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Remember 9/11/01*: *Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*An expert is a man who tells you a simple thing in a confused way in such a fashion as to make you think the confusion is your own fault.*" (William Castle)

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ADMINISTRATIVE NOTES:

Montejo v. Louisiana; *Acting as a Prosecutor's Agent*: In the Note to my brief of *Montejo v. Louisiana* (Legal Update Vol. 14, #6), I suggested that officers use a little caution in seeking interviews with arraigned defendants despite the fact that the U.S. Supreme Court has put its stamp of approval on this practice under the circumstances as described in the brief. Given the fact that the decision was a 5-to-4 split, with a strong dissent (not to mention the prospect of more liberal judges being appointed to the Supreme Court in the near future), I further suggested that officers seek the advice of a prosecutor in such circumstances. However, it was

wisely pointed out to me that asking for a prosecutor's assistance may well lead to an agency relationship between the cop and the prosecutor, perhaps extending the application of the California's Rules of Professional Conduct, Rule 2-100 (prohibiting communications between prosecutors and a represented person without the person's attorney's knowledge and consent) to the officer himself. Also, it is a fact that many prosecutors decline (selfishly, in my opinion) to get involved in pre-charging investigative decisions due to a diluted ("qualified immunity") protection from civil liability in such a circumstance. So while I always encourage officers and prosecutors to cooperate and communicate more, you might take these realities into consideration in deciding whether you want to talk to your prosecutor before contacting a charged, arraigned criminal defendant.

CASE LAW:

***Search Warrants; Document Retention and Loss of the Affidavit*:**

People v. Galland **(Dec. 29, 2008) 45 Cal.4th 354**

Rule: Sealed *Hobbs* warrant affidavits may be retained by the involved law enforcement agency only after an in-court showing of necessity. Loss of the affidavit is not fatal to the case so long as an adequate record may be reconstructed.

Facts: The Buena Park Police Department sought and obtained a search warrant for defendant's home, vehicle and person, looking for evidence of the possession and sale of methamphetamine. Upon having the magistrate approve and sign the warrant, a portion of the warrant's affidavit was sealed for the purpose of protecting one or more confidential informants. The magistrate ordered the sealed portion of the affidavit be secured in the Buena Park Police Department's property room. Charged in state court with various drug-related offenses, defendant challenged the search warrant in a motion to suppress. The sealed portion of the affidavit was brought to court by the police for the hearings on the motion. After the court denied the motion, the sealed affidavit was returned to the police department's property room. However, when defendant appealed the denial of his motion to the Fourth District Court of Appeal, it was discovered that the police department had in the meantime purged their files on this case, destroying the sealed affidavit. In its place, the Orange County District Attorney's Office recreated an unsigned five-page version of the affidavit. After a hearing on the issue, the Superior Court made the factual determination (based upon the parties' stipulation) that the substitute version correctly reflected what had been in the original affidavit. The Fourth District Court of Appeal, however, found this insufficient and ruled that the remaining unpurged record was inadequate to permit meaningful appellate review. The Court also ruled that the magistrate had improperly ordered the sealed portion of the affidavit to be held by the police department in that the court is required by the Penal and Government Codes to retain the entire warrant and affidavit. The Court therefore reversed the trial court's denial of defendant's motion to suppress. The State appealed to the California Supreme Court.

Held: The California Supreme Court reversed the appellate court, remanding the case back for further hearings on the issues raised. The Court first reviewed the procedures to be used when, pursuant to *People v. Hobbs* (1994) 7 Cal.4th 94, a magistrate seals a portion of a search warrant affidavit. Under *Hobbs*, a magistrate has the authority to "order any identifying details to be redacted or, as in this case, . . . adopt 'the procedure of sealing portions of a search warrant affidavit that relate facts or information which, if disclosed in the public portion of the affidavit, will reveal or tend to reveal a confidential informant's identity.'" Defendant did not challenge these procedures on appeal. Rather, he argued that allowing the sealed portion of an affidavit to be retained by a police department instead of by the court, and then destroying that record, is reversible error. The Supreme Court determined, however, that there is statutory and decisional authority for allowing documents normally filed with a court, including search warrant affidavits, to be kept by outside entities. Where such a document should be kept depends upon the circumstances, requiring a balancing of the state's interest in protecting the confidentiality of an informant's identity with the necessity of safely securing the document. But a law enforcement agency should not be allowed to retain court documents just because it wants to. The presumption is that the court clerk's office is capable of safeguarding sealed documents in its possession. Generally, therefore, the sealed portion of a *Hobbs* warrant should be kept with the rest of the warrant in the court clerk's possession. However, a sealed search warrant affidavit may be retained by the law enforcement agency upon a showing that:

