 kids in Flint, Michigan, you're going to have trouble learning because that's a neurotoxin and it lasts forever. And so kids like Mari Copeny, who's like 12 years old, who speaks around the country and spoke at the Science March in Washington DC-- Little Miss Flint, who spoke about lead poisoning-- she needs the First Amendment. She needs to be able to talk about these things.

And kids who are affected by gun violence. Of all the places in Florida that I could go when I was on my Tinker Tour in 2013 and '14-- well, I'm sort of still on it-- but that time, we had a 23 foot long RV decorated for the First Amendment, and had balloons on it. Said, free speech, free press, civics education. It was really great.

But we couldn't go to all the schools in Florida that wanted us to come to, so we could only go to one school. and which school did it turn out to be? Parkland, Marjory Stoneman Douglas. We just happened to go there. And the journalism teacher had invited us.

They had a very active journalism program, and actually, people have cited that as giving the kids the strength and the tools to be able to advocate for themselves after the murders there at Parkland, that because they had an active debate club, they had an active journalism club, they had theater, all of those things gave them the tools. Talk about inequality in First Amendment and that everybody doesn't own the market. Everybody doesn't own the press. Those kids had some tools that were very important when it came to them speaking up. Not only for their rights. They've used that for other kids around the country.

And I was very honored last February for the 50th anniversary of the *Tinker* ruling, when 10 of the journalism students from Parkland came up to Iowa and helped us celebrate the 50th anniversary of the *Tinker* ruling. Because they know that these things are all related. And the rights of kids without the First Amendment, young people can't advocate for their own interests and for their health.

And so I left my hospital, where I worked at various hospitals, clinics, schools. And I left in 2013 and I decided that it's better for kids to learn their rights, that this is better for their health

than probably anything that I could do for them in the hospital after the fact. It's better to prevent them from being injured.

Every three hours, on average, a child or teenager in the United States is shot and killed. And Virginia has a very high rate, of course. But that doesn't count the ones that are injured. And so should these kids have a right to speak up for their own interests, for the measures that will decrease gun violence in their lives? Yes.

And the black kids and Hispanic kids, it's even worse. The leading cause of death in the United States right now for teenagers is gun violence. It always has been the leading cause for black teenage males, but now it's true for all kids. In Washington DC, where I live, the inequality for young people is so extreme that on one side of town, there's seven times the hospitalization rate for asthma.

Why? Because of housing, because the developers have taken over the housing and jacked up the prices of these very luxury condos, and the low income housing is really struggling and having a hard time. So therefore, you've got housing where there's dust, there's bugs, and kids end up having asthma and being hospitalized, seven times the rate for black kids. On one side of Washington DC, the infant mortality rate-- the infant mortality rate is very interesting.

If you want to see how healthy a population is, all you have to look at, there's one thing, the infant mortality rate. If you want to see how healthy people in Virginia are, just look at the infant mortality rate. If you want to see how healthy people of the United States are, look at that. There's a huge discrepancy, of course, between blacks and whites. It's almost twice as worse. It's almost twice as bad.

But in DC, we've even beat that. In our nation's capital, the infant mortality rate on one side of Washington DC is 10 times worse than the other side of Washington DC. In other words, how successful is a population in getting their babies to live to age one? That's what it's all about. If you want to see how successful that society is and how healthy, just look at that one thing.

In Washington DC, there's so much discrepancy that it's 10 times. And of course, that affects so many other issues because that's just one part of it, but there's a ripple effect that goes out from there. And so that's why kids need their rights to speak up about these things. Because as it turns out, a group who is affected who speaks up for themselves, that is the most effective.

Yes, we can advocate for youth and we can speak up for these things and we are their allies, but when young people speak up for themselves, like the March for Our Lives, like Black Lives Matter, that is the most effective. There's a saying, nothing about me without me. And when young people speak up, that is very, very effective.

Homeless youth. There's around 2 million homeless kids in the United States. I was in Seattle recently, where the homeless rate for teenagers has doubled in the last five years. So kids are speaking up about these things. And kids are speaking up about racism. Mrs. Strongs was just telling me about a program in Durham, North Carolina, where students are addressing racism, even five-year-olds, six-year-olds, seven-year-olds.

And I believe that's what we should have all over the country. Why wait until some kid is doing - everywhere I go, it seems like, around the country lately, there's been some kind of hate speech incident. I was just talking to a teacher at a journalism conference I was at. She said, oh yeah, my school in Erie High School, the volleyball team decided-- the girl's volleyball team - to make a swastika with their bodies on the court, on the volleyball court.

