

2007
Law Day
Fact Pattern

The following individuals served on the
2007 Essex Vicinage Law Day Mock Trial Committee

The Honorable Siobhan A. Teare, J.S.C., and
The Honorable Verna G. Leath, J.S.C,
Geoffrey Mott, Law Librarian
Shazeeda Samsudeen, Ombudsman
Sigfredo Carrion, Assistant Trial Court Administrator

With the assistance of:
The members of their staff and the
2007 Law Day Planning Committee

LIBERTY UNDER LAW: Empowering Youth, Assuring Democracy

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Background

The United States Supreme Court issued a decision in 1969 in a case entitled *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) that raises the issues presented by our Law Day fact pattern. This Supreme Court decision should serve to guide participating students in their review and consideration of the Law Day Fact Pattern.

In the *Tinker* case, John F. Tinker, 15 years old, Christopher Eckhardt, 16 years old, and Mary Beth Tinker, 13 years old were students attending school in Des Moines, Iowa. John and Christopher were high school students. Mary Beth, John's sister, was a student in junior high school. On December 16, 1965 Mary Beth and Christopher wore black armbands to school in protest of the Vietnam War. On December 17, 1965 John wore his black armband to school. Their schools had a regulation that provided that any student wearing a black armband to school, who did not remove the armband when asked, would be suspended. John, Christopher and Mary Beth refused to remove their armbands, and they were all suspended. They sued the school district and the case was finally decided in the United States Supreme Court. The Supreme Court decided that the wearing of an armband was a form of protected speech under the First Amendment to the United States Constitution. This right could not be easily taken away by the government or a school district. The First Amendment to the United States Constitution protects the rights of citizens to the freedom of expression, including the freedom of speech.

In *Tinker*, the Supreme Court of the United States set a standard that school officials must meet when they issue rules, regulations and penalties that restrict a student's constitutional right to free speech and expression. **The standard the Court set**

requires that school officials must be able to show that the speech or expression by the students would materially and substantially interfere with class work and discipline in the school or the rights of other students. It is not enough for the school officials to say that the student's expressed views are unpopular and that the school seeks to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint.

Law Day Fact Pattern

In our Law Day case, a student named Georgina Hanshee is a fourteen-year-old middle school student who attends Fort George Middle School. The school is located next to the United States Fort George Military Base. Approximately 40% of the students attending Fort George Middle School have parents or siblings in the military.

On November 9, 2006, Fort George Middle School, in honor of Veteran's Day, planned an assembly for the entire community on the school's football field. Local politicians and military leaders were scheduled to speak about the importance of military service and to recognize some of the local residents who had died while serving their country. The event was scheduled to be covered by the local media. On the day of the assembly Georgina Hanshee wore a T-shirt to school which read, "Stop Killing Innocent People For Oil!" Georgina also wore army fatigue pants that were ripped. In addition to her anti-war attire, Georgina handed out leaflets for a peace rally that was entitled "War is Not Patriotic!" to the students entering the school.

During the course of the day, several students voiced their unhappiness with Georgina's attire. At one point her social studies teacher, Frank Wright, approached Georgina and suggested she turn the T-shirt inside out because it was not appropriate to wear the attire during the Veteran's Day assembly. He told her that some of the students and faculty would find it offensive. Georgina, however, refused Mr. Wright's request.

Some of the students called Georgina a "traitor" and "a terrorist" and threatened to rip the T-shirt off of her as she walked through the school's hallways. During Mr. Wright's social studies class, an argument broke out between Georgina and some students who surrounded her and began calling her a "traitor" and "anti-American."

Georgina argued back that they could not take away her First Amendment rights which guaranteed her the freedom of expression under our Constitution. One of the students, Jeb Williams, threatened to rip the T-shirt off of Georgina. Another student, Carolyn Parker, picked up Georgina's peace rally leaflets and began to rip them up. Carolyn also threatened to punch Georgina in the face before Mr. Wright intervened and took both Carolyn and Jeb to the principal's office. After he returned from the principal's office, Mr. Wright told all of the students to take their seats and class resumed without further incident.

Upon hearing from Jeb and Carolyn about Georgina's outfit and about the leaflets Principal Waldo Harper called Georgina into his office. He told her that she could either turn her T-shirt inside out and put on a pair of gym sweatpants or he would call her parents to pick her up. He also confiscated the peace rally leaflets and told her that she was not allowed to hand out the leaflets on school grounds. Furthermore, Mr. Harper stated that if Georgina refused to change her clothes, he would suspend her. Georgina refused to change her clothes.

Mr. Harper then contacted Georgina's mother, Cindy Hanshee. When Cindy Hanshee, a well-known peace activist, arrived Mr. Harper informed her that her daughter was suspended for ten days and that she would not be allowed onto school grounds while wearing the clothing that she had on nor any other attire with political statements about the Iraq war. In supporting his decision, Mr. Harper cited the school's dress code which states that, "[s]tudents may not wear clothing or have personal belongings with messages and or symbols that are disrespectful, offensive and/or distracting such as: H. Commentary on the Iraq War." (page 8) He also referred to the school policy regarding

handing out literature on school grounds which states that, “[s]tudents may hand out leaflets, pamphlets and other literature before and after school and during lunch. Leaflets that have messages, symbols or information with the following content will not be approved: H. Iraq War.” (p.9).

