

# Q & A The Newsletter of the Criminal Law Section

Volume 3, Issue 4

Aug - Sept 2005

## REPORT FROM THE CHAIRMAN



Oklahoma Bar Association  
Criminal Law Section

**DENNIS SMITH**

Dear Fellow Criminal Law Section Members:

The days seem to be flying by as we head towards the annual meeting of the Oklahoma Bar Association on November 2 - 4. I again want to emphasize to you how important it is to attend the Criminal Law Section Luncheon on Wednesday, November 2, at the Petroleum Club. This special program will be presented by Gregg Crittenden, who is the District 5 First Assistant District Attorney for the State of Colorado, which includes the Vail and Aspen areas. He was the lead prosecutor on the Kobe Bryant case and will be speaking about the preparations and particular problems that occur in dealing with a case involving a high profile celebrity. Please make plans to attend this meeting on November 2. There will be a one-half hour CLE Credit and we will also hold our yearly business meeting and elect new officers for the upcoming year.

We will also be presenting some awards. We will present a Criminal Law Section Professional Advocate of the Year Award to a deserving defense attorney and to a deserving prosecutor. The criteria for this is that the recipient of the award must be an Oklahoma attorney who practices criminal defense (Federal or State) in Oklahoma, or an Oklahoma attorney who represents the government in criminal prosecutions (Federal or State) in Oklahoma. Both should be recognized as ethical and professional advocates who exhibit superior advocacy skills before the court either at the trial or appellate level and consistently show professionalism, courtesy, and respect to opposing counsel in the spirit of the adversarial system. The professional advocate should defend and protect the constitutional rights of his individual client, and the prosecutor should be known for exercising his prosecutorial discretion in an equitable manner towards the community as a whole.

Please submit your nominations to Ben Brown, Assistant

### INSIDE THIS ISSUE

Professional Advocate of the Year Award . . . . . 3

GPS Tracking Devices: A Fourth Amendment Violation . . . . . 4

Illinois: Tape the Interview . . . . . 7

*Georgia v. Randolph* . . . . . 8

Courthouse Violence . . . . . 9

73 Year-old Woman Goes To Jail for Feeding Pigeons! . . . . . 10

Psychologist Arrested for Sniffing Whipped Cream Cans . . . . . 10

Law Flaws and Haw-Haws . . . . . 11

Criminal Law Section Luncheon and CLE. . . . . 13

Gregg Crittenden: 2005 CLE Luncheon Keynote Speaker . . . . . 14

Annual Luncheon Registration Form . . . . . 15

*Q&A* is peer reviewed; however, the articles do not necessarily reflect member viewpoints, and should not be relied upon for litigation purposes. Copyright permission required, contact Mike Wilds, Editor, *The Gauntlet*, [wilds@nsuok.edu](mailto:wilds@nsuok.edu).

Public Defender, 611 County Office Building, 320 Robert S. Kerr, Oklahoma City, Oklahoma, 73102 or via e-mail, [ben.brown@oscn.net](mailto:ben.brown@oscn.net) by October 7, 2005. Be sure to explain in your letter why you believe the nominated individual is deserving of the Award, and limit the letter to 250 words. Nominations must be postmarked or received by e-mail or fax by 5:00 pm on October 7, 2005. The winners will be announced during the annual luncheon meeting of the Criminal Law Section on Wednesday, November 2, 2005 at the Petroleum Club.

The Criminal Law Section has also been contacted by Mike Evans, President of the Oklahoma Bar Association, about contributing to the Jim Gassaway Justice House. President Evans has asked that the Criminal Law Section make a contribution towards their goal of \$62,000.00. The Criminal Law Section Board of Directors have voted to give \$500.00 directly from the Criminal Law Section, and also are asking each member to donate in the name of the section. Checks should be made to the Central Oklahoma Habitat for Humanity and please write "Criminal Law Section" in the memo line at the bottom left of the check. Please note that to be placed on the individual contributors list, you will have to give at a certain gift level. If you wish to give a smaller donation than the \$52.00 gift level, it will be carried under the Criminal Law Section name.

Please use the registration form in the September 3, 2005, Oklahoma Bar Association Journal. We hope to be able to get this done quickly as time is growing short for the completion of the Justice House.