In Wisconsin, where I was about a month ago, some of the kids decided it would be really fun to have a float in the homecoming parade that put down and mocked immigrants. And I could give you 100 examples, and there are many in Virginia as well. But the way to deal with it, I think, is to prevent.

As a nurse, we think about prevention. Why wait until you have these kinds of hateful feelings and thoughts and actions? We should start when the kids are little, in kindergarten, like they're doing in Durham, and teach the kids. Have anti-racism programs.

And I've come to believe that it's especially a responsibility of us white people to teach other white people, at any age but especially children when they're young, to teach kids the history of Virginia, the history of the Confederacy, the history of how we got here, the kind of violence, and to help kids understand. I mean, I go to high schools where I was talking about the discrepancy rate-- I think this was in Illinois maybe-- for black teenagers.

And so this kids said something like, well, how did it get that way? And I thought, you know, this is really not good. We've got a kid who's gotten all the way to 11th grade without having a clue about how things got this way and why things are this way.

So I think a lot of education. And all of us can take part in that. We can work with kids and

volunteer with kids so much more. So I mean, the other issues that kids are dealing with. War should be focused on more, I think, in our society. It affects kids so much. I was just reading a series in *The Washington Post* on Afghanistan and how there's been over \$133 billion spent.

Now, that's \$133,000 thousand million, by the way. I have to remind myself. \$133 billion dollars, and there's probably more in Afghanistan over the last 19 years. And this whole series is all about how these top generals are saying, and why did we do it? We had no clue what we were doing. And we've gotten nothing out of it. We weren't even there to fight the Taliban, but we started fighting the Taliban. And now the Taliban is stronger than it ever was in Afghanistan.

We almost started another war in Iran. So I'm very happy to see the War Powers Act that's been passed by the House and that is now in the Senate, because war affects children so much. Not only do their families end up going to war-- and these aren't the rich kids, by the way, as you know, who's dad and mom are over in Afghanistan or have been killed or hurt in Iraq. I worked at the Veterans Hospital myself as a nurse and I'm very aware about the issue of veterans.

So this is why kids need to speak up and stand up. And also, by the way, war is also the greatest polluter. It's the greatest danger to our climate, and so I think it's good that we pay attention to that more. But when I was a child, I was affected by all of the things that were going on. I saw them on the news. War was what was going on in our lives.

Well, first it started with the Civil Rights Movement, because in 1963-- and all the rights in public schools right now today for kids really are founded by the actions of students in the Civil Rights Movement. In 1963, when I was 10 years old, I saw on the news children in Birmingham, Alabama. And they were marching and singing songs, like (SINGING) this little light of mine, I'm going to let it shine.

Well, it's actually nicknamed Bombingham because the Ku Klux Klan, the white supremacists, had been bombing the black churches. And Birmingham was one of the most segregated cities in the United States. But I saw these kids on the news, and then the police, the chief of police-- he had a perfect name for a bully, Bull-- put the dogs on the children and the water hoses. And I know you've seen all these photos, these famous photos that went viral. I thought those kids were so amazing.

I didn't even like dogs. I was scared of dogs. I didn't know how they could stand up to those



dogs and everything. But I knew I was nothing like those children because I was shy and I was one of the youngest in the family. And I said, wow, those kids are pretty amazing.

Well then, to punish the children, the Ku Klux Klan, the white supremacists, white nationalists-- and I think we also need to use their name a little more and teach people who these people are. And also, by the way, that they have a flag to symbolize their work. It's the Confederate flag. And I'd like to tell kids these stories so that they know why people are so upset when they see the Confederate flag, because there's a history there, and it's not such an old history.

And so these kids, to be punished, the Ku Klux Klan planted a bomb in their headquarters, which was the 16th Street Baptist Church, right on Sunday morning knowing the kids would be in Sunday school. And sure enough, the bomb went off and the charred bodies of four children, four girls-- Cynthia, Addie Mae, Carol, and Denise-- were found in the church.

I had just turned 11 years old. It was September 15th. And someone came by our picnic to tell us what had happened. And we were so sad about what had happened to those brave kids. James Baldwin and Bayard Rustin, who was Martin Luther King's right hand man-- but he was gay, so you don't always hear a lot about Bayard Rustin.

The two of them, James Baldwin and Bayard Rustin, they had an idea. What if we would wear black armbands at memorial services all over the country for these little girls who've been killed? And so that's what we did in Des Moines, and all over the country there were services for the little girls. And that was my first experience with black armbands.

