**Lecture 9/30 –**

How does the Court deal with a speaker that advocates for people to commit a crime?

* Question is answered 100 years ago with Schenck, Frohwerk, Debs
* Questions arise due to Espionage Act of 1917, can country protect its own security, etc?
* Court first raised “Clear and Present Danger” Test
* Learned Hand – “Bad tendency” test
  + Holmes’ dissent raised Clear and present danger
  + Danger is serious and very immediate
  + But fairly weak test when considering Schenck, Frohwerk, Debs
* 1930s-1940s: More cases start to take strong Holmes’ version of the test
* 1950s: Dennis case, Supreme Court weighs gravity of evil discounted by the probability
* Brandenburg in 1960s:
  + Begins the consolidation into very strong free speech protection
  + “Likely, imminent lawless action”
  + But Dennis is not overruled

**Case:** Rethink Columbia’s Free Speech policy. Any 4-letter-word that Prezbo doesn’t like is banned – violators will be expelled. Constitutional or not?

* Think it is unconstitutional – Cohen v California – profanity is protected because it is expressive speech
  + Prezbo says, “Well, look at our curriculum and you don’t see 4-letter-words, you don’t even need them!”
  + Do these words add to the marketplace of ideas?
    - Is there a threat of great danger, is it imminent, is it “fighting words” meant for people to get angry?
  + Pacifica – after Cohen, FCC could fine a broadcaster for airing indecent language that encompassed a monologue
    - Maybe if you’re really offended, turn off the radio!
    - But broadcast media had a unique large position in the home
    - But think about the children! They may hear things that will offend or corrupt their beings
      * Or persuade them to imitate it through George Carlin
  + Private space isn’t allowed but public space is because – you expect it outside but not inside?
    - That is using the result to justify the outcome

**Why is Hate Speech Protected?**

* Speech that advocates discrimination, against people based on religion, ethnicity, color, etc – that is protected
* If you believe it is really bad, it is better to have it in an environment where we see it and fight against it rather than hide it
* If the court draws lines, govt can stretch lines to shut down speech it doesn’t like
  + Counterargument – VA v Black: Court held pit was permissible to ban coross-burning if it can be shown that it was intended to intimidate
    - Court brings concept of genuine threat
* **Beauharnais**: Court protects a racist speech
  + It is not overruled
  + Most 1st amendment scholars say it is no longer good law
* Libel: