

# 4. Traditional Crimes Online

## Administrative

- Next Time: Punishment: 220-250
- Paper Topics: Must be in to me now. If not, talk to me at the break. I will try to get comments back to you by next time.
- Student Responses
  - Thanks (again) to Tracy, Venu, Roman.
  - Starting Tuesday: Password protected. Password is 1030.
- Tenth Circuit Visit Wednesday
- Next Monday: Keep your eye on Frontier Flight 721 from DCA to Denver
  - Scheduled ETA: 10:50am.
  - If it arrives later than 2:30pm, probably no class.
- News
  - Angelides Hack: [http://www.spot-on.com/archives/schmidt/2006/09/la\\_times\\_covered\\_up\\_angelides.html](http://www.spot-on.com/archives/schmidt/2006/09/la_times_covered_up_angelides.html)
  - Crackdown on the Online dating Industry: <http://www.law.com/jsp/article.jsp?id=1158915928398>

## Last Time

## The First Amendment (Brief, hurried overview)

- Straw-Poll: Have you taken it?
- Text is pretty absolute: "Congress shall make no law . . . abridging the freedom of speech."
- In reality, speech is "abridged" in many laws.
  - Content-based restrictions
    - One exception: Low-valued speech can be abridged.
      - Fighting Words
      - Incitement if meets Brandenburg test.
      - True Threats
      - Obscenity
      - Child Pornography
  - Content-Neutral restrictions
    - The Medium Matters

## Online Threats and "True Threats"

- Compare Two Cases
  - Carmichael (Text, 150)
  - Planned Parenthood (Internal to Carmichael)
  - Reasonable Speaker vs. Reasonable Recipient
  - Are threats online special? Different?

## Child Pornography

- What does it mean to receive, distribute, possess, or make CP?
  - The lifecycle of an Internet download.
    - Sits on web server.
    - IMG is requested over network.
    - IMG is copied from server to series of routers, until it arrives at destination.
    - IMG is copied into RAM associated with Web browser
    - IMG is copied into Video RAM so that it can be displayed on screen.
    - IMG is almost always copied into Cache (on hard drive) to allow for quicker DL's in the future. What is Internet Cache?
    - If user chooses, IMG is copied onto hard drive.
  - Tucker (191) D. UT
    - Hypo 1 (Note 1, 195): Did not realize the images were being copied to his computer, and did not know about cache (novice). Possession?
    - Hypo 2: Accidental Possession
- The First Amendment: Virtual CP, Morphed CP, Pandering
  - CP and the First Amendment
    - CP may sometimes be obscenity, under the Miller test.
      - Average person, applying contemporary community standards, find that work appeals to prurient interest
      - Work describes, in patently offensive way, sexual conduct or excretory functions.
      - Lacks serious literary, artistic, political or scientific value.
    - But CP is independently proscribable, even when all of the Miller elements aren't met, per Ferber.
      - Rationale: Intrinsically related to the sexual abuse of children in two ways.
        - 1. Continued circulation continues to harm child depicted. New injury to emotion and reputation.
        - 2. Economic motive to continue harming children.
      - Per Osborne, applies to possessors of CP too.
  - Free Speech Coalition Questions
  - Entrapment and Traveler cases