But the next year was also a year when young people stood up and spoke up and said, no, we can do better. And they were called to Mississippi by Robert Moses and the Student Nonviolent Coordinating Committee and Ella Baker and Fannie Lou Hamer. And they went to Mississippi that year to help register black voters. Why? Because of the reign of terror of the Ku Klux Klan.

And counties that had majority African Americans, only 2% or 3% of African Americans were registered to vote. And so 700 college students went from all over the country to Mississippi. And as soon as they got there, three of them disappeared, James Chaney, Mickey Schwerner, and Andrew Goodman. Well, James Chaney was from Mississippi. He had gone up to Oxford, Ohio, where the training was held, to help teach them how to stand up to the Ku Klux Klan.

And so when these three got back to Mississippi, they immediately disappeared, and everyone

suspected that the Ku Klux Klan had gotten them. And he searched and searched, and you can hear these tapes of President Johnson talking to Andrew Goodman's mother saying, we're searching for the kids and the young people. And the FBI is looking and we're trying to find them. Well, they did find them, that August 4th, 1964. They found their bodies, because sure enough, the Ku Klux Klan had murdered them.

And so my parents went to Mississippi that year to be with Freedom Summer people, to stand with them, because my dad was a Methodist preacher and we later became involved with the Quakers. And my parents believed strongly in the social gospel. Well, as Reverend Barber from North Carolina says, all gospel is social gospel, actually.

But my parents believed that you should put your faith into action. Don't just preach about love and brotherhood on Sunday and sing little songs and hymns. Go there. Go to Mississippi and show these people that you're with them. And so that's what they did. And they came home on my 12th birthday and told us kids what had happened there and how they were staying in the home of an older lady. And when she said, go and sleep in the back now because when you're back there, you won't be hurt from the shooting later tonight.

And my parents said, what shooting? She said, honey, don't worry about it. I'm used to it. This is what she had gotten used to in 1964, an older black woman who was putting my parents up in her home so that they could all work together for our democracy. That night, in the middle of the night, sure enough, the shooting started. And my parents rushed up to the front and looked out the window. And the woman was crouched by the window.

Out there was a pickup truck in the dark night. They're in Ruleville, Mississippi. And someone in the truck had just shot into her house and it shot and killed her dog. And they never told me if they had a Confederate flag on that truck or not, but I wouldn't be surprised if that was part of their actions and part of their life, those people.

And so my parents lived through that night. The woman lived through the night. And a lot of other things happened while they were only there for a few weeks. But they came back and told us kids this story, and I was starting to get the message. This is the way you should live. You should speak up for what you believe and for what's right. Yes, there would be risks, but that's the way you should live.

The same day that the bodies of Chaney, Schwerner, and Goodman were discovered by the FBI on August 4th, 1964, the very same day, off the coast of Vietnam, a US Navy ship claimed

it had been attacked, the *USS Maddox*. It turns out it had not been attacked. But that didn't stop the US Congress from voting almost unanimously to escalate the Vietnam War with the Gulf of Tonkin Resolution.

So by 1965, now we were seeing on the news-- thanks to the free press, by the way. We wouldn't have known about Birmingham. We wouldn't have known about all these things. Now we're seeing on the news visions of the war, little children running from their burning huts, the body bags on the ground for the soldiers. And every night, Walter Cronkite would give a body count of how many soldiers had been killed in Vietnam.

And us kids were getting sadder and sadder, like kids today. I was just with some kids in Maryland yesterday, at a high school in Maryland. And they have a toxicity program. It's called coming of age in an age of toxicity, talking about the things that they're up against, that they're dealing with, the stressors. Not only the chemical toxins, but also the psychological and emotional ones.

When they see the news. Kids see the news. Do you think they don't feel things? Kids are very good at feeling things. That's one of their strengths. Kids see all this with the immigrants, the migrants, all of it. We saw that on the news and we were very upset, and we didn't know what to do. Some kids had an idea-- well, it actually started with an adult who had the idea, coming back from a protest against the war in Washington DC.

But the idea got started to wear black armbands again to mourn for the dead in Vietnam and to support a Christmas truce that was being supported by Robert Kennedy, the senator. And so I heard about the idea. My brother John heard about it. And a lot of the kids at our Quaker youth group heard about it and we were getting involved. And some of the kids were in the Unitarian youth group, and some of the kids were at Roosevelt High School. And so they started planning to wear black armbands at Christmas time.

