

# 5: Sentencing

## Administrative

Next Week: Lab! Go to ECEE 275A at 4pm.  
Directions and Map posted on website under "Syllabus". (paulohm.com)  
I'll try to wind up by 5:40pm for people who need to get back for TM class.  
But I'll hang out until 6pm for people who want to continue to play.

Next Week's Reading: Posted to Web (Three articles)

## Last Time

Free Speech Coalition Questions  
What if this leads to more obscenity prosecutions? Good result?  
What about morphing and pandering?  
Bach (8th Cir): Receiving morphed CP can be punished.

Entrapment and Traveler cases  
Inducement: Did govt create a special incentive for D to commit the crime? (any incentive that materially alters the risks and rewards so as to increase the likelihood he will engage in the conduct).  
Predisposition: D's willingness to commit the offense PRIOR to being contacted by govt agents.  
Even if inducement, still no govt entrapment if predisposed.

Two requirements: Inducement and Predisposition

Poehlmann  
Public surveillance policies -- should we allow FBI agents to do this kind of operation?  
Federalism concerns and Venu  
Roman: Dru Stevenson and predisposition

## Theories of Punishment

Deterrence - Neal Katyal  
Retribution - Kerr: Feels like a computer game?

## The Mechanics of Sentencing

USSG  
Special Skill Enhancement  
Starts (!) at Base level 18 and 22 for distribution, production  
First time offenders: 27 - 33 or 41-51; Worst repeat offenders: 57-71 or 84-105

Child Pornography  
Notable Specific Offense Characteristics  
Mere receipt with no intend to traffic: - 2.  
Younger than 12 year old victim: +2  
Distribution (+5-7)  
Sadistic or Masochistic: +4  
Use of a computer: +2  
Image counts: 10 (+2) 150 (+3) 300 (+4) 600 (+5)

Computer Misuse  
Starts at Base 6  
\$400M in damage -- +30!  
How Loss is calculated.  
Greater of...  
Actual Loss = Reasonable Foreseeable Pecuniary Harm (D knew or should have known was a potential result)  
Intended Loss = Intended to result from offense (attempts?)  
Special Rule for 1030 violations: Middleton's response factors -- what it cost to bring the system back up.  
Larry, Moe, Curley hypothetical on 242. Why should sentence turn on cost and amount of response?  
Viruses and Worms - I LOVE YOU -- \$10 Billion?

Loss Table  
Critical Infrastructures

## Conditions of Probation