



The Tinkers: Mary Beth and her brother John display the black armbands that got them suspended from school.

The Teens Who Fought for Free Speech

A Supreme Court ruling 50 years ago ensured students' First Amendment rights—and paved the way for today's student protests **BY JOE BUBAR**

Thirteen-year-old Mary Beth Tinker and her 15-year-old brother, John, felt that they had to do *something*. It was 1965, and thousands of U.S. troops were fighting in the Vietnam War—a war that Mary Beth and John both opposed.

"All the time, we were seeing on the news: war, war, war," Mary Beth Tinker, now 66, says. "The bombings, the kids running from their huts screaming—it seemed like everything was on fire."

In December of that year, Mary Beth Tinker walked into Warren Harding Junior High School,

in Des Moines, Iowa, wearing a black armband to protest the war. That didn't go over well with the school principal, who suspended her for violating school rules. John, their friend Christopher Eckhardt, and three others who also wore the armbands to high school were suspended too.

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AP IMAGES (VIETNAM WAR); HULTON-DEUTSCH COLLECTION/CORBIS VIA GETTY IMAGES (PROTESTS)

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The question was: Did suspending the students violate their First Amendment right to free speech? The Tinkers, Eckhardt, and their parents thought so. They sued the school district with the backing of lawyers from the American Civil Liberties Union (A.C.L.U.).

The case made it all the way to the Supreme Court, which in 1969 ruled 7-2 in favor of the students. The Court famously stated that students and teachers don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The landmark case clarified that public school students have the right to voice their opinions, as long as they're not interfering with the ability of the school to function or disrupting the right of other students to learn.

Fifty years later, *Tinker v. Des Moines Independent Community School District* is considered the most important case regarding students and freedom of expression. It set the standard by which all subsequent students' rights cases are judged and paved the way for the school walkouts last year, when students across the country protested to demand stricter gun laws following the school shooting in Parkland, Florida.

Youth in Revolt

The *Tinker* case "was almost like a Declaration of Independence for students," says Stephen Wermiel, a professor of constitutional law at American University Washington College of Law, in Washington, D.C.

"It wasn't that anybody was uniformly saying that students have no rights. But more that it was unclear what rights they had, and when, and under what circumstances."

When the Tinkers were growing up, students were at the forefront of protests from Birmingham, Alabama, to Berkeley, California.

"Kids today say they're woke," Mary Beth Tinker says. "So many young people through history have been woke."

'So many young people through history have been woke.'



More than 2.7 million Americans served in the Vietnam War. Back home, many students protested.

In the South, young people were among those leading the charge in the civil rights movement—staging sit-ins at segregated lunch counters, helping organize voter-registration drives, and boycotting businesses that discriminated against blacks.

In the spring of 1963, thousands of students marched in the "Children's Crusade" in Birmingham to demand an end to segregation. Police officers released dogs on them and knocked them to the ground with high-pressure hoses. Many of the young protesters were thrown in jail. But their courage would help lead to federal laws outlawing segregation.

In the mid-1960s, college campuses also erupted with protests against the Vietnam War. The U.S. began sending

combat troops to Vietnam in 1965 to try to halt the spread of Communism in Asia. Though most Americans at that time supported the war, a small but loud antiwar movement was forming among people who believed that the war had no clear objective, especially college students and young people.

Mary Beth Tinker and her brother were inspired by seeing news of other teens protesting.

"We saw other young people speaking up and standing up for the things they taught us in school and in church but weren't reality, like fairness, equality, justice, and peace," she says. "That was a turning point for us."

A 'Small Action' Against War

The Tinker siblings and a group of other students came up with the idea to wear black armbands as a symbol

AP IMAGES (VIETNAM WAR); HULTON-DEUTSCH COLLECTION/CORBIS VIA GETTY IMAGES (PROTESTS)

BETTMANN/GETTY IMAGES

of mourning not only for the American soldiers who'd been killed in the war, but also for the Vietnamese.

But before the students' protest, school district officials found out about their plan and implemented a ban on armbands, threatening to suspend anyone who violated the rule.

The Tinkers decided it was important to stand up for what they believed in anyway. They didn't think a suspension was that big a price to pay compared with what teenagers protesting for civil rights in the South faced—and they certainly never imagined their symbolic display would lead to a Supreme Court case.