I wasn't sure if I should do it. I was really nervous and scared because I was very shy and I didn't want to get in trouble, especially when the principals heard about it and made a rule against armbands. Then I had a real dilemma because I didn't want to get in trouble. But I kept thinking of those Birmingham kids and how brave they were, and everything else. So I decided I would.

So I had on my armband. I was really nervous. I was in eighth grade. I was 13. It was 1965. And I went off to school. My friend Connie said, you better take off that armband. It's against

the rules. I said, but Connie, I'm upset about the war. And she's like, well, you're going to get in trouble.

So I went all through lunchtime, no problem. And then my teacher, Mr. Moberley, met me at the door of math class with a pink slip saying to go to the office. So I went down to the office. I was so nervous. My heart was beating. I was scared. I got in the office. I mean, I wasn't the person to go to the office real often, if I could possibly avoid it.

But I got down to the office and the vice principal, Mr. Willitson, said, now take off that armband, Mary Beth. That's against the rules and the principals have made a rule against it. And so in a great stand of courage and conviction, I looked around the office and I looked at Mr. Willitson and I said, OK, here you go, and I took off that armband.

I learned a very important lesson that day. You don't have to be the most courageous person in the world. You can be when you. When you do something to speak up about something that you care about, you probably will be nervous. You may be scared. But I found out that even that little bit of courage went a long way, because then Mrs. Tarmin, in the girl's advisor, gave me my suspension notice, which I'm so glad I found it in a box.

[LAUGHTER]

I know, I always tell the kids, keep your suspension notices, guys.

[LAUGHTER]

Hey, you never know when you're going to want that. Yeah, it's so exciting. So I have it. Yeah, so she gave me this suspension notice. And I went home. I wasn't sure what might-- oh, my dad said we should not wear the armbands, but you see, kids are so persuasive. And we said, dad, look out you speak up for what you believe, and you even risked your life. And my mom, I knew she would understand.

So then some crazy people started getting-- seven kids were suspended. No, five. And that actually helped us a lot in court, because Thurgood Marshall at the Supreme Court, he was the lawyer for the school board. And Thurgood Marshall said, well, how many kids were suspended? So he said, well, five, but there were more than that that actually wore the armbands.

So Thurgood Marshall said, OK, well, how many actually wore the armands? So I think it was

Mr. Herrick, the lawyer. He said, well, seven. So Thurgood Marshall said, are you telling me that seven kids in a district of 18,000 were substantially disrupting your school? And it really helped us. There were going to be more wearing them, but when they made a rule against it, it dropped down.

But I wanted to tell you also, when Chaney, Schwerner, and Goodman were murdered by the Ku Klux Klan-- and this is how this standard is based on kids in the Civil Rights Movement-- students wore buttons to school in Mississippi, high school students at a black school, black kids, that said, one man, one vote, SNCC. And they were suspended. And that case, it was before we ever did our actions, in 1964.

That started working its way through the courts. And they ended up winning their case in the 5th Circuit Court of Appeals because the Court said they should win because they had not substantially disrupted school, and that's where the standard comes from. It comes from kids in Mississippi who were protesting the Ku Klux Klan murders of Chaney, Schwerner, and Goodman.

Well, the American Civil Liberties Union heard what had happened to us, the Iowa Civil Regime, and they came and started helping us. And they said, first, you always have to negotiate. So we did. We went back to the school board, and they would not change their mind. And so they said, well, we're going to have to take this over to the other branch of government, the courts.

And so it went to court. And we lost at the district level and we lost at the appeals level. Right when we were losing at the appeals level, right before that, the kids in Mississippi won. And that *Burnside* caused a circuit split, when they ruled against us at the 8th Circuit in Iowa. So now we have circuit split.

So it was appealed to the Supreme Court, but as you know, they only take about 80 cases a year out of around 10,000. So we're really glad that they took our case, first of all. But I certainly thought we would lose because I said, there's no big, important judges that are going to say, the kids were right and the teacher was wrong and the school board was wrong and the superintendent was wrong. No, I didn't think that was ever going to happen.

So I was really surprised, when I was a junior in high school, when we won the case by 7-2, and Abe Fortas made his wonderful ruling about what education should be in a democracy.

And one of my favorite things that he said was that students are persons under our Constitution with the rights and responsibilities of persons. And I had no idea that this case was going to be so important. Well, I knew it was kind of big deal because my mom went out and bought some ice cream that night.

[LAUGHTER]

But still, I didn't know it was going to be this big landmark case, that I would be here today talking with you. And so I grew up and I became a nurse and I started working with children and teenagers. And I started to see firsthand how kids do not get a fair deal in our society. I was taking care of kids who were shot. Their after school programs were cut.