Georgina Hanshee sued the Board of Education and the principal of her middle school, Mr. Harper, for violation of her First Amendment rights. Georgina is seeking a declaratory judgment for violation of her First Amendment rights, an injunction restraining enforcement of the school’s regulations and the removal of the reference to her ten day suspension from her school records and monetary damages.

Fort George School District Dress Code Policy

Section I.

Students may not wear clothing or have personal belongings with messages and or symbols that are disrespectful, offensive and/or distracting such as:

- A. Offensive ethnic remarks
- B. Violence/death
- C. Drugs, including alcohol and tobacco
- D. Sexual slurs
- E. Harassment
- F. Suicide
- G. Put downs
- H. Commentary on the Iraq War**

Policy on Students Handing Out Leaflets, Pamphlets and Other Literature

Students may hand out leaflets, pamphlets and other literature before and after school and during lunch. Leaflets that have messages, symbols or information with the following content will not be approved:

- A. Offensive ethnic remarks
- B. Violence/death
- C. Drugs, including alcohol and tobacco
- D. Sexual slurs
- E. Harassment
- F. Suicide
- G. Put downs
- H. Iraq War**

Instructions for Teachers

The Fact Pattern should be reviewed and discussed with your students prior to Law Day. The students should be familiar with the text and understand the sequence of events. Students should be selected to portray the parties and the other fact witnesses. Six students should be designated as jurors.

On Law Day two attorneys and a judge from the Superior Court will visit your school and enact a brief mock trial calling the witnesses listed. The judge will instruct jurors briefly on the applicable law and the jury will be asked to render a verdict. After the verdict, the judge and other participants will ask questions and encourage participation from the audience. We want your students to engage the participants and interact with them.

Instructions for Attorneys / Judges

The students have received the Fact Pattern in advance. Students have been selected to portray the parties and witnesses. The judge will preside over the trial. The attorneys will role-play. One attorney will act as the attorney for the plaintiff and one attorney will act for the defendant. The direct and cross-examination of each witness should take no longer than 5 minutes. Each attorney will make a 3 to 5 minute opening and closing statement. The judge will give a brief explanation of the applicable law. The selected jurors will then render a verdict and the audience can then express their various viewpoints. Feedback and participation are encouraged. Additional discussion questions are available on page 38.

Judge's Preliminary Remarks to Jury

My name is Judge _____ of the New Jersey Superior Court.
You have been brought here to act as the jury in this case.

I realize jury service may be new to you, so I will give you some instructions. You are the judges of the facts. You will listen to the witnesses and at the end of the case you will determine what facts have been proven or not proven. I am the judge of the law. In addition to regulating the trial, at the end of the case, I will tell you what the law is. You must accept the law as I tell it to you whether you agree with the law or not. You are being asked to apply that law to the facts as you find them to be in order to reach your verdict. That is your job as jurors. In a civil case such as this, there is a minimum of six people who serve on the jury in deciding a case. It is not necessary that all six jurors agree on a verdict. An agreement by any five jurors is enough to reach a verdict.

The burden of proof is on the plaintiff to prove the claim by a preponderance of the evidence. This means that the evidence supporting that claim must weigh heavier and be more persuasive in your minds than the contrary evidence. In other words, the plaintiff's evidence must be a little more convincing than the defendant's evidence. If you find that the evidence is equally balanced, then plaintiff is not entitled to your favorable decision.

Now please stand and raise your right hand, state your name after the word "I" and repeat: "I (state your name) do solemnly promise that I will listen to the evidence of the case with an open mind, without prejudice and favoritism and apply the law as it is given by the judge in reaching a fair and just verdict."

I will now introduce the attorneys and they will explain their positions and what they think the evidence will show. Remember that what the attorneys say in these opening statements or in their closing statements is not evidence. The evidence on which you must decide this case will come from the testimony of the parties and the witnesses only.

The Plaintiff is represented by _____

The Defendants are represented by _____

Plaintiff's Opening Statement:

Defendants' Opening Statement:

ARE WE READY? PLAINTIFF MAY CALL HER FIRST WITNESS

WITNESSES FOR THE PLAINTIFF:

Witness: Georgina Hanshee

Witness: Frank Wright

Witness: Fifi Murphy

WITNESSES FOR THE DEFENDANT:

Witness: Jeb Williams

Witness: Waldo Harper

Witness: Alistair McTwist

CLOSING STATEMENTS

Defendants' Closing Statement:

Plaintiff's Closing Statement:

STATEMENT OF GEORGINA HANSHEE

I am an eighth grader at Fort George Middle School. On November 9, 2006 I wore a T-shirt that read, "Stop Killing Innocent People For Oil!" I also had on army fatigue pants which were all ripped up. I knew that the school had planned a Veteran's Day assembly after school and I wanted to make a statement because I knew that there would be TV and newspaper reporters there. I knew that the assembly would be promoting the war so I wanted to use the opportunity to let them know that not everyone supported the war in Iraq. That's also why I handed out the leaflets about the peace rally. I wanted to let all of the students know that just because we lived by and went to school near a military base, they could still express their opinions about why the war is wrong. I believe that innocent people, including our soldiers, are dying over a war that we should not have started.