Again, please make plans to attend the Criminal Law Section Luncheon on November 2, 2005. I look forward to seeing you there.

Best Regards,

*Dennis A. Smith*

Chairman  
Criminal Law Section  
Oklahoma Bar Association

## **CRIMINAL LAW SECTION ANNUAL SECTION MEETING**

Mark your calendar for the Criminal Law Section's Annual Section Meeting and CLE Luncheon. The keynote speaker will be Gregg Crittenden, the lead prosecutor in the Colorado Kobe Bryant case. The meeting is scheduled for November 2, at 12:00 noon, at the Petroleum Club in the Bank One Building (across the street from the Sheraton Hotel).

**CRIMINAL LAW SECTION**  
**PROFESSIONAL ADVOCATE OF THE YEAR**  
**BY**  
**BEN BROWN**

The Criminal Law Section is seeking nominations for the 1st Annual "Professional Advocate" awards. The awards will be presented annually to a Prosecutor and a Defense Attorney who best exemplifies the criteria listed below. Nominations can be made by any member of the bar. However, we request that Prosecutors nominate Defense Attorneys and Defense Attorneys nominate Prosecutors.

**CRITERIA**

**DEFENSE ATTORNEY: PROFESSIONAL ADVOCATE OF THE YEAR**

The recipient of this award must be an Oklahoma attorney who practices criminal defense (Federal or State) in Oklahoma and is recognized as an ethical and professional advocate who defends and protects the constitutional rights of his/her individual client. The recipient should be an individual who exhibits superior advocacy skills before the court either at the trial or appellate level and consistently shows professionalism, courtesy, and respect to opposing counsel in the spirit of the adversarial system.

**PROSECUTOR: PROFESSIONAL ADVOCATE OF THE YEAR**

The recipient of this award must be an Oklahoma attorney who represents the government in criminal prosecutions (Federal or State) in Oklahoma and is recognized as an ethical and professional prosecutor who exercises his/her prosecutorial discretion in an equitable manner towards the community as a whole. The recipient should be an individual who exhibits superior advocacy skills before the court either at the trial or appellate level and consistently shows professionalism, courtesy, and respect to opposing counsel in the spirit of the adversarial system.

Please submit nominations to [ben.brown@oscn.net](mailto:ben.brown@oscn.net), or snail mail to Ben Brown, Assistant Public Defender, 611 County Office Building, 320 Robert S. Kerr, Oklahoma City, Oklahoma, 73102 by October 7, 2005 with, a letter explaining why you believe the nominated individual is deserving of the Award. PLEASE LIMIT NOMINATIONS TO 250 WORDS. Nominations must be postmarked or received by e-mail or fax by 5:00pm on October 7, 2005. The winners will be announced during the annual meeting luncheon of the Criminal Law Section on Wednesday, November 2, 2005 at the Petroleum Club.

# GPS TRACKING DEVICES: A FOURTH AMENDMENT VIOLATION?

BY  
MIKE WILDS

U.S. District Court Judge David N. Hurd recently ruled in *U.S. v. Moran* that law enforcement officials do not need a warrant when attaching a GPS satellite tracking device to an automobile. In *Moran*, Utica, New York police officers attached a global positioning satellite device to a vehicle driven by a member of the Hell's Angels who was suspected of being a drug dealer. Police monitored the GPS device for two days while the suspect drove to Arizona and purchased large quantities of methamphetamine. The suspected drug dealer, and eight other members of the Hell's Angels motorcycle gang were convicted, in part, due to the evidence acquired via the GPS tracking device. *U.S. v. Moran*, 349 F. Supp. 2d 425 (N.D.N.Y. Jan 05, 2005).

Judge Hurd reasoned that no warrant was needed because the GPS tracking device is merely an easier way to track a vehicle as it travels on a public highway. He further held that the drug dealer "had no expectation of privacy in the whereabouts of his vehicle on a public roadway. Thus, there was no search or seizure and no Fourth Amendment implications in the use of the GPS device." *Id.* at 467.