One boy, I remember, came rolling through the door of the ward there, and he had been shot and he had a tube coming out of his chest and he was barely awake. But he had a big dollar sign tattooed on his neck. And I thought to myself, how ironic. He has absolutely no say about the budget in our city. He has no say about his parents' minimum wage jobs, or whatever they're getting for their wages, about the rent and whether there's rent control. But here he is, paying the price for policies that he had no say in. And so that's when I decide to leave the hospital and start traveling around, talking to students.

And just recently, I heard about a speech that some students gave at the United Nations a few years ago, advocating for the universal rights of children. And the United States is one of the only two countries who has not signed on to that, by the way. I think Sudan is the other country. And the kids we're saying, we're not the problem. We're the solution. You say that we're the future, but we're also the present. So thank you for having me here today. Here's to you and to all kids and the First Amendment. Thank you for having me here.

[APPLAUSE]

Thank you. Do we have a few minutes for questions? Do we have a few minutes? Speak up. All right, OK. Does anyone have a comment or a question? Yes.

**AUDIENCE:**

So not only do we see people trying to restrict student speech, we see the news about a president, and lobbying students, they're trying to say something about gun violence, the environment, or issues they're really passionate about, what would you want to say to those people?

**MARY BETH**

When people are mocking the kids? Yeah, I mean, kids are always mocked. When we stood up about Vietnam, people said, you kids don't know anything about Vietnam. Well, guess what I found out later? Adults didn't know anything about Vietnam.

**TINKER:**

[LAUGHTER]

They couldn't even find it on a map. Here, we're going to war in this place Vietnam. They had never heard of it. They didn't know the history. They didn't know there was a war of independence. They didn't know about the French colonizing Vietnam. Now people are saying, oh, these kids, these March for Our Lives kids, they don't know anything about guns. Wait, they know a lot about guns. They have a lot of experience.

And I talked to so many kids all over the country who have been affected by gun violence. Every group of teenagers, if you ask, who has somebody who's been shot? Who knows someone who's been shot? I mean, hands will go up. So there's a kind of knowledge. And there is a great Brazilian educator named Paolo Freire who used to talk about that. There's a kind of knowledge that you have that's just as valuable as something from a book that you might get in other ways. But yeah.

It's another sign of being a discriminated group. I mean women voting. People would say, oh, women can't vote. Come on. There's no way women can learn all the stuff you need to learn to vote. Speaking of which, now I'm on a new campaign, 16-year-olds voting. Yeah, that's a very interesting one. There are three towns in the United States where 16-year-olds can vote.

And I was very excited to go to a human rights conference in Brazil, and I was speaking about children's rights and teenagers rights. And I said, yeah, we have three cities now where 16-year-olds can vote. Guess what they told me? All Brazil already has that, and so does Argentina, and I think 16-year-olds in Scotland who are voting. So yeah, we almost got it passed last year in DC. It was short one vote. But that's another campaign that's picking up steam. Yes?

**AUDIENCE:**

Thank you so much for speaking. That was great.

**MARY BETH**

Thank you.

**TINKER:**

**AUDIENCE:**

You talked about a lot of issues that cross welfare. But I wanted to ask you, if you were 13 today, for what cause would you wear the armband?

**MARY BETH**

What cause? I'd probably be wearing it for various causes. I think I'd be speaking up against racism and the climate, animal rights, gay rights. I'm gay so I have spoken up about that over the years, although I used to be really scared to say anything about it because I thought, oh no, these crazy people, they're going to come back. Because when we wore the armbands, there were crazy people that would call and threaten to kill me, this lady. I was like, we're speaking up for peace at Christmas time.

[LAUGHTER]

Now people, you send those little glittery cards around that have an earth on it. It says "peace on Earth." I mean, really. I think kids also see through hypocrisy. That's one power. Here's one of my favorite postcards, some of our hate mail. Yeah, well, you have to admit it, it makes it very clear, the message.

[LAUGHTER]

And it's kind of artistic also. Yeah, they would do crazy stuff. They'd throw red paint at our house and threaten to bomb our house on Christmas Eve. Nothing says Merry Christmas than a bomb threat. Yeah. So yeah, so I was kind of afraid to start speaking up about being gay. But then I just kept meeting so many kids who were very stressed out about that issue and I said, I need to say something about myself to help them. Yeah. yes?