The First Amendment guarantees freedom of speech. My mom, Cindy Hanshee, taught me that. After my brother died fighting in Iraq, she started protesting the war even though the government and pro-war organizations are always trying to stop her. I think that the leaders of our country should know that young people also have a voice and their voices should be heard. Why be afraid of ideas?

I also read on the internet that there were a bunch of court cases where students wore armbands and T-shirts with political statements on them. In most of these cases, the Courts found that the school could not tell students to not wear the clothing. There was one famous case, *Tinker v. Des Moines Independent School District*. This case took place during the Vietnam War and the Supreme Court said that the school could not prevent the students from wearing black armbands protesting the war. There was another

case, *Barber v. Dearborn Public School* in 2003, where the Court said that the student, Bretton Barber, could wear a T-shirt to school that was very critical of the President.

The Court said that as long as the wearing of clothing with a political message does not disrupt the school or invade the rights of others, a student can wear clothing or arm bands containing a political message. On November 9th, when I wore my T-shirt I didn't disrupt the school. I know that there are a lot of students at Fort George who have family in the military but not all of them are in favor of the war. Some of the students liked my T-shirt and asked me where I got it. I know that some of them disagreed with the T-shirt. They called me "traitor" and "terrorist" and ripped up the peace rally leaflets that I was handing out, but it was okay with me because they are entitled to their freedom of expression just like me. In social studies class, when Jeb Williams said that he would rip the T-shirt off of me, I knew that he would not follow through with his threats. Carolyn Parker was just trying to get everyone's attention by threatening to punch me. Everyone knows that she is always getting in trouble for fighting anyway. Once Mr. Wright stepped in, they both had to go to the principal's office and everything was fine.

The principal, Mr. Harper, had no right to suspend me for refusing to turn my T-shirt inside out to wear gym pants. Mr. Harper and the school district are violating my First Amendment rights. They are trying to silence me because they don't like the message I want to express. The school's dress code is also unconstitutional because it is based only on the message that I am trying to say about the Iraq war and not whether that speech interferes with school activities. That is censorship, plain and simple. Why can some students wear T-shirts about the situation in Darfur but I am not allowed to wear a T-shirt about the war in Iraq? Also, why can some students hand out leaflets about

religious events or parties but I am not allowed to hand out any leaflets about a peace rally? There is no justification for the school prohibiting me from wearing the T-shirt or handing out the leaflets. Isn't the school promoting the war with the assembly that they were having? Apparently, if you are in favor of the war you can have a school assembly. However, you cannot wear clothing or hand out leaflets that expresses an anti-war view.

The *Tinker* case clearly states that as long as you don't disrupt the school, a student is allowed to express herself or himself. Mr. Wright took care of the situation in social studies class so there was no disruption. I had worn the T-shirt for most of the day and other than some of the students calling me a "traitor" a "terrorist" and "anti-American", there were no other incidents.

I believe that Mr. Harper should remove the suspension from my record. I am a good student and this can really hurt my chances of getting into a good college one day.

STATEMENT OF FRANK WRIGHT

My name is Frank Wright and I teach social studies at Fort George Middle School. On November 9th, I observed Georgina Hanshee, a student in my social studies class, wearing a T-shirt which stated “Stop Killing Innocent People for Oil.” She also had on army fatigue pants which were ripped up. I also observed her handing out leaflets about a scheduled protest against the war outside of school. She, in fact, gave me a leaflet.

Several students approached me and indicated that they were upset that she was wearing the T-shirt and pants and that she was handing out the leaflets. They were especially offended that she wore the outfit and handed out the leaflets on the day that the school had planned an assembly in honor of Veteran’s Day. Many of the students at this school have lost family members in the war or have family members on active duty in Iraq and Afghanistan. None of these students, however, threatened to harm Georgina.

Georgina was also in violation of the school’s dress code which states that: “[s]tudents may not wear any clothing or have personal belongings with messages and/or symbols that are disrespectful, offensive and/or distracting such as:....H. Commentary on the Iraq War.” The school also has a policy that states, “[l]eaflets that have messages, symbols or information with the following content will not be approved:....H. Iraq War.” Although I think that the school’s policy is too broad and restricts the students’ freedom of expression, I nevertheless approached her about the leaflets and her attire because I was afraid that she would be suspended.

I decided to approach Georgina prior to my social studies class. I told her that in light of the events that would be taking place at the school in honor of Veteran’s Day, she

might want to reconsider whether she wanted to wear the outfit and hand out the leaflets because some of the students would deem what she was doing to be offensive or inappropriate. She refused and stated that the First Amendment gave her the right to wear the T-shirt and pants and hand out the leaflets. I could tell that she felt strongly about this issue and as I believe strongly in students' First Amendment rights myself, I decided to not pursue the issue with her.