However, not all courts agree whether installation and monitoring of GPS tracking devices should require court orders. Two years ago, the Washington Supreme Court ruled that police should first obtain a court order prior to installing a GPS satellite tracking device on a vehicle. *State v. Jackson*, 150 Wash. 2d 251, 76 P.3d 217 (2003). In *Jackson*, police officers installed a GPS tracking device to a suspect's car and monitored it for almost three weeks. The tracking data revealed that the suspect had driven to an isolated area north of Spokane. A subsequent search revealed the dead body of the man's nine-year-old daughter. The suspect was later convicted of murder based on the evidence located due to the GPS tracking device.

At face value, the New York Federal Court ruling appears to be based on common sense and legal precedent. Why require a warrant to track what can be visibly tracked by placing a tail on an automobile? No warrant is required for visual surveillance provided the law enforcement officer is where the officer is legally authorized to be.

In *U.S. v. Knotts*, the U.S. Supreme Court has previously held that police do not need a warrant before planting a radio beacon inside a drum of chemicals suspected of being used in methamphetamine production. In *Knotts*, the tracking device was placed in a container of

chloroform, was in a public place and was not a violation of the defendant's rights, because "nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case." *U.S. v. Knotts*, 460 U.S. 276 (1983).

However, in *U.S. v. Karo* the U.S. Supreme Court did rule that police officers must obtain a court order anytime a tracking device might move from a public place into a private home. In *Karo*, the court ruled that no court order was needed to install and monitor a tracking device placed inside a 50-gallon drum. But, the Court also held that the DEA did need a warrant to continue to monitor the tracking device after it entered a private residence. The Court reasoned that the "indiscriminate monitoring of property that has been withdrawn from public view would present far too serious a threat to privacy interests in the home to escape entirely some sort of Fourth Amendment oversight." *U.S. v. Karo*, 460 U.S. 276 (1983).

The real issues arise as GPS satellite tracking technology begins to evolve. Currently, GPS tracking devices are being built into most new automobiles, are embedded in most cellular telephones, and are used in many wireless computer Internet signals. The more complex issue is how to best handle seemingly reasonable GPS monitoring on a public road from an unreasonable intrusion into an individual's private space such as the home. The courts must determine at what point in time and place government monitoring of a GPS tracking device unreasonably invades an individual's reasonable expectation of privacy. Conceivably, in a digital world gone mad, virtually every step one takes could be tracked.

Unless guidelines are judicially constructed, unbridled and unmonitored use of GPS satellite tracking devices would allow unscrupulous law enforcement and government officials to monitor the movements of anyone at anytime. GPS tracking technology could be used to monitor movements and interaction of political activists anywhere at anytime. Fishing expeditions and witch hunts for illicit behavior would potentially run rampant.

With advances in GPS tracking and miniaturization of computer chips, tracking chips such as the "Digital Angel" are being implanted in corporate managers in high risk situations to track their whereabouts for security purposes.<sup>1</sup> Similarly, tracking chips are being developed to be implanted in medical emergency patients, the mentally impaired, and children for safety. Ultimately, tracking chips will be implanted into the bodies of soldiers serving duty overseas to more easily facilitate search and rescue operations. Once perfected, tracking chips could be implanted in undercover officers, spies, sex offenders and ex-felons. Hence, we slide on the slippery slope of reasonable monitoring to the unreasonable 24-hours police surveillance forewarned in George Orwell's book, "1984."

---

<sup>1</sup> Verichip is a company that implants tiny computer chips containing GPS tracking devices, identification numbers and medical information into corporate employees, medical patients and children for security purposes. The implants are random and deep into the body, thereby allowing immediate tracking such that the individual might be readily found at anytime. The computer chip implants are made by a company called Applied Digital Solutions. For more information, See Julie Harden's article, "CHIPPED: What Legal Questions Are The New Chip Implants For Humans Likely To Raise?" [http://practice.findlaw.com/scripts/printer\\_friendly.pl?page=/archives/cyberlaw\\_1002.html](http://practice.findlaw.com/scripts/printer_friendly.pl?page=/archives/cyberlaw_1002.html) (last visited September 11, 2005).

Similar to guidelines for wiretaps, judicial guidelines for GPS monitoring devices must be carefully constructed. Allowing enhancement of the human senses in public places seems somewhat reasonable. However, enhanced senses that unreasonably intrude into the personal privacy of one's home is most unsettling.

Unlike wiretaps, GPS tracking devices do not stand still. Once a legally installed GPS tracking device is installed on an individual's automobile, it is reasonably expected to move into private space of the curtilage, such as an enclosed garage. Therefore, the only reasonable way to protect intrusion into an individual's private space is require a court order prior to installation of a GPS tracking device on any individual's personal automobile.

Requiring a court ordered warrant merely forces law enforcement to state, under oath, their substantiated belief that a crime is afoot and that a certain person is factually connected to the suspected crime. It is a judicial safety net that prevents unbridled surveillance and fishing expeditions by law enforcement officials. It forces law enforcement to carefully consider and memorialize facts and circumstances that justify satellite tracking and monitoring that will most likely invade, at some point in time, an individual's reasonable expectation of privacy.

Requiring a court ordered warrant would also sidestep potential land mines hidden in *Kyllo*. In *U.S. v. Kyllo*, the U.S. Supreme Court held that agents who used a thermal imaging device to monitor the heat signature of a house where they suspected marijuana was being grown did, in fact, need a court order. As stated by the Court, "[w]hen the government uses a device that is not in general public use to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a search and is presumptively unreasonable without a warrant." *U.S. v. Kyllo*, 533 U.S. 27 (2001).

Requiring a court ordered warrant for installation of any GPS tracking device would also protect against more restrictive state constitutional requirements. For example, a state constitutional provision stating that no person shall be disturbed in his private affairs or have his home invaded without authority of law is more protective than its U.S. Fourth Amendment counterpart. In Washington, Article I, section 7 of the state constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." This state constitutional language was deemed by the Washington Supreme Court to be more protective than the Fourth Amendment and mandates a court ordered warrant prior to installation of any GPS tracking devices. *State v. Jackson*, 150 Wash.2d 251, 256, 76 P.3d 217, 222 (2003)

Again, the real difficulty in resolving issues involving privacy and GPS tracking devices is the mobility of the device. Once the tracking device enters personal space such as a covered garage, a large ranch or curtilage of the home, personal privacy has been invaded. Once government officials acquire the technology to track cellular telephones or implanted tracking chips, personal privacy has been invaded.

Unfortunately, no easy way exists to create a line of demarcation for GPS tracking devices or implanted tracking chips. Therefore, the Courts must err on the side of protecting the individual's rights as guaranteed under the Fourth Amendment of the U.S. Constitution. Court ordered warrants with reasonable time, place and manner limitations would serve just that purpose!

# ILLINOIS : TAPE THE INTERVIEW

compiled by

**LISA SCHUSTER**

**Lisa is a graduate of Northeastern State University, is pursuing a Masters Degree in Business from Bethany Nazarine University, and is currently employed in the Special Investigative Unit for State Farm Insurance.**

Illinois statutes now require all homicide interviews to be taped. The tape must also be made available to jurors to view during the trial. Spearheaded by former Governor George Ryan, this legislation was predicated by research conducted by the Illinois legislature that confirmed at least thirteen (13) individuals had been wrongly convicted due in part to wrongful confessions only to later be exonerated by DNA evidence. As stated by former Governor Ryan, “the legislation will not only reveal unethical law enforcement tactics that might occur behind closed doors, but it will also prevent defense attorneys from accusing law enforcement of obtaining false confessions through coercion, improper promises of leniency or illegal use of force.”

The Illinois statute (See 18 Ill. Public Act 93-0517) provides that, in homicide cases, statements made as a result of custodial interrogation in a police station or place of detention are presumptively inadmissible if not electronically recorded. This presumption can be overcome by a showing of a preponderance of the evidence that the statement was voluntary and reliable based on the totality of the circumstances. In addition, the State can use the statement after proving, by a preponderance of the evidence, any of the following exceptions:

- The statement was made in open court, before a grand jury, or at a preliminary hearing;
- The statement was not recorded because it was not feasible to do so;
- The statement was voluntary and bears on the credibility of the defendant as a witness;
- The statement was spontaneous and not in response to a question;
- The statement was made after routine questioning for processing;
- The suspect requested that there be no recording, if the request is recorded;
- The statement was made out of state;
- The statement was made when the interrogator was unaware that a death had in fact occurred;
- Multiple suspects were questioned, and all available recording equipment was being utilized for other suspects; or
- The statement was otherwise admissible under law.