**AUDIENCE:**

So most of us are law students and some of us are going to be representing people when they're standing up for their rights. So I'm curious about, with your experience in Iowa, is there anything that your parents did that you particularly liked or that you didn't like? Like, what--

**MARY BETH**

Yeah. We had the best attorney, Dan Johnston, and he was right out of law school. And the

**TINKER:**

great thing about him was not only was he brilliant in thinking up ways to win the case, and viewpoint discrimination was one of the ways he won-- because the schools, they had allowed other kids to wear black armbands before that to mourn the death of school spirit.

[LAUGHTER]

But they wouldn't let us wear them to mourn the death of actual people.

[LAUGHTER]



So that's one way that we won, really. And also, there was no substantial disruption. So one thing that he did, besides being a great lawyer, was he was just very kind to us kids. Because I think we were a little bit traumatized, even though we tried to pretend like we weren't. But it was difficult at times, and he was just kind and warm and he was just friendly. That really made a big difference because we were kind of stressed out.

When we won the case, by the way, the court said that you could have your free speech rights in school but you could not substantially disrupt school, which came directly from Mississippi. And number 2, you cannot impinge on the rights of others with your free speech, whatever that means, and that's been debated ever since. Yes?

**AUDIENCE:**

Can you speak more about your experiences during the years it took to litigate the case?

**MARY BETH**

The years it took to litigate it? Yeah, I mean, it took about three years. We went on with our

**TINKER:**

lives. The worst thing was the war kept getting worse and worse. So I went to the district court. I flew on an airplane for the first time when I went to the appeals court in St. Louis, and I was really mostly worried about whether I was wearing the right kind of outfit for the occasion. I think I was 15 or 16. Excuse me.

So when we won at the Supreme Court, it was really hard to be happy about it, because it was one of the worst years for the Vietnam War. So it was really hard to be all joyous and happy. Yeah, sure. Now we can wear our black armband, and there are thousands of people killed in Vietnam that year.

In the end, there would be two to three million Vietnamese killed and 58,000 US soldiers directly killed. But actually, there are about 20 veterans per day now in the United States who commit suicide. The majority of them are Vietnam veterans, today, right now. So the effects continue from the Vietnam War.

But going through the case was crazy. I just thought the whole experience was crazy. I mean, in a way, I still do. But we had to go to district court, gave testimony in an office, a lawyer's office, and we went to testify. And then at the Supreme Court, I had just moved to a new city and I was in 11th grade. I moved to St. Louis.

And I was trying to make friends and I was all stressed out. I was so shy. So when we went to Supreme Court, I barely remember it. It's very interesting about memory. And I think I was just dealing with so many adolescent things at that time that Supreme Court, who cares? I mean,

I've got to think about who I'm going to be with in algebra class next week.

[LAUGHTER]

I mean, I knew it was important, but I think it was just overwhelming. Yeah. Yeah.

**AUDIENCE:**

I'm curious about your input [INAUDIBLE] tension [INAUDIBLE] and also, a certain amount of vulnerability with free speech and safety rights, and-- Do you think there should be any restrictions on students' speech? And if so, what kind of thing?

**MARY BETH**

Yes, of course there should be restrictions on some student speech. And as I like to tell students in the schools, all rights have limitations, including the Second Amendment, by the way. But you know, you can't go out in the busiest street in Charlottesville today and decide, hey, let's assemble, you know. So there are restrictions. Yes, of course there should be restrictions. I used to be more of a First Amendment absolutist, you know, the answer to speech we hate is more speech, blah, blah.

**TINKER:**

But now I've become more sensitive and aware of the issue of you can't have a free press if you don't own the press, things like that. And the marketplace of ideas, what you're talking about. If you own the market, it helps a lot. So now I'm conflicted. I don't know. I'm still figuring it out. That's why I tell students and all of you, weigh in on it. Think about it. Learn about it. Because it's not like there's some big, important person out there that has the answers.

So I'm much more aware, I think, now of the issue of inequality of the First Amendment. And traveling around the country, there is a total sliding scale to the First Amendment. I mean, the low income, kids of color, they do not have their rights. I'm sorry. They'll probably be lined up to go to lunch.

They'll be wearing strict uniforms a lot of times. As I said, no press, et cetera, et cetera. So yeah, it's so unfair. So I have been thinking about that a lot more. And I'm glad we're having this discussion. I'm glad you're talking about it more. So are we wrapping it up? Thanks. Thanks, everyone. And feel free to write to me anytime. It's marybethtinker@gmail. I'll write you back.

[APPLAUSE]

Thank you. Thank you. Thank you.