**Lecture 9/16 – Whitney, Dennis, Brandenburg**

* Case: Organization goes around country making hateful/racist statements, they are called the White Nationalist Party (WNP)
  + They express approval and praise for the people who have taken violent action
  + They hold an annual WNP conference in Northern Idaho, various seminars and classes on “How to use a gun,” “Target Practice,” “How to make bombs”
  + ***Is this protected under the 1st Amendment, or can the government say that this is NOT protected?***
  + Brandenburg in our case – seems that all three prongs are violated
    - Just because the statute is unconstitutional does not mean that the Klan’s speech is automatically protected
* Brandenburg (1969) – “clear” means “likely”
  + Leader of KKK convicted under Ohio Law – KKK rally that was broadcasted to local and national statements
  + Prosecution against the KKK
  + Court said Ohio’s statute is unconstitutional – speech is protected unless advocates illegal action
    - Three prongs that need to be satisfied to NOT be protected:
      * *express advocacy* instead of abstract, imminent action, and likely action
    - There is no IMMINENCE factor here, there are no people present besides Klansmen and reporters, this is likely an indirect threat
      * Imminent – immediate
  + Before speech can be prohibited, it must explicitly advocate illegal action:
    - But Brandenburg does not use word “explicit”
  + Brandenburg is a mix of “clear and present danger” and Hand – not only is there a requirement that it must be dangerous and imminent, but it also must be more explicit
* Dennis v US:
  + Communists organized – did this violate the Smith Act?
  + Court said that speech advocating the overthrow of government is NOT protected by the government
  + Here we look at the “gravity” of the evil – overthrowing the government is more grave than say, taking over the office of the President of CU!
* “Clear and Present Danger” v Learned Hand
  + Learned Hand is known for his Masses Decision
    - In Masses, ONLY speech that explicitly advocates for violent or illegal action is unprotected
  + Holmes uses “Clear and Present Danger”
  + Clear and Present – *depends on the context* and the government has to prove that there was an actual danger or risk that this illegal behavior would happen
  + Hand – No! That is too dangerous and too easily manipulated, as we will throw in jail simple dissenters.
    - Hand’s approach has an implication that something may be completely dangerous but be let go
* Suppose both Brandenburg and Dennis are properly decided – how would we reconcile that?
  + By the time of Brandenburg, the Klan was a relatively minor threat in the United States