

# ADA ELLIOTT - BURGLARY - ENTRY - STORE

After a number of incidents of shoplifting, Foley's department store in Albuquerque gave Defendant a "Trespass Notice." In no uncertain terms, the notice stated he was no longer welcome in any Foley's anywhere. It added that if he was ever found on Foley's property, he would be charged and arrested for criminal trespass.

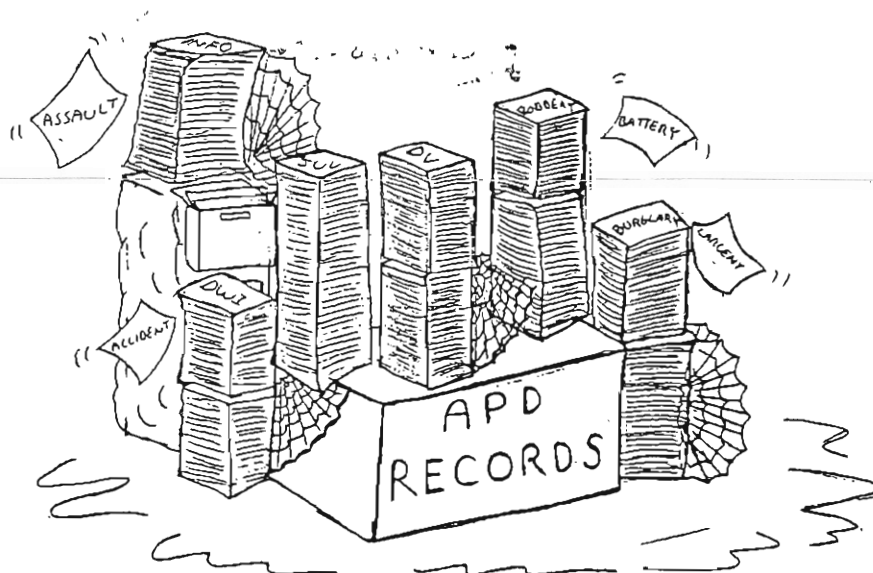
Two years later Defendant returned to Foley's. He was caught shoplifting clothing items valued between \$100 and \$250 (misdemeanor shoplifting). Had he simply walked into the store he could have been charged with criminal trespass. But Defendant did more than simply go into the store: he committed a theft therein. Criminal trespass and shoplifting? Or is there a more serious charge? Let's look at the burglary statute.

NMSA 1978, Section 30-16-3. Burglary

Burglary consists of **unauthorized entry** of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the **intent** to commit any felony or **theft** therein.

Does burglary apply? The store was a place of commerce opened to the public. Yet there is something different here: Defendant entered Foley's store after his permission to enter had been revoked. He was not authorized to enter the store. Since he was caught stealing items from the store, it can reasonably be inferred that he entered the store with the intent to steal from it.

His conduct fits the elements of the burglary statute. Court of Appeals held that where a person has notice that he or she is not authorized to enter a particular place and he or she, nevertheless, does so with intent to commit a theft, that person can be charged with burglary. State v. Tower (2002).



REMEMBER YOU MUST TURN IN  
YOUR REPORTS AT THE END OF  
YOUR SHIFT !