"I had no idea that our small action was going to turn into such a big thing," Tinker says.

When the Tinkers appealed the suspension to the school board, about 200 people showed up at the meeting. Some came to support the students, but others viewed the message of mourning for the dead Vietnamese as "un-American" and praised the schools for punishing them.

The school district upheld the suspensions, so the Tinkers sued. The first court to hear the case dismissed the complaint, allowing the school

Key Students' Rights Cases

Here's how the Supreme Court has ruled on student speech since *Tinker*

Bethel School District v. Fraser (1986)

Ruling: Schools can discipline students for lewd speech.

Senior Matthew Fraser was suspended from Bethel High School in Washington State for using lewd language in a speech at an assembly. The Court sided with the school district, stating that although a school can't prohibit speech because of the viewpoint it expresses, it can prohibit speech because it's vulgar and offensive.

Hazelwood School District v. Kuhlmeier (1988)

Ruling: Schools can censor student newspapers.

Three juniors at Hazelwood East High School in St. Louis wanted to publish articles in their school paper about divorce and teen pregnancy. The school pulled the articles, saying the topics were too sensitive. The Court sided with the school, ruling that a school paper is a supervised learning experience, not a public forum.

Morse v. Frederick (2007)

Ruling: Schools can prohibit student speech advocating drug use.

Joseph Frederick, a senior at Juneau-Douglas High School in Alaska, held up a sign with language related to marijuana use at a school event. The principal suspended him, saying the sign could be seen as promoting illegal drug use. The Court sided with the principal, stating that schools may take steps to protect students from this type of speech.

district's decision to stand. But the students and their lawyers from the A.C.L.U. didn't stop there; they continued to appeal the case until it made it to the Supreme Court.

As the *Tinker* case was winding through the court system, more and more men were being drafted into the armed forces, and the antiwar

movement was growing. In 1967, 100,000 people gathered on the National Mall in Washington, D.C., to protest the war.

However, many people still supported the fighting in Vietnam and the Tinkers became the focus of a lot of anger. They were accused of being Communists, and their house was

Students from Miami Country Day School in Florida walk out of their school in March to protest gun violence.



MARTA LAVANDIER/AP IMAGES

#YELLA/SHUTTERSTOCK.COM

smeared with red paint. They received hate mail and death threats, and their car window was smashed with a brick.

The Tinker Standard

At the center of the Tinker case was the First Amendment, which guarantees the right to free speech and the right to peacefully “assemble, and to petition the Government.” It was unclear how the First Amendment should apply to students.

“Students were supposed to go to school and do what they were told,” says Wermiel, the law professor. “So I think *Tinker* changed the paradigm. It changed the way we thought about what kids were supposed to do . . . to think critically for themselves and to express themselves and voice their views.”

The Tinker ruling ensured that students have free speech rights in public school—but only up to a point. It doesn’t mean you can do or say *anything*. The justices said that school officials must balance students’ First Amendment rights with the school’s need to maintain order, so as long as an act of expression doesn’t cause a “substantial disruption” or infringe upon the rights of others, it’s allowed. Legal experts often refer to this as the Tinker standard.

In three cases since Tinker, the Supreme Court has grappled with how to strike that balance between allowing free speech and maintaining order in school. In each one, the Court has sided with the schools (see “Key Students’ Rights Cases,” facing page).

“The Supreme Court has pretty consistently since 1969 limited the scope of Tinker,” says Wermiel.

Still, courts at all levels continue to apply the Tinker standard when ruling on student speech (see “Can Your Instagram Post Get You Suspended?”). *Tinker v. Des Moines* has been cited in court decisions at the local, state, and federal levels more than 2,000 times.

From Tinker to Parkland

Last March, thousands of high school students across the country followed

Can Your Instagram Post Get You Suspended?

Courts are grappling with how to apply the Tinker standard in the age of social media

One of the biggest debates regarding students’ rights today is whether schools should be allowed to punish students because of something they post on social media while off campus. The Supreme Court has yet to weigh in, but federal courts have ruled on a handful of these cases in recent years.

In some, the courts have sided with schools. In 2016, for example, a court ruled that a Pennsylvania high school had the right to suspend a student for posting about a bomb threat on Facebook.