During my social studies class, I had difficulty controlling the students and getting them to concentrate on what I was teaching. When my back was turned I kept hearing the words "traitor" and "terrorist". Then an argument broke out as a group of students left their desks and surrounded Georgina. Both Jeb Williams and Carolyn Parker appeared to threaten Georgina. I had to raise my voice and escort them to the principal's office immediately. After they left, I was able to calm most of the students down and continue my lesson. Shortly after that, Principal Harper came in and instructed Georgina to follow him to his office.

I understand why school officials want to avoid any disruption but it appears that they may have gone too far in prohibiting certain types of expression about this one subject of the war. The rules seem inconsistent to me. Students can speak about the war but they can't wear clothing that expresses a view on the war or hand out leaflets that contain a message about the war.

STATEMENT OF FIFI MURPHY

My name is Fifi Murphy and I am in the eighth grade at Fort George Middle School. On November 9, 2006 my friend Georgina Hanshee wore a T-shirt which stated, "Stop Killing Innocent People For Oil." She also had on these really cool army fatigue pants which were ripped up. In addition, I observed her handing out leaflets for some peace rally to all of the students entering the school. When she was handing out those leaflets about the protest, some of the students grabbed them out of her hand and ripped them up. On the day that she wore the outfit, I heard a lot of the students calling her names and threatening to make her take off the T-shirt. Georgina told me that she did not care and that she planned to hand out more leaflets after school as everyone was entering the Veteran's Day assembly on the football field.

During social studies class, Jeb Williams, Carolyn Parker and a some of the other students approached Georgina in class and threatened her. I heard Jeb say that he was going to rip off her T-shirt and Carolyn said that she was going to punch Georgina in the face. Nothing happened though because Mr. Wright stepped in and took Carolyn and Jeb to Principal Harper's office. After they left Mr. Wright told everyone to take their seats and class resumed.

I've known Georgina Hanshee since fifth grade and she has always been very opinionated. Once, she wrote a letter to the Superintendent of our school district because she felt that the quality of food being served at our school was not very good. So she has always stood up for what she believed in without fear. A lot of this attitude comes from her mom, Mrs. Hanshee. After Georgina's brother, Sydney, died in Bakala, Iraq, Mrs. Hanshee was on the news a lot protesting the war. My dad is a Captain in the Army and I

have heard him say that he disagrees with what Mrs. Hanshee is doing. I disagree with it to. I don't think that Georgina is right when she says that we are killing innocent people for oil. I think that the United States is fighting for democracy in Iraq and that the people who once ruled that country did not believe in democracy.

Even though I disagree with Georgina, I still think that she has a right to wear her T-shirt and those pants and to hand out her leaflets. I don't plan to attend the protest but some of the other students may agree with her and want to attend or at least learn more about why the protesters feel the way that they do. What kind of country is this when the government tries to prevent certain views from being expressed by its young people?

The First Amendment of our Constitution states that we are guaranteed the freedom of speech and expression. We believe that all views should be expressed and that our country is stronger when we listen to each other. This principle also applies to young people in school. Georgina gave me a copy of this famous case named *Tinker* that stated that young people don't give up their rights to freedom of speech and expression at the "schoolhouse gate." I think that this case is very important for all young people to know about. *Tinker* means that Georgina should be allowed to wear her T-shirt while I can wear one supporting the war. The school is violating our First Amendment rights by telling us that we can't wear any clothing with political messages about the war or hand out any literature about the war. That *Tinker* case makes it clear that students can express their political beliefs unless it is clear that the expression of these views would materially and substantially interfere with school work, discipline or the rights of other students.

I know that the *Tinker* case also says that speech and expression can not disrupt the school or invade the rights of others if it is to be protected under our Constitution.

However, it wasn't Georgina that was disrupting the school; it was the students who were picking on her. I know that there have been some incidents recently outside of school where students were disagreeing about the war. Those incidents, however, did not involve any fights. The flag burning and graffiti were isolated incidents and the fight at the local diner took place outside of school grounds. Whenever there have been any disagreements about the war in the school building, the faculty has been able to control the situation so that a fight could not break out. Mr. Wright was able to control the situation in his classroom as well so that there wasn't a fight between Georgina and the other students.

Finally, I don't think that Georgina invaded the rights of the other students. They don't have to agree with her views. They should also be able to wear their own T-shirts supporting the war if they wanted to. The school's policy about students not being allowed to wear clothing with political messages or symbols about the war is unconstitutional, I believe. The same is true of the policy prohibiting students from handing out any literature about the war. In my opinion the school is censoring ideas because it is afraid of those ideas being expressed in a military community. In a democracy all people should be free to express their views in any manner they choose. We all benefit from the free and open exchange of ideas, even unpopular ideas.