*See 18 Ill. Public Act 93-0517.*

**U.S. SUPREME COURT**  
**TO DETERMINE COHABITANT'S CONSENT POWERS**  
***GEORGIA V. RANDOLPH***

No. 04-1067 Docket Number: 04-1067 - Argued November 8, 2005

compiled by  
**Ernest Noblett**

**Issue:** Is a cohabitant's consent to a search of the common areas of a home valid if the second cohabitant (with equal use and control of the home) objects to the search?

The issue combines issues of search and seizure and a cohabitant's consent (a disgruntled wife) with overriding issues of privacy and sanctity of the marriage.

**Rules of Law:**

The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

In *U.S. v. Matlock*, the U.S. Supreme Court permitted warrantless searches with the permission of a third party who possesses common authority over, or other sufficient relationship to the premises sought to be inspected.

**Facts:** Scott and Janet Randolph had been separated, but subsequently reconciled two days later. Unfortunately, they began arguing, and Mrs. Randolph reported a domestic disturbance. Upon arrival, Mrs. Randolph informed police that Mr. Randolph had been using drugs. He denied the accusations.

Janet Randolph gave consent and the police entered the house over Scott's objection. She led the police to the bedroom where police found a straw and white powder appearing to be cocaine. Later, Mrs. Randolph withdrew her consent. However, police obtained a search warrant *based on what officers saw earlier*, seized 25 "drug-related" items and charged Scott Randolph with drug possession.

**Arguments:**

*Mr. Randolph's position* is that police must defer to an objecting occupant's position when two people have equal use and control of the home. Based upon "the sanctity of marriage,"

courts should “avoid circumstances that create adversity between spouses.... Allowing a wife's consent to search override her husband's previous assertion of his right to privacy threatens domestic tranquility.”

Scott Randolph further argues that states have the authority to give their citizens privacy rights that go beyond the U.S. Constitution. A husband's interest in privacy outweighs the wife's property right to allow a search.

*Prosecutors argue* that “When a residence is jointly occupied by two persons with equal authority over the premises, the Fourth Amendment permits a search based on the consent of either one. *United States v. Matlock*, 415 U.S. 164 (1974); *Illinois v. Rodriguez*, 497 U.S. 177 (1990). There is no basis for carving out an exception to that rule for cases in which both occupants are present at the time of the search, and one occupant consents while the other objects.”

---

## Federal Legislation

# COURTHOUSE VIOLENCE

submitted by  
**Jessica Saffa**

**H.R. 1751** - The House Judiciary Subcommittee approved the Crime, Terrorism, and Homeland Security bill (H.R. 1751). This bill is aimed at preventing courthouse violence. If approved, the bill will:

- increase penalties for assaulting, kidnaping, or murdering judges or their family members, jurors, witnesses, victims, or informants,
- make it a federal crime to kill state public safety officials whose offices receive federal funds, including prosecutors and courthouse personnel,
- protect federal judges and attorneys from the filings of fictitious liens and create a new federal crime to prohibit the public distribution of certain officials' personal information over the Internet, and
- prohibit the possession of a dangerous weapon in federal courthouses.

The big question, “*What's the bag limit on defense attorneys?*” Apparently, the bill protects prosecutors, but fails to address the issue of whether defense attorneys could be shot on sight....

## **73 YEAR-OLD WOMAN GOES TO JAIL FOR FEEDING PIGEONS!**

Reproduced in part from the AP Wires: MARTINS FERRY, Ohio

A 73-year-old woman spent a week in jail for ignoring a judge's order to stop feeding flocks of pigeons in her back yard. Anna Stahanczyk promised a judge in 2001 that she would quit putting out seed for the birds, but neighbors complained last year that she was doing it again! The neighbors even videotaped Stahanczyk buying and spreading seed....

Belmont County Northern Division Judge Frank Fregiato warned Stahanczyk to stop, but she continued to feed the pigeons. As echoed by the District Attorney, "We're talking about hundreds and hundreds of pigeons!"

Stahanczyk was found guilty of violating a public health statute, was booked into the Belmont County jail, and is commonly known as "public enemy number one." Rumor is that several squirrels were reported to be on the front lawn on the day Stahanczyk went to court, but none of the nuts present stopped to feed them....

