**Lecture 10/2 –**

* Recall Brandenburg: Who the speech is directed at (i.e intent) shows if it is legal or illegal
* In order to prosecute someone for a crime, you have to show that they have a state a mind (intent) to commit the crime (this is in criminal law)
* Espionage Act 1917
  + Criminal interferes with war conduct
  + Congress passes a law saying advocacy is illegal, and not just doing the act
  + Should courts give more deference to law in rational judgement or in cases where law does not expressly prohibit speech?
  + For: Court is co-equal branch, decisions should give deference for other branches as well
  + Against: Court should only defend laws that protect free speech
* If we say “Lets go back to be Nazis” is said, that must be stopped
* Emotional harm is legitimate as this speech comes at a high price
* Going around the world, most democracies do not allow for hate speech
* Argue against line-drawing argument?
  + Well, line-drawing is always a problem, but 1A is filled with lines
  + Obscenity is extremely vague, but that is an exception

**Case:** We want to ban fighting words that are racist and sexist since fighting words are not protected. Is that permitted?

* RAV – Justice Scalia says that while fighting words are not protected by the 1st Amendment, you cannot ban them as part of a speech that is doing other things (?)
* Hand’s Masses Case – interpreted Espionage Act in relation to Post Office and discerns the legislative intent in enacting this law – cant believe that Congress wanted to create a prohibition on speech that would undermine all ipionion in a functional democracy
  + State cannot choose based on the speech’s content of fighting words to ban a narrow segment of those fighting words
  + You can’t choose to prohibit some hate speech based on some content
* VA v Black – Speech that is a general personal threat is NOT protected, but advocacy is
  + If done in a way that is done AS A THREAT AGAINST THAT PERSON – the state can intervene to protect that person

**Case:** Editor of WaPo and I am running an article that says “Donald Trump Jr. uses Cocaine Daily.” I got an anonymous call and the person sounded good and gave a number of details, sources – it looks good enough for me! Personally – we have a strong desire to make money, but we have no strong desire to hurt Don Jr.

* Legal advice before I run the story?
* NY Times v Sullivan – We can run this if it is not with malice
  + Malice is also “reckless disregard” –
  + Even if what we say is false, it is still protected unless there was “actual malice” – you knew it was false, or you acted in reckless disregard of its falsehood
    - If either of those is true, then no protection from NYTimes v Sullivanssss\`]\
* Hustler Magazine v Falwell – highly offensive things published about Falwell, but was still protected