STATEMENT OF JEB WILLIAMS

I am in the eighth grade at Fort George Middle School. I am an honors student and the quarterback on the Fort George Bald Eagles football team. I also live on the Army base at Fort George and am able to walk to school every day. I am proud to be an American living in the United States. When I graduate from high school I intend to join the U.S. Marine Corp. and serve my country as my father, uncle and grandfather have done before me.

In our community of Fort George most families have at least one member of their family serving in the military. I personally knew three of the seven soldiers from Fort George who lost their lives in the Iraq war. I believe that the United States is in the war to protect us and to take the fight to the terrorists abroad instead of waiting for them to attack us here.

On November 9, the Fort George Middle School was scheduled to have its annual Veteran's Day Assembly. Around here, celebrating Veteran's Day is a big deal. Military leaders and politicians come to the school from all over the state to give speeches, meet the students, teachers and members of our proud community. We have a parade and barbecue for the entire town. Last year the Governor spoke at the school along with General McCafferty from Fort George.

In the midst of our proudest day, Georgina Hanshee, who will never serve in the military a day in her life, arrived at school in ripped-up Army fatigues and a torn T-shirt that had written on it, "Stop Killing Innocent People for Oil." Give me a break! While students were entering the school, Georgina was standing there in that getup handing out leaflets inviting them to a peace rally. The rally was called "War is Not Patriotic" and

Georgina's mother, Cindy Hanshee, and the Rev. Tankson Prugert were going to speak about the so-called evils of our government and of this war in Iraq.

The Iraq war has divided the community of Fort George and our student body. We have had problems and incidents in the Village of Fort George and on the school grounds between students who support the war and those who oppose the war. Last year, for example, there was a fight at the local diner between students of our school over the merits of the Iraq war. The police were called but not before students were injured and damage was done to the diner. Within our school, tensions between these two groups have been brewing. The war cannot be discussed in a civilized manner any longer. Students have been threatened and graffiti has been painted on the school building. Georgina was, in my opinion, properly threatened by me and Carolyn Parker but threats have been made to many students who both oppose or support the war, and not just to Georgina.

Georgina and her mother don't realize and respect the fact that it is the military that helps protect this great country of ours and it is the military in the end that will defend their right to speak their mind and believe what they want. Those rights, however, are not without limits. For example, I learned in my social studies class that you can't stand up in the middle of a crowded movie theater and yell, "Fire!" when there is no fire. This is considered false speech and it is designed to cause a riot and may result in danger to others. So I know you are not absolutely free to say anything, anywhere, whenever you want. Our freedom of speech and expression guaranteed by our United States Constitution is simply not absolute.

In social studies we read about legal cases where students wore T-shirts to school that had confederate flags on them and other hateful symbols of racism. Courts have said that the students can be required to take off those T-shirts when those symbols have led to violence and disruption in the school and where there have been prior racial problems. Those cases interpreted and applied the Supreme Court's decision in the *Tinker* case and held that wearing the confederate T-shirt was shown to materially disrupt class work or involved substantial disorder or the invasion of the rights of others in that particular school district.

The same legal principle should apply to prevent Georgina from disrupting the Veteran's Day events at Fort George Middle School. On the day that she wore her anti-war get-up and was handing out anti-war leaflets, a lot of students were visibly angry at her. During that day, whenever Georgina walked down the hall you could feel the anger, rage and resentment in the air. Many students told her how angry they were by her conduct and her clothing. Some students jeered, snickered cursed and yelled threats at her. Georgina didn't seem to care. In fact, Georgina appeared to enjoy the negative attention she was receiving and seemed to relish the thought that she was disrupting the special day's events.

I was furious and so angry with Georgina for what she was doing. Georgina was in my homeroom and later when I had a chance in social studies class I threatened to rip her T-shirt off of her. Carolyn Parker then threatened to punch Georgina in the face. A lot of students were happy that I threatened Georgina because they wanted to do the same thing or even worse. Some of my angry classmates went to the principal's office before homeroom and demanded that Georgina take off her offensive clothes. After I

threatened Georgina she kept yelling, “War is murder,” and “This war is killing innocent people all for oil and nothing else you pig!” She argued that she had First Amendment rights in this democracy and therefore she could say whatever she wanted, wherever she wanted and if I didn’t like it I could “leave the country!”

At the same time many of the students witnessing this started calling Georgina a “traitor” and “anti-American” and much worse. Georgina’s friends also started yelling at me and my friends. The room was tense and students were lining up behind me or behind Georgina. Everyone was yelling. Then, Mr. Wright, the social studies teacher, took me by the arm and led Carolyn and I out of the room to calm down. I was then brought to the principal’s office with my friends. I was suspended for two days from classes for threatening Georgina.

I understand that people can have different views about a war. That has been true throughout our history. I also respect that freedom of speech is a fundamental right of all Americans. However, our rights also come with responsibilities. I cannot say things that intentionally hurt people without there being consequences. I do not have the freedom to intentionally harm another with my words and actions as Georgina has done in this instance. Our military community has suffered a great deal so far in this war. Georgina came to school that day to make everyone angry and she knew that there was a history of incidents in our community involving the very views that she was expressing. Georgina knew that students would be pushed to anger, rage and maybe near-violence by the way that she paraded her views with her clothing and rally leaflets around the school. She must have known that very deep feelings would be stirred up by her conduct and that her anti-war, anti-veteran message portrayed on her T-shirt on Veteran’s Day, would inflame

this student body and our distinguished guests. Thank goodness the principal intervened and sent Georgina home. If she were allowed to promote her message of hate and disapproval I am certain that incidents among our student body would have increased to a point much more harmful than my silly threat toward her.

STATEMENT OF PRINCIPAL WALDO HARPER

My name is Mr. Waldo Harper and I have been the principal of Fort George Middle School since 1986. The community of Fort George and the students that we educate come predominantly from military families. About forty percent of our class is composed of students who have relatives presently stationed in Iraq. Unfortunately, seven families have lost loved ones in the Iraq war since it began three years ago. Needless to say, we are aware at this school that many of our students come to class each day filled with fear and anxiety over the plight of their loved ones who are in harm's way.

In the past few years we have had problems within the Village of Fort George and at the Fort George Middle School between students who support the war and those who oppose the war. I have received almost weekly reports from the Mayor and Police Chief that there have been scuffles between these groups in the Village and around our campus after school hours. At times the police have been called to calm things down. Last year a fight broke out at the Sloppy Joe's Diner. The police and an ambulance had to be called to restore calm and treat the injured. In school, verbal arguments and threats between students in our hallways almost always begin with a discussion over the merits of the Iraq war. Last year some students burned American flags in the front of our building. In recent years, graffiti, reflecting views both in favor and against the war, have been sprayed on our walls of the school. It is as if we have gangs in our school, each one trying to express its views while attempting to silence the opposing point of view.

If this was merely a heated debate about this war I would not be concerned. However, in my school, these viewpoints have been matched with passionate emotional outbursts and I am concerned that under the wrong set of circumstances violence could

erupt. We simply cannot afford to express these views in this school at this time without edging towards unwelcome consequences and the possibility of violence. I believe that the School Board took the right action in prohibiting the wearing of clothing with Iraq war messages and the distribution of leaflets that deal with the Iraq War. We cannot meet our educational mission where the possibility of violence looms under these circumstances.

As the chief administrator of the school I am particularly sensitive to the needs of all of my students, not just part of the student body. I recognize that the feelings and views of students on both sides of this important question need an avenue for expression. I am troubled because expression at this time at our school and on this issue could lead to violence and the disruption of our educational mission. Accordingly, I have felt that we had little choice but to institute a policy that prohibited students from passing out leaflets or wearing any apparel that contains a message about the Iraq war, whether pro or con. Based upon our experiences at Fort George Middle School, the wearing of clothing that includes or promotes a message that is either for or against the Iraq war has the potential to materially and substantially disrupt class work and discipline in the school.

My concern that any message about the war worn on clothes by students could lead to disruption in our school program and possibly violence is not born out of mere fear but experience. When a student speaks out for or against this war the emotions run so high that the threat of violence is always a possibility. As principal I must and will stop this from occurring in our school. Our primary mission is to educate our students and that education cannot occur where there is a threat of violence. If certain speech leads to violence or raises a fear of violence in our school community, I believe that I

have a duty and obligation to prevent that speech or expression from occurring here. I must prohibit that speech whenever possible and penalize the student who chooses to ignore our code of conduct. Students do not have an absolute right to speak and express themselves wherever and however they want in the school. The Supreme Court made that clear in the *Tinker* case.

On Veterans' Day Georgina Hanshee came to school wearing torn Army clothing with a T-shirt that read, "Stop Killing Innocent People For Oil!" The message on this T-shirt plainly violated the dress code at Fort George Middle School and Georgina knew this when she wore that outfit. In fact, I believe that Georgina intended to provoke many students in her class by wearing this outfit as it was Veteran's Day, a very special day of commemoration in our town.

Georgina also handed out leaflets to students entering the building. The leaflets were for a peace rally entitled, "War is Not Patriotic." The school has regulations restricting a student's ability to pass out leaflets on school grounds that deal with the war. Georgina was aware that the message on the leaflets violated the rules of our school. Georgina maintained that she had First Amendment rights to express herself and to inform the public of the peace rally. She argued that the school was promoting the war with the assembly and that the school had an obligation to allow opposing views on the subject.

I was advised by Mr. Wright that Georgina was threatened by Jeb Williams and Carolyn Parker after an argument arose over Georgina's attire and the message on her T-shirt. Jeb is a committed war supporter, probably as intensely and as passionately as

Georgina is an opponent of the war. Jeb was brought to my office and admitted that he threatened Georgina. Jeb was suspended for making that threat.

Georgina was also brought into my office after the incident. I told her that her clothing violated the dress code and that she violated the policy against handing out leaflets about the war in Iraq. Georgina contended that if people did not like her message that was “just too bad...because this war is killing innocent people solely for oil.” She then said to me, “What are you going to do, put me in jail for expressing myself? What kind of country is this where students cannot express themselves? Where are my guarantees of free speech and expression? Where is the democracy?”