(1) Disclosure of the information would impair further investigation of criminal conduct or endanger the safety of the confidential informant;

(2) Security procedures at the court clerk's office governing a sealed search warrant affidavit are inadequate to protect it from disclosure to unauthorized persons;

(3) Security procedures at the law enforcement agency or other entity are sufficient to protect the affidavit against disclosure to unauthorized persons;

(4) The law enforcement agency or other entity has procedures to ensure that the affidavit is retained for 10 years after final disposition of a non-capital case, permanently in a capital case, or until further order of the court, pursuant to Gov. Code, § 68152(j)(18)), so as to protect the defendant's right to meaningful judicial review; and

(5) The magistrate has made a sufficient record of the documents that were reviewed, including the sealed materials, so as to permit identification of the original sealed affidavit in future proceedings or to permit reconstruction of the affidavit, if necessary.

Upon such a showing, the Court found that there is nothing in the Penal Code nor the Constitution barring a law enforcement agency from retaining custody of the original sealed affidavit. In this case, although there were identified security issues with the clerk's office, and the police department failed to retain its records for the statutory 10 years, the real problem is that the magistrate failed to make the above-listed findings before allowing the police department to keep the sealed portion of its warrant affidavit. However, contrary to defendant's contentions and the appellate court's conclusions, the record reconstructed by the Orange County District Attorney *is* sufficient to permit meaningful appellate review of the warrant. It is a rule of law that "(t)he absence of an affidavit to support an executed search warrant, . . . does not invalidate the warrant when 'other evidence may be presented to establish the fact that an affidavit was presented, as well as its contents.'" Reversal of a court ruling is required only when critical evidence

or a substantial part of the record is irretrievably lost or destroyed and there is no alternative way to provide an adequate record so that the appellate court may pass upon the question sought to be raised. The trial court in this case determined that the reconstructed warrant affidavit was adequate after it was stipulated by the parties that the detective/affiant would testify that it was an exact copy of the original. The appellate court's determination, therefore, that the record on appeal was insufficient to permit meaningful appellate review, was error. The Supreme Court remanded the case back for further hearings to clarify some of these issues.

Note: The San Diego Superior Court years ago published a very detailed protocol for the handling of sealed affidavits, including their retention in the court's files. If your jurisdiction doesn't have something similar, I would suggest you contact the San Diego District Attorney's Office (since I don't have a copy anymore) and inquire as to what is done there, and then work with your court administrators to implement something similar. It's worked in San Diego quite smoothly for years now, as far as I am informed. If, in the meantime, you can't trust your court clerk with sensitive information such as sealed warrant affidavits, know that it is the prosecution's burden to provide evidence of the five-part test described above before storing it elsewhere; something that may not be easy to do.

***Detentions, Patdowns, Arrests and Impounding of Vehicles*:**

Ramirez v. City of Buena Park **(9th Cir. Mar. 25, 2009) 560 F.3rd 1012**

Rule: (1) The detention of the plaintiff in this case was based upon sufficient reasonable suspicion to be lawful. (2) Patting down a detainee for weapons absent a reasonable belief that he might be armed is illegal. (3) The plaintiff's arrest was supported by sufficient probable cause to where a reasonable officer would have believed it to be lawful. (4) The impounding of the plaintiff's car was justified under the police department's "community caretaking" function because leaving it at the scene would have subjected it to possible vandalism or theft.

Facts: Buena Park Police Officer Pedro Montez observed Joseph Ramirez, plaintiff in this civil suit, apparently asleep in his car which was parked in a drugstore parking lot at about 8:00 p.m. with its parking lights on. Because the area is known for "grab-and-run" thefts and robberies, with getaway cars typically used, and because Montez was also concerned that plaintiff might have some sort of medical problem or was physically impaired, he decided to investigate further. Montez was trained as a "drug recognition expert," having received some 80 hours of instruction in the recognition of the signs and symptoms of drug influence and related topics. As such, he knew that drug influence may cause a person to "fall asleep quickly, inappropriately, and sometimes uncontrollably." Montez walked up to the vehicle and noted that the sleeping plaintiff, sitting behind the steering wheel with the keys in the ignition, was breathing rapidly; another indication of drug influence. Officer Montez knocked on plaintiff's window, waking him. Plaintiff seemed to be "irritable and aggressive, . . . assertively ask(ing) if it was necessary to knock on his window." Montez had been trained that such an attitude is

