**Lecture 10/30 –**

Case: Reporter for WaPo, reports on Foreign Affairs, National Security, and the White House. Has received a verbatim transcript of a Trump conversation with Erdogan of Turkey, where Trump asks “By the way, need a favor: want you to investigate the Biden Family, and it’s also ok if you go into Syria, push the Kurds back, take it over with Russia…” Erdogan replies “Sure.” Lots of emails and documents that show how we will withdraw, what will happen to the Kurds, etc.

* Can we verify the documents are valid? Reporter has no doubt that they are real – how to validate?
* How did he come by the documents? Person who works in White House and has access to top, classified information – urged for the benefit of the country to go find these kind of documents and turn them over, incredibly classified documents
  + This person did NOT have authority to share this classified information
* Pentagon Papers Case: Holds that you cannot stop publication of classified information even though it was taken illegally
  + Harm must be immediate and direct to the country
  + Daniel Ellsberg – worked for RAND corporation with DoD and got these documents, Xerox them
  + Can the govt sway the court to issue an injunction (order to press not to publish something)?
    - Court DIDN’T decide if the govt can wait until AFTER publication and then bring a criminal case. Subsequent punishment vs prior restraint
* Progressive Case: Writer reached out to Dept of Energy in which the guy laid out how to build an H-bomb, govt granted a preliminary injunction because it is partially restricted data
  + Decided by a Federal District Court
  + Judge says there is no plausible reason why the public would need to know how to build an H-bomb, but I *do* see a direct harm – dictators that would take this info
* Is there a statute now that gives the courts authority to issue an injunction against classified information? There is NO such statute
  + Ever since Pentagon Papers, Congress has never acted to pass a law authorizing an injunction
* Problem of the leaker – after Pentagon Papers, Ellsberg was charged under Espionage Act, govt had written into his psychiatric office, looking for something
* Government keeps things secret and prosecutes people who leak, and press who gets things through leaks and tries to hide behind the 1st amendment