I told Georgina that she had to turn her T-shirt inside out and put on gym sweatpants, or I would call her mother to pick her up. I told her that under no condition would she be allowed to attend classes or attend the assembly unless she dressed in conformity with our dress code. Georgina refused to turn the T-shirt inside out or to change her pants. Her mother, Cindy Hanshee, a well know peace activist came to school and was advised that Georgina was suspended for ten days and would not be allowed to return to classes unless she agreed not to wear that clothing again. Ms. Hanshee stated, “I’ll see you in Court!” as they walked out of my office. Next thing I knew I was given court papers.

STATEMENT OF ALISTAIR McTWIST, ESQ.

I am the President of the Fort George School Board and make this statement to explain why we have regulations at Fort George Middle School that prohibit students while in school from wearing any clothing that express messages or include symbols about the war in Iraq. Students at the middle school are also prohibited from handing out any literature on school grounds regarding the war in Iraq.

The Fort George Board of Education recognizes that the U.S. Supreme Court in the *Tinker* decision ruled that students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. Members of the Board of Education and, indeed, the entire educational staff at Fort George Middle School want nothing more than to have a free, uninhibited, open and healthy debate on any and all subjects of concern to our students. Free speech and free expression of ideas are the foundations of our democracy and a key to our strength as a nation. The Supreme Court, however, has also said that a student's right to free expression and speech are not without limits. Specifically, where, as here, student speech materially and substantially disrupts class work and discipline at the school then, the Court has ruled, the school can restrict student speech.

The Board of Education felt compelled to restrict some of our student's ability to express views about the war in Iraq by instituting the controversial provisions within the student codes. The Board of Education concluded after extensive deliberation that an open and free debate on the Iraq war cannot be conducted on our middle school campus without the danger of violence breaking out among our students and a likely and substantial disruption of class work and discipline.

The Board did not make this decision to impose these restrictive regulations without great caution and after much deliberation. Fort George Middle School is located next to a military base. Almost half of our student body has at least one family member in the military. Since the war in Iraq began our community has lost seven soldiers in combat in Iraq. The war has had a devastating impact on our students. Most of the students who live on the base have been staunchly pro-war and are not afraid to speak their mind. At the same time a large percentage of our student body oppose the war and they are equally unyielding in their stance. How have these two major segments of our student population co-existed on our campus? Clearly, the answer is, “not very well.”

In the twelve months preceding the enactment of our regulations there were many incidents on and off campus that caused concern among the Board and school administrators. For example, last year at the Fort George Sloppy Joe Diner in the village of Fort George, students got into a fist fight over the merits of the war. Ten students were involved in what the local media described as a brawl. There was physical damage as well as property damage done to the diner. Police were called to the scene and an ambulance took one student to the hospital for treatment. While this incident occurred off campus all of the persons involved were Fort George Middle School students. There is no reason to believe that students would or will leave their anger and violent tendencies at the schoolhouse gate upon entering our school.

Other worrisome incidents at the school have forced the Board to adopt these restrictions on our students’ free speech rights. I have received repeated reports of verbal sparring and threats among students that have been almost always precipitated by a discussion of the merits of the war in Iraq. Students have been threatened because they

wore a political message on their T-shirts, their hats and their buttons. Graffiti has been appearing on the walls of the school that included physical threats to proponents and opponents of the war. Last year students burned an American flag in the parking lot. The problems were escalating and the Board felt that action had to be taken before things got out of hand.

The School Board weighed all its options and determined that a student's promotion or opposition to the war in Iraq was volatile and would lead to further violence than what transpired at the diner. It was clear that the violence and threats were substantially disrupting class work and discipline in Fort George Middle School. It was also obvious that students were disrespecting each other based solely on the views that a student held about this conflict that appeared on their clothing or on literature that students wanted to hand out. A free and open debate by students on the war could not occur in our school without the safety and security of our students being threatened. That is why the Board imposed a total restriction on a student's ability to express views about the Iraq War.

Jury Charge

General Charge

Ladies and Gentlemen of the jury. The time has arrived when you are to perform your final function in this case, but before you retire to discuss and decide on a verdict, it is my duty to instruct you as to the principles of law which you are to apply to the facts of this case.

Functions of the Court

In this trial the function of the Court is to instruct the jury with respect to the principles of law governing the case. The jury is required to accept and apply the law as stated by the Court to the facts of this case.

Comments of Counsel and Judge

Counsel have, in their opening statements and closing statements (summations), commented upon the evidence to assist you in your deliberations. Their comments are not evidence.

Burden of Proof

The burden of proof is on the plaintiff in this case to prove a violation of the First Amendment of the United States Constitution. To prove an allegation by a preponderance of the evidence, plaintiff must convince you that a violation of constitutional right more likely than not did occur. You must ask yourself as to each issue, which side has the more convincing evidence?

If the evidence on a particular issue is evenly or equally balanced, that issue has not been proven. An easy way to understand this is to picture a scale or seesaw. If the weight on both sides is even, then plaintiff has not met the requirement to prove her case. However, if it tips a little more to plaintiff's side than the other, the plaintiff wins and you should return a verdict for the plaintiff.