another sign of drug influence. Plaintiff told Montez that he worked a lot, was merely tired, and was less than a mile from his house. Suspecting that plaintiff was in fact under the influence of drugs, he had him step out of the vehicle. At some point (the timing of this observation being in dispute), Montez noted that plaintiff's pupils were dilated; another indication of drug influence. Montez patted plaintiff down for weapons to make sure there were none involved. Montez performed a field sobriety test on plaintiff, including having him estimate when 30 seconds had passed. Plaintiff stopped the officer at 45 seconds. The inability to estimate the passage of time (with a 10-second margin of error) is another sign of drug influence. Plaintiff's respiration rate was 132 beats per minute, where 60 to 90 is normal. Montez also had plaintiff perform a finger-to-nose coordination test which he completed without difficulty. Officer Montez determined that plaintiff was under the influence of a controlled substance and arrested him. He had plaintiff's car impounded, pursuant to P.C. § 22651(h)(1), for "safe keeping." Because a blood test administered at the station later came back negative, all charges were eventually dropped. Plaintiff thereafter sued Officer Montez and others in federal court, alleging an illegal detention, patdown, arrest, and impoundment of his car. The federal trial court granted summary judgment (i.e., dismissal without the need for a trial) in favor of the civil defendants (i.e., Officer Montez et al.). Plaintiff appealed.

Held: The Ninth Circuit Court of Appeal affirmed in part, and reversed in part, remanding the case back for further proceedings. (1) The Court first upheld the lawfulness of the original detention which the parties conceded was when Officer Montez ordered defendant out of his vehicle (a questionable concession). The proof standard, of course, is merely a "*reasonable suspicion*." Given Officer Montez's expertise in recognizing the signs and symptoms of drug influence, noting plaintiff's sleepiness, irritability, and rapid breathing, along with the unusual circumstance of being parked in a drugstore parking lot at 8:00 p.m. with his parking lights on and while less than a mile from home, was sufficient to constitute a "*reasonable suspicion*" to believe that plaintiff was under the influence of drugs. That part of plaintiff's lawsuit was therefore properly dismissed. (2) Plaintiff also alleged that Officer Montez illegally patted him down for weapons without sufficient cause. It noted that no evidence was alleged of any reason to believe plaintiff might be armed. Officer Montez testified that he patted plaintiff down just "to make sure" he wasn't armed. For a patdown to be lawful, however, it is necessary that there be at least a "*reasonable belief*" that plaintiff was in fact armed, as determined by specific, articulable facts. No such specific articulable facts were provided by Officer Montez. The patdown for weapons, therefore, was unlawful. That part of the trial court's summary judgment was reversed and remanded for further proceedings. (3) As for whether defendant was lawfully arrested, the Court noted that in addition to Officer Montez's reasons for detaining plaintiff, there was evidence that plaintiff's respiration rate was abnormally high and his pupils were dilated. Also, plaintiff's inability to accurately estimate the passage of 30 seconds added to the officer's probable cause. Despite the fact that plaintiff performed the finger-to-none test well, and that plaintiff claimed to have been merely tired, it was close enough to probable cause for the Court to find that Officer Montez had at least "*qualified immunity*" from civil liability. This conclusion is based upon the rule that qualified immunity will be found whenever a reasonable officer, under the circumstances, wouldn't have necessarily known the arrest

was illegal. This part of plaintiff's lawsuit, therefore, was also properly dismissed. (4) Lastly, plaintiff complained that his vehicle was impounded in violation of the Fourth Amendment. Officer's Montez's stated reason for impounding plaintiff's car was for "safe keeping," pursuant to V.C. § 22651(h)(1) (i.e., where its driver has been arrested). The Court first noted that just because a statute authorizes the impounding of a car does mean its impoundment is allowed under the Fourth Amendment. But impounding an arrestee's car is constitutional under the Fourth Amendment under law enforcement's so-called "*community caretaking*" function when necessary to avoid "jeopardizing the public safety" or to insure "the efficient movement of vehicular traffic." Protecting the car from becoming a target for vandalism or theft is included in this category. Here, Officer Montez, not knowing when plaintiff would be able to retrieve his car, had a duty to protect plaintiff's car from becoming a target for vandalism or theft. Impounding it, therefore, was lawful. This last part of plaintiff's lawsuit was also properly dismissed.

Note: Although I tend to avoid civil cases out of the Ninth Circuit, they being somewhat redundant from case to case, I thought this was an important one to brief in that it gives you examples of how much information an officer needs in order to justify (1) a detention, (2) a patdown, (3) an arrest, and (4) to impound the person's car, all in one neat package. The only issue the Court wimped out on was whether Officer Montez had sufficient probable cause for the arrest, finding only that it was close enough to protect him from civil liability due to "qualified immunity." My personal opinion, for what its worth, is that the Court would have found that there was enough probable cause for an arrest; the officer's training and experience counting for a lot in this equation. The fact that the blood test later came back negative is irrelevant to this issue. Probable cause only means that the there was a "*fair probability*" that the plaintiff was under the influence of drugs; not that he really was. Lastly, since both state and federal courts have started finding many of the vehicle impounds we do to have been done in violation of the Fourth Amendment, even though authorized by a state statute, it's good to have an example with which to work. Add this to your folder on the rules for impounding vehicles. (See *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3rd 858 and *People v. Williams* (2006) 145 Cal.App.4th 756, my briefs on which I can send you upon request.)

***Miranda*: *The Non-Custodial Interrogation*:**

***United States v. Bassignani* (9th Cir. Mar. 25, 2009) 560 F.3rd 989**

Rule: The questioning of a suspect is held to be non-custodial under the circumstances, aided by an effective, although less than perfect, *Beheler* admonishment.

Facts: Yahoo, Inc., reported that a user with a specific e-mail address had uploaded child pornography. The Sacramento Valley High Tech Crimes Unit began an investigation, connecting the reported e-mail address to defendant's workplace e-mail account at a business in Petaluma, California. Armed with a search warrant for defendant's workspace, officers confronted him there, working at his computer. Having discovered during the investigation that defendant had installed on his work computer software called "Window Washer," which can be used to delete and overwrite the Internet

browsing history and other information, defendant was immediately ordered to "*remove himself*" from his computer. He was then "*instructed*" to follow the company's Human Resources Manager, accompanied by one of the investigators, to the company's conference room. With the door shut, defendant and the investigator were left alone while other officers searched defendant's computer, his vehicle and his residence (occurrences he was told about during the ensuing interrogation). The investigator first told defendant he was "*not under arrest. You're not being arrested. You'll walk out of here when we're done*." Defendant was not told, however, that he was free to leave at any time or that he could cut off the interrogation whenever he wanted. He was also never advised of his *Miranda* rights. For the next two and a half hours, defendant was questioned about his involvement with child pornography. Most of the interrogation was conducted in a civilized, low-key tone although defendant was confronted with the fact that they had his "*email connected to the (pornographic) images, it's a done thing*." He admitted to his involvement with child pornography. At the end of the interview, when talking about whether defendant might need an attorney, defendant was again reminded that he was "*not under arrest* (*and*) *you're going to walk out of here*." As promised, he was released after the interview. Later charged in federal court with possession and distribution of child pornography, defendant filed a motion to suppress the products of this interrogation arguing that he should have been advised of his *Miranda* rights. The trial court agreed, finding that he was in custody for purposes of *Miranda* and should have been advised. The Government appealed.

Held: The Ninth Circuit Court of Appeal, in a split, 2-to-1 decision, reversed the trial court, finding that under the circumstances defendant was *not* in custody. Absent custody, a *Miranda* admonishment and wavier is legally unnecessary. It was first noted that it is the defendant's in-court burden to prove that he was in custody for purposes of *Miranda*. The test for determining whether he was in custody is whether a reasonable innocent person in the same or similar circumstances would have believed that he was not free to leave; i.e., that he was subjected to "*a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest*." In evaluating a defendant's argument on this issue, the Court is to consider at least five factors:
(1) The language used to summon the individual;
(2) The extent to which the defendant is confronted with evidence against him;
(3) The physical surroundings of the interrogation;
(4) The duration of the detention; *and*
(5) The degree of pressure applied to detain the individual.
Also, it was noted that "(o)ther factors may also be pertinent to, and even dispositive of, the ultimate determination whether a reasonable person would have believed he could freely walk away from the interrogators." In this case, the Court held that:
(1) Defendant was "*instructed*" to go to the conference room with the investigator. While being "instructed" is less intrusive than being "ordered," it is obvious that defendant didn't go willingly. This factor indicates he was in custody.
(2) Although defendant here was asked about the pornography he was known to have on his computer, the tone of the questioning was not confrontational. It was all very low-key, in an "*open, friendly tone*," with defendant actively and willingly participating. This factor indicates a lack of custody.

(3) Defendant was questioned in a conference room at his place of employment; "*familiar surroundings*" to defendant. This factor shows a lack of custody.
(4) Defendant's interrogation lasted 2½ hours. Although not a "marathon session," this is long enough to fall into the custody category.
(5) There was no pressure applied to defendant to get him to confess or to stay in the conference room. He was also told that he was not under arrest and would be free to leave when they were done. Although it would have been better if he had been told that he was free to end the interrogation or otherwise leave at any time, telling him twice that he was not under arrest was enough to add this factor to the non-custodial category.
Balancing all these factors, the Court found that although a "*close case*," defendant was not in custody for purposes of *Miranda*. His confession, therefore, did not require a *Miranda* admonishment and wavier to be admissible.

Note: Despite the good result, this case should serve as a reminder to all police interrogators that a *Beheler* admonishment (*California v. Beheler* (1983) 463 U.S. 1121; i.e., telling a suspect that he is not under arrest and is free to leave, thus taking the "*custody*" out of an interrogation) may not necessarily eliminate the need for a *Miranda* admonishment. (See also *United States v. Craighead* (9th Cir. 2008) 539 F.3rd 1073; custody found despite a *Beheler* admonishment.) A *Beheler* admonishment counts as no more than a part of one factor the court is to consider. While we consistently win a *Beheler* issue on appeal (*Craighead* being the exception, with this case *almost* being another), we have to get it by the trial judge first, and we *do not* always win it in the trial court (as this case illustrates). Also note the officer's mistake in telling defendant that he was free to leave "*when we're done*," as opposed to whenever he chooses. The value in an effective *Beheler* admonishment is successfully conveying to the suspect the fact that he is free to cut off the questioning and leave *whenever he chooses*. That is the key to taking the custody out of an interrogation. The dissenting justice in this case, who argued that defendant was in custody, made a big deal out of this mistake. The majority justices, while calling this a "*close case*," were able to live with it only because the overall questioning was conducted in a low-key, non-confrontational, "*open, friendly tone*." Had it been a little more high pressure, the result might very well have been different.

***Grand Theft from the Person; per P.C. § 487(c)*:**

People v. Cuellar **(July 31 2008) 165 Cal.App.4th 833**

Rule: Theft of a forged check is in fact a theft; the paper the check is written on having some "*intrinsic value*," even if minimal.

Facts: Defendant attempted to buy some cosmetics at a Nordstrom department store, using a previously signed check drawn on a bank account belonging to John Becker. The clerk was suspicious of the authenticity of the check and took it to a back office. Defendant became impatient, went into the office, grabbed the check from the clerk's hand, and left with it. John Becker later confirmed that the check was from an old account of his but told investigators that he had not authorized defendant to use it. Defendant was charged with burglary, uttering a fictitious check, and grand theft from the

person (plus other charges stemming from some other events). Convicted on all counts, defendant appealed the grand theft from the person charge.

Held: The Third District Court of Appeal (Placer County) affirmed. Defendant's argument on appeal was that grand theft from the person, per P.C. § 487(c), requires that the item taken have some "*intrinsic value*," and that a check, by its very nature, at least until accepted, has no value. Also, per the defendant, being forged, the check was worthless. The People, on the other hand, contended that because the value of an item taken in a grand theft from the person is irrelevant, there is no requirement for the item taken in this case to have any intrinsic value, but even if some value is necessary, the paper on which John Becker's check was written had some intrinsic value even if very minimal. Tracking the history of California's theft statutes from when they were all classified as "larceny," the Court noted that there has always been a requirement for any type of theft that the item taken to have had some "*intrinsic value*." There is no reason to treat grand theft from the person, per P.C. 487(c), any different. As for a check, the Court agreed with defendant that a check's value is not the amount written on the check itself. Rather, a check is merely "an order to pay" that amount. But prior cases have also noted that a piece of paper such as a check has some "slight intrinsic value by virtue of the paper it is printing on." Also, there is "intrinsic value as a negotiable instrument that, if legally drawn, would entitle its holder to payment on demand." Under either theory, there is enough value in John Becker's forged check to support defendant's conviction for grand theft from the person.