But in other cases regarding social media, the courts have sided with students. In 2015, for instance, a court ruled that an Oregon eighth-grader’s Facebook rant about a teacher was protected free speech.

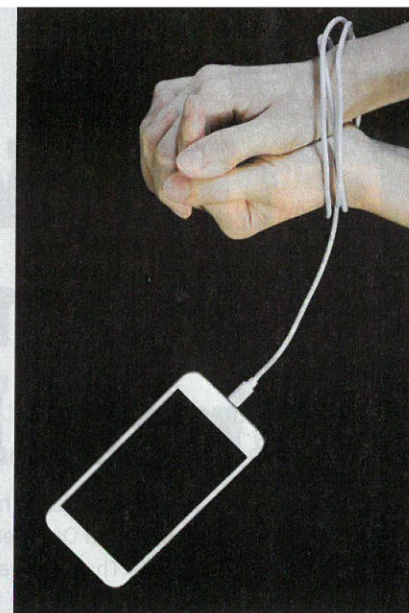
Tinker set the standard for what is acceptable student speech within the

in the Tinkers’ footsteps when they walked out of their classes to demonstrate for stricter gun control.

Schools wrestled with how to respond to the walkouts. Some supported and even helped their students protest. Others threatened to punish students with suspensions.

Before the protests, the A.C.L.U. posted a guide on its website for students. It said that schools could discipline students under attendance guidelines. But what schools couldn’t do, the legal experts said, was “discipline you more harshly because of the political nature of or the message behind your action.”

The idea that school officials can’t



“schoolhouse gate.” But many people think that social media has changed what it means to be on and off school grounds. After all, a student who posts a comment on Instagram for everyone at school to see has the same effect as a student who makes a comment in class. So even though the courts are coming to different conclusions in these cases, they’re still going by the Tinker standard, says Stephen Wermiel, a professor at American University Washington College of Law.

“Their results vary,” he says, “based on whether there was a reasonable perception that the tweet, or Facebook post, or Snapchat might cause disruption at school.”

punish students simply because they don’t agree with a certain viewpoint comes directly from the Tinker case.

On the morning of the walkouts, Mary Beth Tinker, now a retired pediatric

nurse who continues to speak out about First Amendment rights, joined students in McLean, Virginia, who’d stepped out of

class to protest. In a park near McLean High School, she encouraged them to continue standing up for what they believe in.

“When you find an issue that you care about, that affects your life, and you join up with a group of others to take action,” she says, “then life becomes so meaningful.” •

Students have First Amendment rights—but only up to a point.

Tragedy at Kent State

When National Guard troops killed four students at an anti-war protest, it brought the horror of the Vietnam War home to America

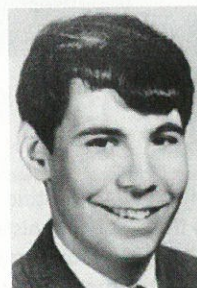
BY BRYAN BROWN



The photo that shook the world: 14-year-old Mary Vecchio kneeling next to Jeffrey Miller, one of the four students shot dead



Ohio National Guardsmen move in on student protesters at Kent State, May 4, 1970.



Four Dead: (clockwise from top left) Allison Krause, William Schroeder, Sandra Scheuer, and Jeffrey Miller

Before May 4, 1970, few Americans had heard of Kent State University, a college in a small Ohio city. Today, the name is forever linked to a shocking event: During a campus protest against the Vietnam War, National Guard soldiers fired into a crowd of student demonstrators, killing four and wounding nine.

Laura Davis, a Kent State freshman at the time, remembers the sense of disbelief. “To think that American soldiers would shoot students on their own campus—that was unthinkable,” she says.

The shootings at Kent State instantly symbolized the nation’s stark division over Vietnam. For many Americans it became “the day the war came home.”

U.S. involvement in Vietnam had begun in 1954, when President Dwight D. Eisenhower sent military advisers to South Vietnam to help it in its fight against the Communist North (see *Timeline*, p. 18). In 1965, President Lyndon B. Johnson sent in ground troops, eventually totaling more than half a million; by the spring of 1970, about 50,000 of them had been killed.

Unlike previous wars, this one played out on television, with Americans seeing the horrors of battle beamed into their living rooms. The daily brutality galvanized young people, especially college students, to demand an end to the war and the draft. Since 1973, the U.S. has had an all-volunteer army. But during Vietnam, able-bodied men ages 18 to 26 had no choice but to fight if they were called up.

“Many Americans, particularly younger Americans, questioned why we had to shed our blood in such a small,

far-off country that was of no threat to us,” says historian Philip Caputo. “Other Americans deeply believed that the war was [a necessary battle in] the Cold War. These Americans regarded the former as cowards and traitors.”

The War Escalates

In 1969, President Richard Nixon took office promising to end the war. He brought home more than 100,000 troops by the end of that year, but on April 30, 1970, Nixon announced that the U.S. had invaded Cambodia, South Vietnam’s neighbor, to attack Communist forces there. The news that the war was still expanding sparked new protests around the country. At Kent State, students held a rally on Friday, May 1, and made plans to demonstrate again on Monday, May 4.

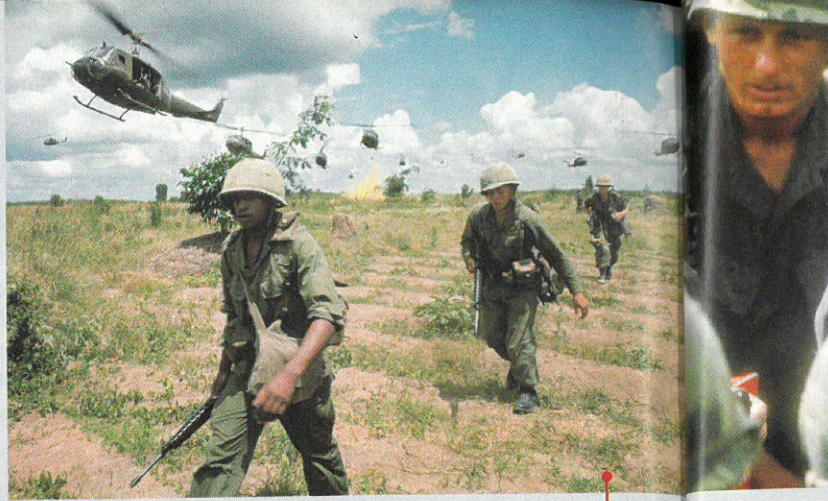
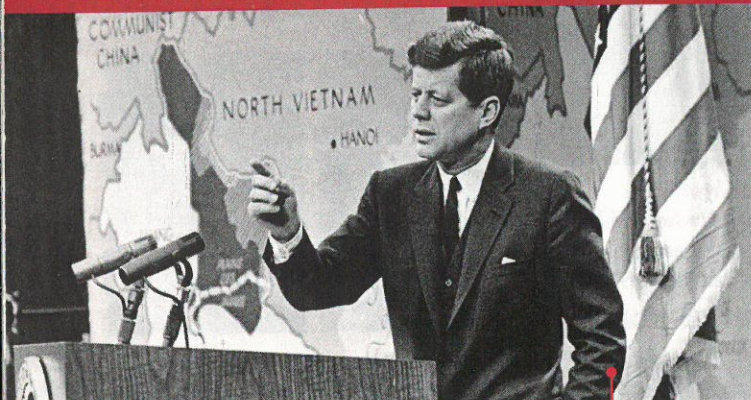
All that weekend, tensions on campus ran high with confrontations between students and police. On Saturday evening, the Reserve Officers’ Training Corps (ROTC)* building, a symbol of pro-war sentiment on campus, was burned down. (It’s still unclear who was responsible.) Ohio Governor James Rhodes



Download two eyewitness accounts at upfrontmagazine.com

*College students enrolled in ROTC train to become military officers while getting scholarships for tuition.

Timeline VIETNAM WAR



1954

U.S. Advisers

After Communist forces defeat the French in their effort to hold onto their colonies in Indochina, Vietnam is partitioned into a Communist North Vietnam and a pro-Western South Vietnam. President Eisenhower sends several hundred military advisers to train the South.

1961-63

Escalation

As fighting between Communists and the South intensifies, President John F. Kennedy increases the number of U.S. advisers in Vietnam to 17,000.