The First Amendment

The First Amendment of the United States Constitution protects freedom of speech. In *Tinker v. Des Moines Independent Community School District*, the Supreme Court made it clear that the First Amendment protects the free speech rights of students within the school setting. This means that school officials cannot create a content-based prohibition of speech unless they have evidence that the prohibition "is necessary to avoid material and substantial interference with school work or discipline."

Your Role

The decision in *Tinker* clearly states that the First Amendment protects the free speech rights of students within the school setting. Your role is to determine whether the plaintiff has proven that the defendants violated her First Amendment rights.

Evidence/Credibility

You are to determine the facts from the testimony you heard from the witnesses. You will do this by judging which testimony can be believed and what probably happened.

To help you in making this decision, I want to explain some legal principles. The evidence in a case can be direct evidence or circumstantial evidence. Let's say someone testified that they saw snow falling outside their window at night. If you believe them, that directly proves it snowed that night. But if that person testifies it was dry out when they went to bed but in the morning there was snow on the ground, that is circumstantial evidence that it snowed that night. They didn't see it snow but we still know it snowed just as surely as if the witness actually saw the snow fall. Both types of evidence, direct and circumstantial, are acceptable as proof in a case. Also, you have to decide if you believe each witness after observing their behavior while testifying. Consider if they favor one side or the other and their ability to see or hear what they say they saw or heard.

You can believe all of what the witness said, some of it, or none of it. It's up to you. In other words, are you convinced by it, and does it make sense?

Under no circumstances should your deliberations be affected by any favoritism for a party or any prejudice against a party or your views about the war in Iraq. Bias, passion, and sympathy may not influence your decision. Decide this case on the facts and law I have given you.

Deliberations and Verdict

You must discuss the case among yourselves and listen to the opinions of your fellow jurors. However, in the end, each of you must decide the case for yourself. Your decision is important to both sides.

Although your verdict need not be unanimous, you should try to agree on a verdict. Once all 6 of you, or 5 out of 6 of you, agree on the answers to the jury verdict form, that is your verdict. (The Judge may wish to poll the audience while the jury deliberates.)

VERDICT FORM

1) Is the School Board's policy prohibiting students from wearing any clothing with messages/symbols about the Iraq war or from disseminating any written material about the Iraq war unconstitutional under the *Tinker v. Des Moines Ind.* decision and the facts of this case?

Yes _____ No _____

If your answer to Question 1 is No, please hand in your verdict form. If your answer is Yes, please go to Questions 2.

2) Was the school justified in prohibiting Ms. Hanshee from wearing the clothing and disseminating the leaflets because under the *Tinker* decision, the clothing and conduct materially and substantially disrupted class work and discipline in the school?

Yes _____ No _____

If your answer to Question 2 is Yes, please hand in your verdict form. If your answer is No, please go to Question 3.

3) Should Ms. Hanshee be allowed to return to school immediately and should the school remove the suspension from her record? Yes _____ No _____

4) Is Ms. Hanshee entitled to monetary damages?

Yes _____ No _____

If you answer to Question 4 is No, please hand in your verdict form. If you answer is Yes, please go to Question 5.

5) How much money is Ms. Hanshee entitled to as damages? _____

ADDITIONAL QUESTIONS FOR STUDENTS TO CONSIDER

1. In a democracy should a school district be allowed to restrict the expression of ideas by its students altogether on a certain subject?
2. Do you believe that the Supreme Court in *Tinker* answered the question properly?
3. Why is free speech essential in a democracy and what does the concept of free speech mean to you?
4. Does the right to free speech in a democracy also come with certain responsibilities and limitations?
5. Would you have decided the issue differently than the Supreme Court had in *Tinker*?
6. Could you come up with your own test for determining when a student's right of speech or expression should be restricted in school?

Vocabulary List

Declaratory Judgment – A court decision in a civil case that tells the parties what their rights and responsibilities are, without necessarily awarding damages or ordering them to do anything. Unlike most court cases, where the plaintiff asks for damages or other court orders, the plaintiff in a declaratory judgment case simply wants the court to resolve an uncertainty so that it can avoid serious legal trouble in the future.

Defendant – the party against whom relief or recovery is sought in an action or suit. In this case the Fort George School District is the defendant.

Democracy – a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation.

First Amendment – states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Freedom of Speech – the right to express information, ideas, and opinions free of government restrictions based on content and subject only to reasonable limitations (as the power of the government to avoid a clear and present danger).

Injunction – A court decision that is intended to prevent harm – often irreparable harm— as distinguished from most court decisions, which are designed to provide a remedy for harm that has already occurred. An injunction orders that one side refrain from or stop certain actions.

Plaintiff – The person, corporation or other legal entity that starts a lawsuit. In our Fact Pattern, Georgina Hanshee is the plaintiff.

Unconstitutional – An act or law that violates a person’s rights guaranteed by the U.S. Constitution.