Note: This case is not a surprise, but I thought it was worth reminding you of the rules for determining the value of items such as lottery tickets (*People v. Caridis* (1915) 29 Cal.App. 166.), checks, or any other negotiable instruments. It's not the value written on the piece of paper, but the paper itself, that is determinative of the crime committed. So if defendant in this case hadn't snatched it from the person of the Nordstorm's clerk, but maybe picked it up off a table instead, it would have been no more than a petty theft, but a theft nonetheless. However, I thought the more interesting issue would have been whether taking a check under the circumstances described here, is the taking of the "*personal property of another*" (see P.C. § 484(a))? I suppose the argument is that it certainly wasn't the defendant's check. It was John Becker's check that was temporarily in the lawful possession of the Nordstrom's clerk. Without researching this issue, I would think that should be enough to make it a theft.

***Aggravated Mayhem, per P.C. § 205*:**

***People v. Newby* (Oct. 29, 2008) 167 Cal.App.4th 1341**

Rule: A disfiguring injury, for purposes of P.C. § 205 (aggravated mayhem), may be "*permanent*" despite the fact it can be repaired by medical procedures.

Facts: When defendant was told by his fiancée, Julie H., that she was leaving him, he didn't take the news well. He grabbed her by the throat and punched her in the face with his fist several times. Falling to the floor and drifting in and out of consciousness, Julie

felt defendant kicking her in the face with his steel-toe boots as he repeatedly told her she was a "*f__king dead, bitch*." Taking her engagement ring, defendant left her in that condition. As a result of the beating, Julie's nose was pushed into her nasal cavity. The bones supporting her nose and those surrounding her eyes were shattered with the fragments strewn throughout her nasal cavity. One of her front teeth was broken off at the root. She was left with a deep bleeding gash from her collapsed nose extending up to her forehead. Her injuries required reconstructive surgery. A titanium plate was inserted into the side wall of her nose, replacing the structure previously provided by the missing bone. Laser treatments lessened the scarring on her face, but did not completely eliminate them. Defendant was charged and convicted of a whole pile of charges including aggravated mayhem, per P.C. § 205. He appealed from his life (with the possibility of parole) sentence.

Held: The Third District Court of Appeal (Sacramento) affirmed. Defendant's contention on appeal was that the trial court had erred when it instructed the jury that a "*disfiguring injury may be permanent even if it can be repaired by medical procedures*." (CALCRIM No. 800) This is important because one of the elements of aggravated mayhem under P.C. § 205 is that the defendant "*intentionally causes permanent disability or disfigurement of another human being.*" Defendant's argument was that because Julie's injuries were repairable through medical means, they were not "*permanent.*" The Court disagreed. The non-aggravated mayhem statute, P.C. § 203, has for years been interpreted by case law to require that the injury, at least when based upon a disfigurement of the victim, be permanent. (*People v. Newble* (1981) 120 Cal.App.3rd 444.) When the Legislature wrote Penal Code § 205 (aggravated mayhem), it specifically added as an element of the offense the permanency requirement. Aside from this additional element, and except for the requirement that aggravated mayhem requires the "specific intent" to cause the disfigurement (simple mayhem being a general intent crime only), the two types of mayhem are substantially the same. Prior cases interpreting the implied permanency requirement of simple mayhem have consistently held that the disfigurement is no less permanent just because it can be repaired through medical means. "(T)he word 'permanent' can no longer be applied in its literal sense since medical technology is increasingly capable of effective cosmetic repair of injuries that would otherwise be permanently disfiguring. Advances in medical technology do not . . . in any way diminish the culpability of one who intentionally disfigures another." (*People v. Hill* (1994) 23 Cal.App.4th 1566.) The Court here decided that the same rule applies to aggravated mayhem. As a result, the word "*permanent*," for purposes of both mayhem statutes, means "(c)ontinuing or *designed to continue indefinitely without change,* . . . (as) (o)pposed to temporary." Therefore, in this case, the jury was correctly instructed.

Note: The Court further held that even if it was wrong to instruct the jury according to CALCRIME 800, the error was harmless in that Julie's facial scars *are* permanent. But the importance of this case is in the Court's application of P.C. § 203's loose definition of "*permanent*" to P.C. § 205 cases as well. That's a good thing. Putting this piece a crap away for the rest of his life is also a good thing.