

CHAPTER TWELVE

BURGLARY, TRESPASS, ARSON, AND MISCHIEF

The “Home is our Castle,” philosophy that allows us to retreat to the safety and security of the home is a central value of American society, and the home historically has been protected against intruders. Crimes against habitation protect the peaceful enjoyment of the home and protect individuals against assaults to persons and property in the home.

BURGLARY

Burglary at common law is the breaking and entry of the dwelling house of another at night with the intention to commit a felony. Burglary statutes no longer require a breaking, include a broad range of structures and vehicles, may be committed at night or day, and no longer require an intent to commit a felony.

In California, Burglary is defined as:

PC 459. Burglary; Inhabited Defined

Every person who enters any

- *house*
- *room,*
- *apartment,*
- *tenement,*
- *shop,*
- *warehouse,*
- *store,*
- *mill,*
- *barn,*
- *stable,*
- *outhouse or other building,*
- *tent,*
- *vessel,*
- *floating home,*
- *railroad car,*
- *locked or sealed cargo container, whether or not mounted on a vehicle, or trailer coach,*
- *any house car,*
- *inhabited camper, when the doors are locked,*
- *aircraft*
- *mine or any underground portion thereof*

Burglary Mens Rea

... with (the) intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

PC 460. Degrees of Burglary

*(a) (First Degree) Every burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, or trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building, is **burglary of the first degree.***

Note that there is no requirement for the burglary to be committed at night to be a burglary in the first degree. Also, today the term “breaking” is a misnomer, as the crime of burglary doesn’t really require anything be physically “broken.” What the law refers to is in the actual entry that would basically break the plane of the secure level of the area in question. For example, assuming a residential home is being burglarized. Using a window to gain entry, and even assuming the window was open at the time, the moment that a portion of an individual’s body enters the dwelling, such as a finger, hand, or foot is sufficient. Courts also find burglary when there is entry by an instrument or object that is used to carry out the burglary. This might involve

reaching into a window with a straightened coat hanger to pull out a wallet or reaching an arm through a window. This is also referred to as “*constructive*” entry, when some other means is used to actually “enter.”

(b) (Second Degree) All other kinds of burglary are of the second degree.

Defining “Building”

The word “building” in burglary is interpreted broadly. It usually means any type of structure with four walls and a roof on it, but not necessarily a human habitation. (Amber S. (1995) 33 Cal.App.4th 185, 187.) Thus technically, an enclosed telephone booth or a showcase can be the subject of a burglary. One case even held a partially enclosed carport to be a “building” since it was permanently attached to a house. (Christopher J. (1980) 102 Cal.App.3d 76.)

Even a garage that is “Attached and Integral” to the residence, *even though the “garage door” is open*. However, “*framed*” houses under construction.... would not!

What if the perpetrator’s intent arises after entry? For example, Joe’s invited to a party. While in the party, he goes upstairs to use the restroom, and wanders into the owner’s master bedroom. He spots some cash and jewelry and slips it into his pocket. Has a burglary occurred? No, it would not be. It would still be theft however.

What if Joe entered the party with the intent to steal cash and jewelry, but upon entering the bedroom cannot find it. Is he still culpable for burglary? Yes, if the felonious intent is there, it is burglary even though the object of the intent is not present or cannot be fulfilled. Obviously, the intent is going to have to be proven, which is always a challenge for the prosecution.

Burglary of Vehicles

In California, breaking into a car to steal is burglary. The vehicle must be locked to constitute burglary. Entering the locked trunk of an unlocked vehicle is burglary. Whereas, an inhabited camper need not be locked. Inhabited means currently being used for dwelling purposes whether occupied or not. A vehicle must be locked or some force must be used to open it. For example, pushing open the broken wing-window of an otherwise locked vehicle would suffice. However, simply unhooking, unlatching, or loosening something in order to enter will not.

Burglary of a vehicle occurs at the moment entry is made with the intent to steal, regardless of whether the intent is to take the vehicle itself or some object inside the vehicle. Stealing the vehicle itself would be theft of a motor vehicle (Vehicle Code 10851)

What about looting during a riot or state of emergency? Would this be considered burglary also? Yes, it would:

Looting: PC 463. Burglary During State of Emergency

(a) Every person who violates Section 459, punishable as a second-degree burglary pursuant to subdivision 2 of Section 461, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of the crime of looting

For purposes of this section, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction.

*(b) Every person who commits the crime of **grand theft**, as defined in Section 487, except grand theft of a firearm, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting...*

*Every person who commits the crime of **grand theft of a firearm**, as defined in Section 487, **during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting***

*(c) Every person who commits the crime of **petty theft**, as defined in Section 488, **during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of a misdemeanor***

(d)(1) For purposes of this section, "state of emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(2) For purposes of this section, "local emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(3) For purposes of this section, a "state of emergency" shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to Section 8629 of the Government Code. For purposes of this section only, a "local emergency" shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to Section 8630 of the Government Code.

PC 464. Burglary by Acetylene Torch or Explosive . You've seen the movies where the highly sophisticated burglar fires up an acetylene torch inside the bank and starts to "burn" through the safe. Is this also "burglary?"

Any person who, with intent to commit crime, enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of acetylene torch or electric arc, burning bar, thermal lance, oxygen lance, or any other similar device capable of burning through steel, concrete, or any other solid substance, or by use of nitroglycerine, dynamite, gunpowder, or any other explosive, is guilty of a felony and, upon conviction, shall be punished by imprisonment in the state prison for a term of three, five, or seven years.

Burglary "Tools"

Certain items can be considered "burglary tools," and can be illegal merely by their possession. The circumstances and intent would also be a consideration, as to why one had them in their possession.

PC 466. Possession of Burglar Tools

Every person having upon him or her in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vise grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, floor-safe door puller, master key, ceramic or porcelain spark plug chips or pieces, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument named above so that the same will fit or open the lock of a building, railroad car, aircraft, vessel, trailer coach, or vehicle as defined in the Vehicle Code, without being requested to do so by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor.

This section is a cross between burglary and trespass.

PC 603. Forcible Entry or Injury to Dwelling House, Etc.

Every person other than a peace officer engaged in the performance of his duties as such who forcibly and without the consent of the owner, representative of the owner, lessee or representative of the lessee thereof, enters a dwelling house, cabin, or other building occupied or constructed for occupation by humans, and who damages, injures or destroys any property of value in, around or appertaining to such dwelling house, cabin or other building, is guilty of a misdemeanor.

TRESPASS

Trespass is the unauthorized entry onto the land or premises of another or remaining on the land or premises of another. The *actus reus* is entering or remaining on another person's property without his or her permission. An example is disregarding a "no trespassing" sign and climbing over a fence in order to swim at a private beach. You also may commit a trespass when you swim with the owner's permission and then disregard his or her request to leave.

PC 601. Trespass With Threat to Cause Serious Bodily Injury

(a) Any person is guilty of trespass who makes a credible threat to cause serious bodily injury, as defined in subdivision (a) of Section 417.6, (Threats with weapons) to another person with the intent to place that other person in reasonable fear for his or her safety, or the safety of his or her immediate family, as defined in subdivision (il) of Section 646.9, (Stalking) and who does any of the following:

(1) Within 30 days of the threat, unlawfully enters into the residence or real property contiguous to the residence of the person threatened without lawful purpose, and with the intent to execute the threat against the target of the threat.

