Bollinger’s Case:

Dude goes to Alma Mater and rants about AA, “must take action into our own hands,” calls for a takeover the president’s office so the university will change its policy. But University Security comes up, tells him to stop, and 30 minutes later he is expelled from the university. Advice?

* Security told him to stop speaking – he was beginning to have a real impact on people
* What is actually important – how do the COURTS understand the words that are said? The documents and principles matter most in determining whether he is expelled or not
* Do our 1919 cases say that if you are speaking, you are safe? No. Under certain circumstances, the government may punish you (including with jail-time) for doing nothing more than giving a speech about a political problem
  + Frohwerk and Debs – they were advocating communism, advocating against the draft
  + What is the test? **Clear and Present Danger** of some evil that the government has a right to prevent
  + What is the scope/applicability of the First Amendment? To WHOM or to WHAT does it apply?
    - Over time, courts have made it clear that it is not only Congress, but all of the federal government (including the Executive and Judicial Branches)
    - Bill of Rights applies to federal government, not to States
    - After the 14th Amendment, it became a question of constitutional importance if the Bill of Rights would be applied to the States
      * Yes – courts have decided that 1st and 14th amendments apply to all actions of federal and state governments
      * DON’T apply to private actions
  + If you do not receive money from the state (public college) you are NOT a state actor (E.G. Columbia). But if you were Berkeley or UMich, you ARE a state actor
    - Private universities largely abide by 1st amendment principles and doctrines in the forum of how the university is conducted
  + Schaeffer is lower court case:
    - If Speech has tendency to lead people to commit illegal acts, then the speech is NOT predicted.
    - As a speaker, you want a “clear and present danger” test over a “bad tendency” test
  + Masses Case:
    - Judge who is named Learned Hand
    - Legal Liability Test
    - Speech is protected until the point of advocacy of their listeners to violate the law
      * But if there was no chance of this happening? People were rushing by and mocking them
    - Free speech isn’t an absolute for him
    - Hand – if we say as judges “clear and present danger” = no protection, then EVERY judge will use this excuse
      * So the test: If you explicitly advocate it, then we won’t protect it
        + Some people who aren’t threats WILL go to jail, as long as you avoid illegal advocacy, it will still encourage people to come forward and engage in public debate
        + Not every criticism of govt is “clear and present danger”
  + Schenk
    - Assume this is a state actor
      * Maybe it isn’t as clear and present a danger