1964 Gulf of Tonkin

After a murky incident in which North Vietnamese torpedo boats were said to have attacked a U.S. destroyer in the Gulf of Tonkin, Congress passes the Gulf of Tonkin Resolution, essentially giving President Lyndon B. Johnson power to wage war in Vietnam without a formal declaration.

1965

First U.S. Combat Troops

Johnson sends the first U.S. combat troops to Vietnam. By year's end, U.S. troop levels reach 200,000, and by 1969, they hit a peak of 543,000.

1968

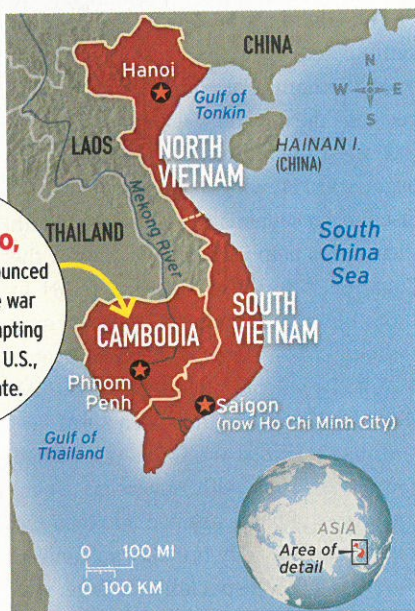
In January, Johnson announces he won't run for re-election. He launches the TV images strategy to build confidence and ease pressure. In Paris and, Vietnam, he announces a ceasefire. He plummeted in the polls.

called out the Ohio National Guard to restore order. University officials announced that the Monday rally was banned—but most students either didn't know about the ban or ignored it.

Sometime around noon on May 4, about 500 protesters gathered on the campus Commons. Some 2,500 other students were either watching the protests or simply trying to get to class. As soon as the rally began, the Guard tried to disperse the crowd. About 100 soldiers marched with bayonets on their rifles, scattering the protesters. The soldiers shot tear gas, which blew back across the Commons. As protesters retreated, many hurled insults at the Guardsmen. Some threw stones or lobbed back tear gas canisters, though most students were too far away to reach the soldiers.

Alan Canfora, then a junior, told *Upfront* he stayed close enough to shout at the soldiers as he waved a black flag. "My friend just died in Vietnam, and

On April 30, 1970, President Nixon announced plans to expand the war into Cambodia, prompting protests across the U.S., including Kent State.



we want to stop that war," he recalls yelling. Even when some Guardsmen knelt to aim their rifles, Canfora didn't believe they would shoot.

By then one group of 70 soldiers had come up against a fence at one end of the campus. They appeared to be heading back to their starting point at the ROTC building and ending the

confrontation. But suddenly, 28 of these soldiers stopped, turned around, and opened fire. Most shot into the air or the ground. But eight of them did not.

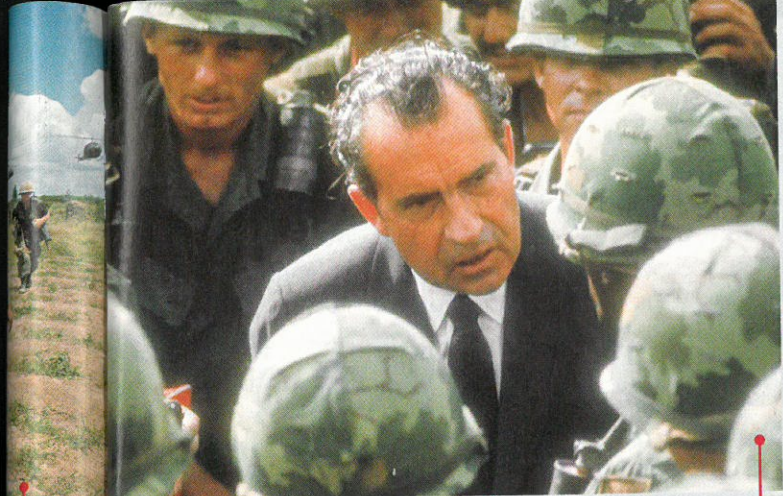
The volley of shots—67 in total—lasted 13 seconds. "When they stopped shooting, there was a split second of just silence," says Canfora, who took a bullet through the wrist. "Then you started hearing students screaming out in pain and people calling for ambulances, and other people screaming at the Guardsmen, calling them murderers."

When it was over, four students were dead, including two who weren't involved in the protests (see photos, p. 17). Nine students were wounded, one of them paralyzed for life.

When the Guard commander threatened to charge again, the students finally dispersed. Laura Davis, who had taken shelter in one of the campus buildings, went home. She was still in shock later when her father came home.

"They should have shot all of them," he told her. "Don't you know that one of those people would have been me?" she replied. Her father didn't answer.

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1968 Tet Offensive/ Peace Talks

In January, Communist forces launch the Tet Offensive. Grisly TV images shake American confidence and add to anti-war pressure. In March, Johnson announces peace talks in Paris and, with his popularity plummeting, tells the nation he won't run for re-election.

1969-70 'Vietnamization'

President Nixon (*above with U.S. troops*) announces a policy of "Vietnamization"—to end U.S. involvement in Vietnam and turn the war over to Vietnamese troops. U.S. forces begin to come home, with troop levels falling to 220,000 by the end of 1970.

1973 U.S. Withdrawal

In January, with the signing of the Paris Peace Accords, the fighting halts temporarily. With 58,000 Americans dead, the U.S. completes its withdrawal, but fighting soon resumes.

1975 Communist Victory

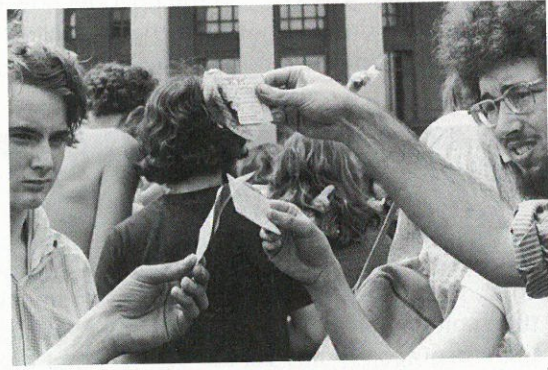
North Vietnamese forces overrun the South, and Saigon (now Ho Chi Minh City) falls in April. The last U.S. personnel make a desperate evacuation from the city by helicopter, along with a fraction of the Vietnamese who want to flee.

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One photo of the shootings, taken by a Kent State student, appeared all over the world. It was of Jeffrey Miller, one of the students shot dead, and Mary Vecchio kneeling in despair at his side (*see photo, p. 16*). Vecchio, a 14-year-old runaway from Florida, had wandered onto Kent State's campus during the protests. The Pulitzer Prize-winning photo has become one of the most iconic images in American history.



Burning draft cards at the steps of the Pentagon, May 1972

"I've always interpreted the picture as a metaphor for the [anguish] of the American society about the war," says Jerry M. Lewis, a longtime Kent State professor.

400 Colleges Closed

In the shootings' aftermath, Kent State's president ordered the university closed. Campuses already in turmoil over the war exploded in new protests, and a national strike of about 4 million students shut down some 400 colleges and universities.

A shocked nation tried to come to grips with why the tragedy happened. Some of

the Guardsmen later said that students had tried to grab their rifles (though investigations disproved the claim). President Nixon denounced the shootings as "tragic and unfortunate," but he also partly blamed the students, saying "when dissent turns to violence, it invites tragedy." A Gallup poll showed that 58 percent of Americans also faulted the protesters.

An Ohio grand jury charged 25 students with rioting, but only one was convicted. A federal grand jury indicted the eight Guardsmen who shot into the crowd for violating the students' civil rights, but the trial judge cut the

proceedings short, ruling that the prosecution hadn't proved its case.

In 1979, a civil suit finally ended with a small cash settlement for the victims' families, and a statement by Governor Rhodes and the Guardsmen expressing regret but not accepting blame.

Forty-five years later, people in Kent, Ohio, refer to "May 4th" like most Americans speak of 9/11. Davis, the former student, is the founder of the May 4th Visitors Center, a permanent exhibit about the shootings. She says the day was "a watershed moment . . . for the whole country."

Davis also believes the shootings hold lessons for young people today, who are "living in a period of constant war" and have the right to protest if they disagree with their government.

It's important, she says, to insist on your First Amendment rights and to speak out, as she and her fellow students did.

"There's a timeless element about Kent State that's important," she says. "It's not just something that happened 45 years ago." •