(2) Within 30 days of the threat, knowing that the place is the threatened person's workplace, unlawfully enters into the workplace of the person threatened and carries out an act or acts to locate the threatened person within the workplace premises without lawful purpose, and with the intent to execute the threat against the target of the threat.

PC 602. Trespassing

Except as provided in paragraph (2) of subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire

control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

Burglary, Trespass, Arson, and Mischief

(g) *Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.*

h)(1) *Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.*

(2) *In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.*

(3) *This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.*

(i) *Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.*

(j) *Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.*

(k) *Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.*

(l) *Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and*

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) *Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.*

(n) *Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.*

(o) *Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer*

that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested...

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u)(1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars (\$100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

(v)(1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(x)(1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(y) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a courthouse or a city, county, city and county, or state building if entrances to the courthouse or the city, county, city and county, or state building have been posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

PC 602.1. Interfering with Business

(a) Any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer acting at the request of the owner or owner's agent, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to four hundred dollars (\$400), or by both that imprisonment and fine.

(b) Any person who intentionally interferes with any lawful business carried on by the employees of a public agency open to the public, by obstructing or intimidating those attempting to carry on business, or those persons there to transact business with the public agency, and who refuses to leave the premises of the public agency after being requested to leave by the office manager or a supervisor of the public agency, or by a peace officer acting at the request of the office manager or a supervisor of the public agency, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to four hundred dollars (\$400), or by both that imprisonment and fine.

PC 602.3. Lodging in Dwelling House

(a) A lodger who is subject to Section 1946.5 of the Civil Code and who remains on the premises of an owner-occupied dwelling unit after receipt of a notice terminating the hiring, and expiration of the notice period, provided in Section 1946.5 of the Civil Code is guilty of an infraction and may, pursuant to Section 837, be arrested for the offense by the owner, or in the event the owner is represented by a court-appointed conservator, executor, or administrator, by the owner's representative. Notwithstanding Section 853.5, the requirement of that section for release upon a written promise to appear shall not preclude an assisting peace officer from removing the person from the owner-occupied dwelling unit..

PC 602.4. Unauthorized Entry or Sales of Goods at Airports

Every person who enters or remains on airport property owned by a city, county, or city and county but located in another county, and sells, peddles, or offers for sale any goods, merchandise, property, or services of any kind whatsoever, to members of the public, including transportation services, other than charter limousines licensed by the Public Utilities Commission, on or from the airport property, without the express written consent of the governing board of the airport property, or its duly authorized representative, is guilty of a misdemeanor.

PC 602.5. Unauthorized Entry of Dwelling

(a) Every person other than a public officer or employee acting within the course and scope of his or her employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other residential place without consent of the owner, his or her agent, or the person in lawful possession thereof, is guilty of a misdemeanor.

(b) Every person other than a public officer or an employee acting within the course and scope of his employment in performance of a duty imposed by law, who, without the consent of the owner, his or her agent, or the person in lawful possession thereof, enters or remains in any noncommercial dwelling house, apartment, or other residential place while a resident, or another person authorized to be in the dwelling, is present at any time during the course of the incident is guilty of aggravated ...

PC 602.6. Unauthorized Entry or Refusal to Leave Fair Buildings or Grounds

Every person who enters or remains in, or upon, any state, county, district, or citrus fruit fair buildings or grounds, when the buildings or grounds are not open to the general public, after having been ordered or directed by a peace officer or a fair manager to leave the building or grounds and when the order or direction to leave is issued after determination that the person has no apparent lawful business or other legitimate reason for remaining on the property, and fails to identify himself or herself and account for his or her presence, is guilty of a misdemeanor.

PC 602.7. Unauthorized Peddling on Rapid Transit District Property or Vehicles

Every person who enters or remains on any property, facility, or vehicle owned by the San Francisco Bay Area Rapid Transit District or the Southern California Rapid Transit District, and sells or peddles any goods, merchandise, property, or services of any kind whatsoever on the property, facilities, or vehicles, without the express written consent of the governing board of the San Francisco Bay Area Rapid Transit District or the governing board of the Southern California Rapid Transit District, or its duly authorized representatives, is guilty of an infraction.

PC 602.8. Trespass - Entering Cultivated, Fenced or Posted Land

(a) Any person who without the written permission of the landowner, the owner's agent, or the person in lawful possession of the land, willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or who willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands, is guilty of a public offense.

PC 602.9. Renting Dwelling Without Consent of Owner

(a) Except as provided in subdivision (c), any person who, without the owner's or owner's agent's consent, claims ownership or claims or takes possession of a residential dwelling for the purpose of renting that dwelling to another is guilty of a misdemeanor

(b) Except as provided in subdivision (c), any person who, without the owner's or owner's agent's consent, causes another person to enter or remain in any residential dwelling for the purpose of renting that dwelling to another, is guilty of a misdemeanor

While not “trespassing” per se, these two sections are related issues.

PC 602.10. Physical Obstruction of Student or Teacher From Attending or Instructing at the University of California, California State University, or Community Colleges

Every person who, by physical force and with the intent to prevent attendance or instruction, willfully obstructs or attempts to obstruct any student or teacher seeking to attend or instruct classes at any of the campuses or facilities owned, controlled, or administered by the Regents of the University of California, the Trustees of the California State University, or the governing board of a community college district shall be punished by a fine not exceeding five hundred dollars (\$500), by imprisonment in a county jail for a period of not exceeding one year, or by both such fine and imprisonment.

As used in this section, "physical force" includes, but is not limited to, use of one's person, individually or in concert with others, to impede access to, or movement within, or otherwise to obstruct the students and teachers of the classes to which the premises are devoted.

PC 602.11. Obstruct Entry/Exit of Health Care Facility, Place of Worship or School

(a) Any person, alone or in concert with others, who intentionally prevents an individual from entering or exiting a health care facility, place of worship, or school by physically detaining the individual or physically obstructing the individual's passage shall be guilty of a misdemeanor,

PC 626.6. Interfering With Peaceful Conduct of Campus - Failure to Leave or Reentering Campus by Person Not a Student, Officer or Employee

(a) If a person who is not a student, officer or employee of a college or university and who is not required by his or her employment to be on the campus or any other facility owned, operated, or controlled by the governing board of that college or university, enters a campus or facility, and it reasonably appears to the chief administrative officer of the campus or facility, or to an officer or employee designated by the chief administrative officer to maintain order on the campus or facility, that the person is committing any act likely to interfere with the peaceful conduct of the activities of the campus or facility, or has entered the campus or facility for the purpose of committing any such act, the chief administrative officer or his or her designee may direct the person to leave the campus or facility. If that person fails to do so or if the person willfully and knowingly reenters upon the campus or facility within seven days after being directed to leave, he or she is guilty of a misdemeanor...

PC 626.8. Person Upon or Near School Ground Without Lawful Business - Interfering With Peaceful Conduct

(a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, or any specified sex offender who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, unless the person is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief administrative officer of that school, is guilty of a misdemeanor and... if...the person:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security or police department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or a Department of the California Highway Patrol peace officer.

