Lecture 10/9 –

**Midterm:**

* 1st: Identify the issues outlined in the hypothetical case (e.g fighting words, defamation, indecent language)
  + Called “spotting issues”
* Before: Make a list of all the first amendment issues discussed thus far and ask if this one is raised
* Make the problem as complex as you can: overcome instinct to say “This is the answer”
* How much do you really know about the cases?
  + Names? Yeah, know Brandenburg v Ohio
  + Know what preceded that case, including overruled ones

**Case:** Recall story of Donald Trump Jr. being a longtime user of cocaine

* Under NYTimes v Sullivan, what are the requirements?
  + First has to be false, and then there needs to be malice – reckless disregard of whether it is true or false. This is speech about *public officials*, and when there exists false statement of fact that damages reputation can only be subject of *tort lawsuit* when plaintiff can show press (or defendant) published injurious statements
  + St. Amant v Thompson? Says not following journalistic practices does not constitute reckless disregard
  + What can Trump Team say? That this DOES satisfy actual malice
    - Editor acted in reckless disregard
    - Maybe NYTimes v Sullivan is not a relevant case because he is not a public official!
    - Normal journalistic practices are that you contact Don Jr. and see if he responds
  + Back to the editors: You have to give them room to make errors, because that is the essence of a democracy – that is what fosters robust debate
  + Trump Team: Public officials are constantly under threat of negative attacks, so you’re going to allow irresponsible people publish damaging things? This will scare people off from public service
    - You get discourse that is highly damaging to a well-functioning society
    - This is not ok in a modern world with massive social media and instant access
    - Maybe Trump Jr. is a de facto public official if an undersecretary for Agriculture is
  + Gertz v Welch – extend Sullivan to Public Figures as well as Public Officials
    - Gertz Represented a large public family, gets drawn into controversy about John Birch society
  + Actual Malice for Public Official/Individual – what about for private individual?
    - Negligence is the standard for private individual
    - Some people are so important that we can categorize them as a public official
  + US v Alvarez,