(2) Reenters or comes upon that place within seven days of being asked to leave by a person specified in paragraph (1).

(3) Has otherwise established a continued pattern of unauthorized entry.

PC 626.85. Drug Offender On School Grounds

(a) Any specified drug offender who, at any time, comes into any school building or upon any school ground, or adjacent street, sidewalk, or public way, unless the person is a parent or guardian of a child attending that school and his or her presence is during any school activity, or is a student at the school and his or her presence is during any school activity, or has prior written permission for the entry from the chief administrative officer of that school, is guilty of a misdemeanor if he or she does any of the following:

... if...the person:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security or police department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or a Department of the California Highway Patrol peace officer.

(2) Reenters or comes upon that place within seven days of being asked to leave by a person specified in paragraph (1).

*(3) Has otherwise established a **continued pattern** of unauthorized entry.*

Note that in trespassing sections, it's not the mere fact that one is "on" areas that are prohibited for one reason or another, it is that they fail to leave upon being asked or ordered to do so.

ARSON

Arson at common law is the willful and malicious burning of the dwelling house of another. There are differences in California law between "arson," and "unlawfully causing a fire."

During the 1980s and early 1990s, Southern California was plagued by a series of mysterious fires. During an arson investigator's conference in Los Angeles in 1987, another fire broke out. Investigator Marvin Casey recovered a single fingerprint from the incendiary device and developed a theory that the fires were somehow connected to the conference. Later, after another conference and more fires, the forensic team finally identified the culprit and realized it was one of their own — John Orr, a Fire Captain and renowned arson investigator. In 1998 he was convicted of setting 20 fires including a 1984 blaze that killed four people in a Pasadena, Calif. hardware store. For an excellent book on this case, read "Firestarter"¹ by Joseph Wambaugh or go to the Court TV website.²

California Firestorms - 2003

By comparison, unlawfully causing a fire is much different than arson. On October 21, 2003 a series of fires began in Southern California that would eventually burn nearly 750,000 acres in six counties. Statewide, fires resulted in 20 fatalities (19 civilian and one fire service), 183 injuries to responding personnel, and destroyed over 3,500 residential structures. This fire siege created the largest mobilization of fire fighting resources in California history. At the peak of the mobilization there were over 16,000 personnel including 1,600 engine companies, nearly 300 fire crews, and over 160 aircraft assigned to the fires.

¹ Wambaugh, Joseph, "Firestarter: A True Story, Morrow, May 2002, 25.95, 338 pp. ISBN: 006009527X,"

² <http://www.courtstv.com/archive/onair/shows/mugshots/indepth/orr/index.html>

In the early evening of October 25, the Cedar Fire started in San Diego County. The fire, initially burning under a Santa Ana wind condition eventually consumed 280,278 acres and destroyed 2,232 structures, 22 commercial buildings, and 566 outbuildings, damaging another 53 structures and 10 outbuildings. There was one fire fighter fatality, 13 civilian fatalities and 107 injuries. The local hunter who accidentally started one of the most devastating fires in the history of the state in 2003 was only sentenced to spend six months in private confinement that allowed him to continue to work and be free on weekends to perform 960 hours of community service. He was also placed on probation for five years and ordered to pay restitution of \$150 a month over that period.

Why was his sentence so light in comparison to the damage and lives lost? Because there was no criminal intent, *mens rea*, on his part. True, his sentence could have been much harsher, but the judge opted on the side of leniency.

PC 451. Arson

A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property.

(a) Arson that causes great bodily injury is a felony punishable by imprisonment in the state prison for five, seven, or nine years

b) Arson that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for three, five, or eight years.

(c) Arson of a structure or forest land is a felony punishable by imprisonment in the state prison for two, four, or six years.

(d) Arson of property is a felony punishable by imprisonment in the state prison for 16 months, two, or three years. For purposes of this paragraph, arson of property does not include one burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's structure, forest land, or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

PC 451.1. Arson Penalty Enhancements

(a) Notwithstanding any other law, any person who is convicted of a felony violation of Section 451 shall be punished by a three-, four-, or five-year enhancement if one or more of the following circumstances is found to be true:

(1) The defendant has been previously convicted of a felony violation of Section 451 or 452.

(2) A firefighter, peace officer, or other emergency personnel suffered great bodily injury as a result of the offense. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 451.

(3) The defendant proximately caused great bodily injury to more than one victim in any single violation of Section 451. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 451.

(4) The defendant proximately caused multiple structures to burn in any single violation of Section 451.

(5) The defendant committed arson as described in subdivision (a), (b), or (c) of Section 451 and the arson was caused by use of a device designed to accelerate the fire or delay ignition.

(b) The additional term specified in subdivision (a) shall not be imposed unless the existence of any fact required under this section shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

PC 451.5. Aggravated Arson

(a) Any person who willfully, maliciously, deliberately, with premeditation, and with intent to cause injury to one or more persons or to cause damage to property under circumstances likely to produce injury to one or more persons or to cause damage to one or more structures or inhabited dwellings, sets fire to, burns, or causes to be burned, or aids, counsels, or procures the burning of any residence, structure, forest land, or property is guilty of aggravated arson if one or more of the following aggravating factors exists:

(1) The defendant has been previously convicted of arson on one or more occasions within the past 10 years.

(2)(A) The fire caused property damage and other losses in excess of five million six hundred fifty thousand dollars (\$5,650,000).

(B) In calculating the total amount of property damage and other losses under subparagraph (A), the court shall consider the cost of fire suppression. It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason, this paragraph shall remain in effect until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

(3) The fire caused damage to, or the destruction of, five or more inhabited structures.

(b) Any person who is convicted under subdivision (a) shall be punished by imprisonment in the state prison for 10 years to life.

(c) Any person who is sentenced under subdivision (b) shall not be eligible for release on parole until 10 calendar years have elapsed.

PC 452. Unlawfully Causing a Fire

A person is guilty of unlawfully causing a fire when he recklessly sets fire to or burns or causes to be burned, any structure, forest land or property.

(a) Unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four or six years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(b) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned his own personal property unless there is injury to another person or to another person's structure, forest land or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

PC 452.1. Arson Causing Great Bodily Injury; Penalty Enhancement

(a) Notwithstanding any other law, any person who is convicted of a felony violation of Section 452 shall be punished by a one-, two-, or three-year enhancement for each of the following circumstances that is found to be true:

(1) The defendant has been previously convicted of a felony violation of Section 451 or 452.

(2) A firefighter, peace officer, or other emergency personnel suffered great bodily injury as a result of the offense. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 452.

(3) *The defendant proximately caused great bodily injury to more than one victim in any single violation of Section 452. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 452.*

(4) *The defendant proximately caused multiple structures to burn in any single violation of Section 452.*

(b) *The additional term specified in subdivision (a) of Section 452.1 shall not be imposed unless the existence of any fact required under this section shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.*

PC 453. Possession or Manufacture of Combustible or Explosive Material or Fire Bomb [Formerly 452]

(a) *Every person who possesses, manufactures, or disposes of any flammable or combustible material or substance, or any incendiary device in an arrangement or preparation, with intent to willfully and maliciously use this material, substance, or device to set fire to or burn any structure, forest land, or property, shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year.*

(b) *For the purposes of this section:*

(1) *"Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.*

(2) *"Incendiary device" means a device that is constructed or designed to start an incendiary fire by remote, delayed, or instant means, but no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for the purposes of this section.*

(3) *"Incendiary fire" means a fire that is deliberately ignited under circumstances in which a person knows that the fire should not be ignited.*

PC 454. Arson or Unlawful Burning Within Area of Insurrection or Emergency

(a) *Every person who violates Section 451 or 452 during and within an area of any of the following, when proclaimed by the Governor, shall be punished by imprisonment in the state prison, as specified in subdivision (b):*

(1) *A state of insurrection pursuant to Section 143 of the Military and Veterans Code.*

(2) *A state of emergency pursuant to Section 8625 of the Government Code.*

(b) *Any person who is described in subdivision (a) and who violates subdivision (a), (b), or (c) of Section 451 shall be punished by imprisonment in the state prison for five, seven, or nine years. All other persons who are described in subdivision (a) shall be punished by imprisonment in the state prison for three, five, or seven years.*

(c) *Probation shall not be granted to any person who is convicted of violating this section, except in unusual cases where the interest of justice would best be served.*

PC 455. Attempts to Burn [Formerly 451a]

Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any structure, forest land or property, or who commits any act preliminary thereto, or in furtherance thereof, is punishable by imprisonment in the state prison for 16 months, two or three years.

The placing or distributing of any flammable, explosive or combustible material or substance, or any device in or about any structure, forest land or property in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of the same shall, for the purposes of this act constitute an attempt to burn such structure, forest land or property.

PC 456. Penalty Enhancements

(a) *Upon conviction for any felony violation of this chapter, in addition to the penalty prescribed, the court may impose a fine not to exceed fifty thousand dollars (\$50,000) unless a greater amount is provided by law.*

(b) *When any person is convicted of a violation of any provision of this chapter and the reason he committed the violation was for pecuniary gain, in addition to the penalty prescribed and instead of the fine provided in subdivision (a), the court may impose a fine of twice the anticipated or actual gross gain.*

PC 457. Psychological Testing for Purpose of Sentencing [Formerly 455]

Upon conviction of any person for a violation of any provision of this chapter, the court may order that such person, for the purpose of sentencing, submit to a psychiatric or psychological examination.

Are arsonists required to register with the police as are sex offenders and drug addicts? Yes, they are.

PC 457.1. Arson; Offender Registration Upon Discharge of Parole

(a) As used in this section, "arson" means a violation of Section 451, 451.5, or 453, and attempted arson, which includes, but is not limited to, a violation of Section 455.

(b)

(1) Every person described in paragraph (2), (3), and (4), for the periods specified therein, shall, while residing in, or if the person has no residence, while located in California, be required to, within 14 days of coming into, or changing the person's residence or location within any city, county, city and county, or campus wherein the person temporarily resides, or if the person has no residence, is located:

(A) Register with the chief of police of the city where the person is residing, or if the person has no residence, where the person is located.

(B) Register with the sheriff of the county where the person is residing, or if the person has no residence, where the person is located in an unincorporated area or city that has no police department.

(C) In addition to (A) or (B) above, register with the chief of police of a campus of the University of California, the California State University, or community college where the person is residing, or if the person has no residence, where the person is located upon the campus or any of its facilities.

(2) Any person who, on or after November 30, 1994, is convicted in any court in this state of arson or attempted arson shall be required to register, in accordance with the provisions of this section, for the rest of his or her life...

CRIMINAL MISCHIEF (Also referred as "malicious mischief," and "vandalism.")

The common law misdemeanor of malicious mischief is defined as the destruction of, or damage to, the personal property (physical belongings) of another. The Model Penal Code refers to this offense as **criminal mischief** and, under modern statutes, criminal mischief includes damage to both personal and real (land and structures) **tangible property** (physical property as opposed to ownership of intangible property, such as ownership of a song or the movie rights to a book). The offense is directed against interference with the property of another and punishes injury and destruction to an individual's home or personal possessions. Malicious mischief under most statutes is a minor felony and the punishment is reduced or increased based on the dollar amount of the damage. A sentence may also be increased when the damage is directed against a residence or interferes with the delivery of essential services, such as phone, water, or utilities.

PC 594. Vandalism [Operative 1-1-2002]

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b)(1) If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by

Burglary, Trespass, Arson, and Mischief

a fine of not more than ten thousand dollars (\$10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars (\$10,000) or more, by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment

2)(A) *If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.*

(B) *If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.*

(c) *Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year.*

Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) *If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.*

(e) *As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.*

(f) *The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.*

PC 594.1. Giving, Selling Etching Cream or Aerosol Containers of Paint to Minors

(a)(1) *It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any etching cream or aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.*

(2) *For purposes of this section, "etching cream" means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.*

Note Subsection (d) It is unlawful for any person to carry on his or her person and in plain view to the public etching cream or an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way, unless he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

PC 594.2. Possession of Vandalism Tools

(a) *Every person who possesses a masonry or glass drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl, a chisel, a carbide scribe, an aerosol paint container, a felt tip marker, or any other marking substance with the intent to commit vandalism or graffiti, is guilty of a misdemeanor.*

PC 594.3.Vandalism - Place of Worship

(a) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery is guilty of a crime punishable by imprisonment in the state prison or by imprisonment in the county jail for not exceeding one year.

(b) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery, which is shown to have been a hate crime and to have been committed for the purpose of intimidating and deterring persons from freely exercising their religious beliefs, is guilty of a felony punishable by imprisonment in the state prison.

(c) For purposes of this section, "hate crime" has the same meaning as Section 422.55.

PC 594.35. Vandalism to Cemetery or Mortuary Property, etc.; Penalties

Every person is guilty of a crime and punishable by imprisonment in the state prison or by imprisonment in a county jail for not exceeding one year, who maliciously does any of the following:

(a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or mortuary or any property in a cemetery or mortuary.

(b) Obliterates any grave, vault, niche, or crypt.

(c) Destroys, cuts, breaks or injures any mortuary building or any building, statuary, or ornamentation within the limits of a cemetery.

(d) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

PC 594.4.Use Butyric Acid, or Similar Chemical, To Injure Property

(a) Any person who willfully and maliciously injects into or throws upon, or otherwise defaces, damages, destroys, or contaminates, any structure with butyric acid, or any other similar noxious or caustic chemical or substance, is guilty of a public offense, punishable by imprisonment in the state prison or in a county jail, by a fine as specified in subdivision (b), or by both that imprisonment and fine.

(b)(1) If the amount of the defacement, damage, destruction, or contamination is fifty thousand dollars (\$50,000) or more, by a fine of not more than fifty thousand dollars (\$50,000).

(2) If the amount of the defacement, damage, destruction, or contamination is five thousand dollars (\$5,000) or more, but less than fifty thousand dollars (\$50,000), by a fine of not more than ten thousand dollars (\$10,000).

(3) If the amount of defacement, damage, destruction, or contamination is four hundred dollars (\$400) or more, but less than five thousand dollars (\$5,000), by a fine of not more than five thousand dollars (\$5,000).

(4) If the amount of the defacement, damage, destruction, or contamination is less than four hundred dollars (\$400), by a fine of not more than one thousand dollars (\$1,000).

(c) For purposes of this section, "structure" includes any house or other building being used at the time of the offense for a dwelling or for commercial purposes.

Vandalism may be more than just "malicious mischief." It can also be a powerful tool in "hate crimes."

PC 422.55.Hate Crimes - Definitions

For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

(a) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

(1) Disability.

(2) Gender.

(3) Nationality.

(4) *Race or ethnicity.*(5) *Religion.*

(6) *Sexual orientation.*

(7) *Association with a person or group with one or more of these actual or perceived characteristic*

Could “vandalism” also be used in hate crimes or to “terrorize” others?

PC 11411. Terrorizing (Includes Cross-Burning)

(a) Any person who places or displays a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property shall be punished by imprisonment in the county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction and by imprisonment in the county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.

(b) Any person who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by placing or displaying a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another on two or more occasions – felony

A violation of this subdivision shall not constitute felonious conduct for purposes of Section 186.22.(Street Gangs)

(c) Any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, on the private property of another without authorization for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who burns, desecrates, or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a primary school, junior high school, or high school for the purpose of terrorizing any person who attends or works at the school or who is otherwise associated with the school...

Review Questions:

1. What are the elements of burglary?
2. Would breaking into a car be burglary?
3. Must burglary occur at nighttime to be first degree burglary?
4. How could a hate crime be linked to vandalism?
5. Are arsonists required to register as offenders for life, upon release from prison, as are sex offenders and drug addicts?

Web Resources

Alcohol, Tobacco, Firearms and Explosives (ATF)

<http://www.atf.treas.gov/>

Department of Justice, Office of the Inspector General- ATF Reports

<http://www.usdoj.gov/oig/reports/ATF/index.htm>

Anti-Defamation League (Combating Hate Crimes)

<http://www.adl.org/>

California Attorney General – Criminal Justice Statistics Center

<http://ag.ca.gov/cjsc/>

Court TV John Orr (“Firestarter”) case.

<http://www.courttv.com/archive/onair/shows/mugshots/indepth/orr/index.html>

FBI – Combating Hate Crimes

<http://www.fbi.gov/hq/cid/civilrights/hate.htm>

International Association of Arson Investigators (IAAI)

<http://www.firearson.com/>

Southern Poverty Law Center (Combating Hate Crimes)

<http://www.splcenter.org/>

Case Study #1: Thorn v. City of Glendale (1994) , 28 Cal. App. 4th 1379

In this case, John Orr, of the infamous “*Fire Lover*,” case, is responsible for a fire but the victim sues the city Orr worked for as being liable under the *Respondeat Superior* rule.

Discussion Question:

Once you’ve learned more about Orr’s fire-setting propensity, and that they were often done while he was working in his official capacity, do you think that the city should be liable for his actions, and did they fail to supervise him properly? Should the city be liable for negligent supervision? After all, he fooled many people, including veteran firefighters for years.

Facts

James Thorn and his business, Glendale Spa City, Inc. (Spa City), appeal from a judgment upon demurrer entered in favor of the City of Glendale (Glendale) in their action against Glendale and its employee and fire marshal, John Orr, for fire damage to Spa City. The complaint alleges that Orr set a fire at Spa City while acting in his official capacity and that Glendale is liable for the ensuing loss both under respondeat superior principles and for negligently supervising Orr. Appellants contend:

"[I.] John Orr was acting within the scope of his employment for the City of Glendale when he set the incendiary devices which damaged appellants' premises. [II.] The City is liable for negligently supervising its fire marshal."

Upon appeal from the sustaining of a demurrer without leave to amend, we assume the truth of all facts properly pleaded in the complaint. "If on consideration of all the facts stated it appears that the plaintiff is entitled to any relief, the order of dismissal upon the sustaining of a demurrer should be reversed. [Citation.]" (*Hill v. People ex rel. Dept. of Transportation* (1979) 91 Cal. App. 3d 426, 429 [154 Cal. Rptr. 142].)

The complaint alleges the following. On February 22, 1991, Orr entered Thorn's premises under color of authority to conduct a fire inspection. He then committed arson by setting incendiary devices which destroyed the premises and the business conducted thereon. Since Orr was acting within the scope of his employment, Glendale is liable for the resulting damage. Moreover, Glendale knew or should have known that the fire marshal was an arsonist and negligently failed to supervise him.

(1a) Appellants urge that Glendale is liable under the doctrine of respondeat superior because Orr's alleged acts were committed within the scope of employment. n1 They rely, inter alia, upon our Supreme Court's holding in *Mary M. v. City of Los Angeles* (1991) 54 Cal. 3d 202 [285 Cal. Rptr. 99, 814 P.2d 1341], which expanded the scope of vicarious governmental liability to cover the rape of a woman by an on-duty police officer.

Issue

Historically, the scope of employment doctrine has been limited to acts which are directly or indirectly in furtherance of the employer's purpose, precluding vicarious liability for criminal acts not related to the employer's enterprise. Section 228 of the Restatement Second of Agency, which states the traditional rule, provides in relevant part that an act is within the scope of employment only if "(a) it is of the kind [the employee] is employed to perform; [P] (b) it occurs substantially within the authorized time and space limits; [P] (c) it is actuated, at least in part, by a purpose to serve the master, and [P] (d) if force is intentionally used by the servant against another, the use of force is not unexpectable by the master."

Under that test, employers have been held liable for the wrongful and unauthorized acts of their employees where they were committed in the course of a series of acts of the agent which were authorized by the principal. (See *Fields v. Sanders* (1947) 29 Cal. 2d 834 [180 P.2d 684, 172 A.L.R. 525] [truck driver strikes

motorist with wrench in course of dispute over driving incidents]; *Carr v. Wm. C. Crowell Co.* (1946) 28 Cal. 2d 652 [171 P.2d 5] [employee of subcontractor throws hammer at employee of a general contractor in the course of a dispute]; *Ruppe v. City of Los Angeles* (1921) 186 Cal. 400 [199 P. 496] [city employee assaults an apartment building manager while attempting to enter a building to install city electrical meters]; *Jones v. City of Los Angeles* (1963) 215 Cal. App. 2d 155 [30 Cal. Rptr. 124] [assault and battery by police officers].)

No liability arises " 'where the agent for however brief a space of time, has ceased to serve his principal . . . ' " (*Fields v. Sanders, supra*, 29 Cal. 2d at p. 839, quoting *Andrews v. Seidner* (1942) 49 Cal. App. 2d 427, 430 [121 P.2d 863]; see *Martinez v. Hagopian* (1986) 182 Cal. App. 3d 1223, 1229 [227 Cal. Rptr. 763] [farmworkers kill visitor to farm over dispute about the treatment of another visitor's wife]; *Golden West Broadcasters, Inc. v. Superior Court* (1981) 114 Cal. App. 3d 947, 955 [171 Cal. Rptr. 95] [stage manager on assignment away from home engages in barroom brawl with stranger]; *Monty v. Orlandi* (1959) 169 Cal. App. 2d 620, 623 [337 P.2d 861] [bartender assaults plaintiff over personal dispute].)

(2) More recently, our Supreme Court stated, " 'A risk arises out of the employment when "in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. [Citations.] In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one 'that may fairly be regarded as typical of or broadly incidental' to the enterprise undertaken by the employer. [Citation.]" ' " (*Mary M. v. City of Los Angeles, supra*, 54 Cal. 3d at p. 209.)

(3) Policy reasons suggested for imposing vicarious liability include that it will tend to (1) provide a spur towards accident prevention; (2) provide greater assurance of compensation for accident victims; and (3) assure that accident losses will be broadly and equitably distributed among the beneficiaries of the enterprise that entail them. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal. 3d 438, 451 [256 Cal. Rptr. 766, 769 P.2d 948]; *Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal. 3d 962, 967 [227 Cal. Rptr. 106, 719 P.2d 676].)

(1b) None of the foregoing tests favor liability in the present case. A fire marshal's entering a building and setting an incendiary device for the purpose of burning it down is so startling and unusual an occurrence as to be outside those risks which should fairly be imposed upon the public employer. The alleged act did not arise from the pursuit of the employer's purpose but was rather the result, we must assume, of a personal compulsion.

While Orr's ability to request access to private areas of a building arose from his employment, that ability is not unique. Similar permissive access is available to security guards, repairpersons, and utility workers. Glendale would have no greater reason to guard against and deter the alleged acts than would employers of other workers whose duties entail their entering private premises. Moreover, property damage resulting from fire, as distinguished from personal injury and trauma, is commonly insurable by the business enterprise victim. In truth, property owners would appear far better able to insure against the loss than would the public entity, particularly where the conduct in question is felonious in nature.

Mary M. v. City of Los Angeles, supra, 54 Cal. 3d 202, relied upon by appellants, is distinguishable in each of these particulars. ***There our Supreme Court imposed respondeat superior liability for rape by an on-duty police officer, emphasizing that a police officer is entrusted with "extraordinary power and authority over its citizenry."*** (Authors emphasis) (*Id.* at p. 216.) The court contrasted that authority with the role of a school ground custodian accused of rape in *Alma W. v. Oakland Unified School Dist.* (1981) 123 Cal. App. 3d 133 [176 Cal. Rptr. 287]: "The danger that an officer will commit a sexual assault while on duty arises from the considerable authority and control inherent in the responsibilities of an officer in enforcing the law. Those responsibilities do not at all resemble the duties of a school custodian, as involved in *Alma W., supra.*" (*Mary M. v. City of Los Angeles, supra*, 54 Cal 3d at p. 218.)

Mary M. distinguished but did not overrule *John R. v. Oakland Unified School Dist.*, *supra*, 48 Cal. 3d 438, which applied "the historical and perhaps still prevailing point of view" that an employer could not be held vicariously liable for the criminal act of an employee committed in furtherance of the employee's personal purpose. (*Id.* at p. 448 [teacher's sexual molestation of student].) In so doing, the majority opinion of our Supreme Court appears to have established a special rule for the independent wrongful acts of police officers based upon their unique position of both trust and power in our society. We decline to extend that holding to one not equally endowed with authority, particularly where the victims of an employee's aberrant behavior can, and virtually always do, guard themselves against the economic loss incurred.

(4) Thorn also urges on appeal that Glendale is liable for negligent supervision of its fire marshal. Glendale takes the position that negligent supervision was waived below, and that in any event there is no statutory authority for an action based upon negligent supervision under the facts of the present case and that Glendale is immune from such liability.

We note first that Glendale raised the issues of statutory authority for negligent supervision and immunity in its points and authorities in support of its demurrer. Appellants did not address those issues, but urged only that Orr's alleged arsonist activities fell within the scope of his employment as fire marshal and that therefore Glendale was liable under the doctrine of vicarious liability. Even assuming the issue may be raised for the first time on appeal (see *Kittle v. Lang* (1951) 107 Cal. App. 2d 604, 610 [237 P.2d 673]), we find it unpersuasive.

Appellants rely upon *John R. v. Oakland Unified School Dist.*, *supra*, and *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal. App. 4th 1848 [19 Cal. Rptr. 2d 671], in support of liability. In *John R.*, however, the issues of statutory authority and immunity were not discussed; the defendant had successfully demurred on the ground of timeliness below. In *Virginia G.*, the court ruled that the plaintiff could proceed with the cause of action for negligent hiring and supervision because a "special relationship" is formed between a school district and its students to take all reasonable steps to protect its students (*id.* at p. 1853) and reserved the issue of public entity immunity for negligent supervision. We reject appellants' claim, made for the first time in their reply brief, that a special relationship was formed when **Orr** undertook an inspection. (See also *Cochran v. Herzog Engraving Co.* (1984) 155 Cal. App. 3d 405, 410 [205 Cal. Rptr. 1] [immunity for inadequate fire inspection services based upon Gov. Code, § 818.6]; *Harshbarger v. City of Colton* (1988) 197 Cal. App. 3d 1335, 1345-1347 [243 Cal. Rptr. 463] [immunity for fraudulent building inspection extends to liability based upon negligent supervision].)

In addition, of course, in view of the exceedingly high cost of modern litigation, from the point of view of a defendant public entity, merely being named in a tort suit places it in a lose/lose situation. Except in those most rare instances permitting the recovery of attorney fees, the more procedural stages through which it must pass prior to vindication, the greater will be its "victorious losses." This problem is particularly acute for today's financially stressed governmental bodies. Consequently, if the governmental bodies' immunity from respondeat superior liability is to be forfeited whenever a plaintiff's counsel elects to add a second count founded on the same facts, but conclusionally couched in terms of negligent supervision, even the limited protection they are now afforded will be essentially eviscerated.

Decision

The judgment is affirmed.

Case Study #2: People v. Nguyen (1995) , 40 Cal. App. 4th 28

Discussion Question: In this case, did the offender commit burglary when he entered a house with the intent to steal property by giving the victim a worthless check in exchange for various items?

Facts

The primary issue in this case is whether Hung Hao Nguyen committed burglary when he entered a house with the intent to steal property by giving the victim a worthless check in exchange for various items. We conclude the conduct constitutes burglary.

Hung Hao Nguyen was convicted of three counts of burglary (Pen. Code, n1 § 459). In each count the victim advertised an item for sale in a local newspaper. Nguyen responded to the advertisements. The victims allowed Nguyen inside their homes. Once inside Nguyen negotiated a price for the items and paid by check. In each case, Nguyen wrote a check on an account he had earlier personally closed. The purchase price of the items ran from \$ 135 to \$ 560.

On appeal, Nguyen contends his conduct did not constitute burglary and that the prosecutor committed misconduct during closing argument.

Issue(s)**I. Burglary**

Section 459 defines the offense of burglary as follows: "Every person who enters any house . . . with intent to commit grand or petit larceny or any felony is guilty of burglary."

(1) Nguyen first argues, based on a historical and semantic analysis of the law of burglary and larceny, that his conduct does not constitute burglary because the burglary statute requires an entry with an intent to commit "grand or petit *larceny* or any felony" (§ 459, italics added) and he intended neither a "larceny" nor a felony but rather a "petit [i.e., misdemeanor]" theft by false pretenses. He points out that originally "larceny" was a separate crime and that there is a separate code section for the crime of theft by false pretenses (§ 532). And therefore, he concludes an intent to commit a misdemeanor or "petit" theft by false pretenses is insufficient to support a **burglary** conviction.

This argument, grounded on the use of the term "larceny," is without merit. As Nguyen acknowledges, in 1927, the Legislature amended the larceny statute to define theft as including the crimes of larceny, embezzlement and obtaining property by false pretense. (Stats. 1927, ch. 619, § 1, p. 1046.) At the same time, the Legislature also enacted section 490a stating, "[w]herever any law or statute of this state refers to or mentions larceny, embezzlement, or stealing, said law or statute shall hereafter be read and interpreted as if the word 'theft' were substituted therefor." (Stats. 1927, ch. 619, § 7, p. 1047.) Thus, the Legislature has indicated a clear intent that the term "larceny" as used in the burglary statute should be read to include all thefts, including "petit" theft by false pretenses.

(2) Nguyen contends his conduct does not constitute burglary because the burglary laws are intended to protect against the "security of habitation or occupancy, rather than an offense against ownership or property" and here "[t]here was no home invasion or intrusion of the type sought to be prevented under the burglary laws."

Nguyen's argument is premised on rejecting a plain language interpretation of the burglary statute

and instead applying a policy approach. Nguyen acknowledges if we adopt a plain language interpretation, as did the court in *People v. Salemm* (1992) 2 Cal. App. 4th 775 [3 Cal. Rptr. 2d 398], then we would affirm his conviction.

In *Salemm*, the court held the defendant committed burglary when he entered a home to sell the occupant fraudulent securities. *Salemm* began its analysis with a Supreme Court case from 1892, *People v. Barry* (1892) 94 Cal. 481 [29 P. 1026]. In *Barry*, the Supreme Court relied on a plain language interpretation of the burglary statute and held entry into a store, generally open to the public, with the intent to commit larceny constitutes burglary. The *Barry* court, after noting "common-law burglary and the statutory burglary of this state have but few elements in common" (*id.* at p. 482), stated: "[T]he language [of section 459] is so plain and simple that rules of statutory construction are not required to be consulted; the meaning is patent upon the face of the statute. No words are found in the statute qualifying the character, kind, time, or manner of the entry, save that such entry must be accompanied with a certain intent; and it would be judicial legislation for this court to interpolate other conditions into the section of the code." (*People v. Barry, supra*, 94 Cal. 481, 482-483.)

The *Salemm* court noted, "For 83 years, this plain meaning applied: *any* entry with the intent to commit a felony [or theft] into *any* structure enumerated in section 459 constituted burglary *regardless of the circumstances of the entry*. [Citations.]" (*People v. Salemm, supra*, 2 Cal. App. 4th 775, 779.)

Salemm next looked at the Supreme Court's decision in *People v. Gauze* (1975) 15 Cal. 3d 709 [125 Cal. Rptr. 773, 542 P.2d 1365], where the Supreme Court "revisited the issue of statutory interpretation of section 459" in deciding "the question whether a person can burglarize his or her own home." (*People v. Salemm, supra*, 2 Cal. App. 4th 775, 779.) The *Gauze* court held a person cannot burglarize his own home. The Supreme Court stated, the "burglary law is designed to protect a possessory right in property, rather than broadly to preserve any place from all crime" and "must be committed by a person who has no right to be in the building." (*People v. Gauze, supra*, 15 Cal. 3d 709, 713-714.) The court, relying on its decision in *People v. Barry, supra*, 94 Cal. 481, defined a person with a "right to be in the building" as a person who had an unconditional right of possession, i.e., a person who could not be refused admittance at the threshold or ejected from the premises if the intent to commit a theft or felony were known. (*People v. Gauze, supra*, at pp. 713-714.)

The Supreme Court further stated:

" 'Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation--the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed, then, not to deter the trespass and the intended crime, which are prohibited by other laws, so much as to forestall the germination of a situation dangerous to personal safety.' Section 459, in short, is aimed at the danger caused by the unauthorized entry itself.

"In contrast to the usual burglary situation, no danger arises from the mere entry of a person into his own home, no matter what his intent is." (*People v. Gauze, supra*, 15 Cal. 3d 709, 715.)

The *Salemm* court also looked at the decision in *People v. Superior Court (Granillo)* (1988) 205 Cal. App. 3d 1478 [253 Cal. Rptr. 316], which followed the *Gauze* decision. *Granillo* held a person who enters a structure with the intent to commit a felony cannot be convicted of burglary

when invited in by the occupant who knows of and endorses the felonious intent. The *Granillo* court reasoned in such a situation, it cannot be said that the accused would have been refused admission at the threshold or ejected after entry on the basis he entertained an intent to commit a theft or felony since the occupant, having knowledge of the intent, admitted the accused and did not eject him. The *Granillo* court, as in *Gauze*, also noted that one of the purposes of California's burglary law was to protect against the dangers to personal safety created by the "usual burglary situation." (*Id.* at p. 1483.)

Salemme, focusing on the language in *Gauze* and *Granillo* that the burglary laws were intended to protect a "possessory right of habitation" CONCLUDED: "since burglary is a breach of the occupant's possessory rights, a person who enters a structure enumerated in section 459 with the intent to commit a felony is guilty of burglary *except* when he or she (1) has an unconditional possessory right to enter as the occupant of that structure or (2) is invited in by the occupant who knows of and endorses the felonious intent." (*People v. Salemme*, *supra*, 2 Cal. App. 4th 775, 781; see also *People v. Felix* (1994) 23 Cal. App. 4th 1385, 1398 [28 Cal. Rptr. 2d 860].)

Because the defendant in *Salemme* entered the home with a felonious intent and neither of the exceptions applied, the defendant could be convicted of burglary. The *Salemme* court rejected the argument the underlying offense must involve some threat of violence: "In effect, defendant would write into section 459 the requirement that the perpetrator must intend to commit a felony which poses a physical danger to the victim, rather than 'any felony' [or theft] as specified by the Legislature. This interpretation is not compelled by the purpose of the burglary statutes as discussed above and would constitute impermissible judicial legislation." (*People v. Salemme*, *supra*, 2 Cal. App. 4th 775, 781-782.)

Nguyen argues *Salemme* was wrongly decided because it relied on the underlying purpose of the burglary statute as protecting a possessory right in property. Nguyen asserts the Supreme Court in *Gauze* held the purpose of California's burglary laws is to protect against the dangers to personal safety created by the "usual burglary situation." (*People v. Gauze*, *supra*, 15 Cal. 3d 709, 715.) Nguyen argues since his offense did not involve the dangers to personal safety created by the "usual burglary situation," he should not have been convicted of burglary.

We find Nguyen's argument unpersuasive. *Gauze* does not stand for the proposition that the burglary laws should only be applied to the "usual burglary situation"; *Gauze* addressed only the limited issue of a right to enter property and whether an individual could burglarize his own home. *Gauze* did not hold that the only purpose of the burglary laws was to protect the "security of habitation" or hold that a burglary conviction would be proper only if the victim were endangered by the "entry." *Gauze* did not reach the issues presented here; it addressed only issues surrounding the possessory right to enter property, i.e., whether an entry occurs within the meaning of the burglary law when an individual enters property in which he has a possessory right.

We believe *Salemme's* reliance on a plain language interpretation of the burglary statute and rejection of an approach that the underlying offense must threaten the "security of habitation" was proper; *Gauze* does not compel a contrary result. *Salemme* correctly recognized the narrow holding in *Gauze* and correctly interpreted the Supreme Court's decisions in *Barry* and *Gauze* as permitting a burglary conviction in the unusual situation where the victim opens the door to a defendant intending to commit theft by false pretenses. Moreover, any doubts about the propriety of *Salemme's* approach have been removed by subsequent Supreme Court opinions.

In 1993, the Supreme Court approved *Salemme's* plain language interpretation approach to the

burglary statute. The court stated: "Not uncommonly, courts must construe statutes in factual settings not contemplated by the enacting legislature. For example, in *People v. Salemme* (1992) 2 Cal. App. 4th 775 [3 Cal. Rptr. 2d 398], the court upheld a conviction of burglary when the felony the defendant entered the residence to commit was that of the fraudulent sale of securities. This scenario likely was not within the Legislature's contemplation when it enacted Penal Code section 459. Nonetheless, *the burglary statute, on its face, addressed the defendant's conduct and was properly interpreted to apply to it.*" (*Johnson v. Calvert* (1993) 5 Cal. 4th 84, 89 [19 Cal. Rptr. 2d 494, 851 P.2d 776], italics added.)

While the Supreme Court in this 1993 case was addressing a different issue (application of the Uniform Parentage Act) and therefore the statement is dicta, nonetheless we find it to be a persuasive endorsement of the *Salemme* decision and rejection of an argument that interpretation of section 459 should be limited by the purposes of the law served in the "usual burglary situation."

A year later, the California Supreme Court expressly recognized there are multiple purposes underlying the burglary law. In *People v. Montoya* (1994) 7 Cal. 4th 1027, 1043 [31 Cal. Rptr. 2d 128, 874 P.2d 903], the court stated: "Although the decisions generally have emphasized [the] aspect of the danger to personal safety created by the offense of burglary, other authority, involving factual circumstances in which actual danger appears not to exist or is relatively minor, and relying upon the purpose of the statute to protect against an invasion of a possessory right, has concluded that the threat to property interests alone, created by the burglar's entry and continued presence inside the structure, supports a finding of burglary. (*People v. Salemme, supra*, 2 Cal. App. 4th 775, 781-782 . . .)"

In *Montoya*, the court held an individual could be convicted of aiding and abetting a burglary if he formed the intent to commit, facilitate or encourage commission of the offense while the perpetrator remained inside the structure. In reaching its conclusion, the *Montoya* court relied on dual purposes underlying the burglary law, i.e., "the increased danger to the personal safety of the occupant, *and the increased risk of loss or damage to his or her property* contemplated by the statutory proscription." (*People v. Montoya, supra*, 7 Cal. 4th 1027, 1043, italics added.)

Thus the Supreme Court has indicated its approval of the approach and the holding in the *Salemme* case.

Here, Nguyen entered the homes with the intent to commit a theft. He did not have an unconditional possessory right as the occupant to enter any of his victims' homes. Nor was he invited in by the occupants with knowledge he had an intent to steal their property. Since Nguyen entered the victims' homes with the requisite intent and no exceptions applied, he was properly convicted of burglary pursuant to the clear language of section 459.

II. Prosecutorial Misconduct

(3) Nguyen contends the prosecutor committed misconduct by misstating the standard of reasonable doubt.

During closing argument, the prosecutor stated: ... "Prosecutorial misconduct implies the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury." (*People v. Strickland* (1974) 11 Cal. 3d 946, 955 [114 Cal. Rptr. 632, 523 P.2d 672].) To establish prosecutorial misconduct, it is not necessary to show the prosecutor acted in bad faith, but it is

necessary to show the right to a fair trial was prejudiced. (*People v. Bolton* (1979) 23 Cal. 3d 208, 213-214 [152 Cal. Rptr. 141, 589 P.2d 396].) If the defendant fails to object to the asserted misconduct and does not request an instruction or admonition to lessen any possible prejudice, then the asserted objection is thereby waived. (*People v. Ghent* (1987) 43 Cal. 3d 739, 762 [239 Cal. Rptr. 82, 739 P.2d 1250].)

Nguyen has a valid point. The prosecutor's argument that people apply a reasonable doubt standard "every day" and that it is the same standard people customarily use in deciding whether to change lanes trivializes the reasonable doubt standard. It is clear the almost reflexive decision to change lanes while driving is quite different from the reasonable doubt standard in a criminal case. The marriage example is also misleading since the decision to marry is often based on a standard far less than reasonable doubt, as reflected in statistics indicating 33 to 60 percent of all marriages end in divorce. (See Dyer, *The Divorce Rate Isn't What You Think*, Dallas Morning News (May 6, 1995) p. 3C; Kasper, *Marriage is Rougher Second Time Around*, Kansas City Star (Sept. 18, 1995) p. E5; Epstein, *Automation, E-Mail Encourage Isolation*, S.F. Chronicle (Sept. 14, 1995) p. A1.)

As our Supreme Court stated over 120 years ago in *People v. Brannon* (1873) 47 Cal. 96, 97: "The judgment of a reasonable man in the ordinary affairs of life, however important, is influenced and controlled by the preponderance of evidence. Juries are permitted and instructed to apply the same rule to the determination of civil actions involving rights of property only. But in the decision of a criminal case involving life or liberty, something further is required. . . . There must be in the minds of the jury an abiding conviction, to a moral certainty, of the truth of the charge, derived from a comparison and consideration of the evidence."

We strongly disapprove of arguments suggesting the reasonable doubt standard is used in daily life to decide such questions as whether to change lanes or marry. The argument is improper even when the prosecutor, as here, also states the standard for reasonable doubt is "very high" and tells the jury to read the instructions. Had Nguyen objected to the prosecutor's argument, the court surely would have sustained his objection and admonished the jury.

Nguyen, however, did not object. Since an objection here and admonition by the court would have cured the error, Nguyen waived the issue for appeal.

Decision

Moreover, we conclude Nguyen was not prejudiced since the prosecutor did direct the jury to read the reasonable doubt instruction and the jury was correctly instructed on the standard. We must presume the jury followed the instruction and that the error was thereby rendered harmless. The verdict was affirmed.

Answers to Review Questions

Chapter 12

1. What are the elements of burglary?

Burglary at common law is the breaking and entry of the dwelling house of another at night with the intention to commit a felony. Burglary statutes no longer require a breaking, include a broad range of structures and vehicles, may be committed at night or day, and no longer require an intent to commit a felony. ... California law only states there must be entry with (the) intent to commit grand or petit larceny or any felony...

2. Would breaking into a car be burglary?

A. Yes, it would .

Burglary, Trespass, Arson, and Mischief

3. Must burglary occur at nighttime to be first degree burglary?

A. *No. Time is not relevant.*

4. How could a hate crime be linked to vandalism?

A. *Yes, if it is done with the intent for the purposes of: intimidating and deterring persons from freely exercising their religious belief...or, one who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by placing or displaying a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, etc.*

5. Are arsonists required to register as offenders for life, upon release from prison, as are sex offenders and drug addicts?

A. *Yes, they are. PC 457.1. Arson; Offender Registration Upon Discharge of Parole*