## **PSYCHOLOGIST ARRESTED FOR SNIFFING WHIPPED CREAM CANS!**

West Hartford, Conn

Reproduced in part from the AP Wires, July 12, 2005

The AP Wires reported that a psychologist was arrested after collapsing from allegedly inhaling nitrous oxide propellant from whipped cream cans. Lisa G. Berzins, a noted lobbyist who had written books on eating disorders, apparently passed out from her "afternoon delight." Ironically, she visited schools in a "fat suit" to bring a message to young people about the fear of being overweight, but apparently gave in to her Achilles heel, whipped cream.

## **Juvenile Court Statistics 2000**

The Office of Juvenile Justice and Delinquency Prevention has just released information regarding 1.6 million juvenile delinquency cases handled by courts in 2000. The latest data may be accessed at <http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=12208>.

# LAW FLAWS AND HAW-HAWS

Collected by

**Jim Drummond**

The source of the following cases is a website, [legalsubmit@shazbot.com](mailto:legalsubmit@shazbot.com). Emboldened headlines are supplied by Q&A.

“If the law supposes that,” said Mr. Bumble, “the law is a ass — an idiot.”  
Oliver Twist, by Charles Dickens.

-----

## **MOTION FOR SKUNK PRO DRUNK**

*Washington v. Alaimo*, 934 F. Supp. 1395 (S.S. Ga. 1996).

The plaintiff, in prison for murder, moved "all Americans at large and one corrupt Judge Smith [to] kiss my got [sic] damn ass sorry m – f– you." This case involved a particularly litigious gentleman who filed more than 75 frivolous motions on a weekly basis, including the following (some were filed on different cases involving the same plaintiff):

"Motion to Behoove an Inquisition"

"Motion for Judex Delegatus"

"Motion for Restoration of Sanity"

"Motion for Deinstitutionalization"

"Motion for Publicity"

"Motion to Vacate Jurisdiction"

"Motion for Cesset pro Cessus"

"Motion for Judex Delegatus"

"Motion for Nunc pro Tunc"

"Motion for Psychoanalysis"

"Motion to Impeach Judge Alaimo"

"Motion to Renounce Citizenship"

"Motion to Exhume Body of Alex Hodgson"

"Motion to Invoke and Execute Rule 15"

Retroactive Note: “The Court's School Days are Over”

"Motion for Skin Change Operation" [he meant gender-change – ed.]

"Motion for Catered Food Services"

\*\*\*\*\*

**BENEATH THE SPREADING OAKEN TREE THE VILLAGE CHEVY LANDS**

This is the actual Holding of *Fisher v. Lowe*, 122 Mich. App. 418 (1983):

**We thought that we would never see  
A suit to compensate a tree.  
A suit whose claim in tort is prest  
Upon a mangled tree's behest;  
A tree whose battered trunk was prest  
Against a Chevy's crumpled crest;  
A tree that faces each new day  
With bark and limb in disarray;  
A tree that may forever bear  
A lasting need for tender care.  
Flora lovers though we three,  
We must uphold the court's decree.**

The Opinion did contain a more conventional holding in FN 1: Plaintiff commenced this action in a tort action against defendants Lowe and Moffet for damage to his "beautiful oak tree" caused when defendant Lowe struck it while operating defendant Moffet's automobile. The trial court granted summary judgment in favor of defendants pursuant to GCR 1963, 117.2(1). In addition, the trial court denied plaintiff's request to enter a default judgment against the insurer of the automobile, defendant State Farm Mutual Automobile Insurance Company. Plaintiff appeals as of right....

The trial court did not err in refusing to enter a default judgment against State Farm. Since it is undisputed that plaintiff did not serve process upon State Farm in accordance with the court rules, the court did not obtain personal jurisdiction over the insurer. GCR 1963

**WESTLAW ADDED THE FOLLOWING HEADNOTE:**

"A wayward Chevy struck a tree  
Whose owner sued defendants three.  
He sued car's owner, driver too,  
And insurer for what was due  
For his oak tree that now may bear  
A lasting need for tender care.

The Oakland County Circuit Court, John N. O'Brien, J., set forth  
The judgment that defendants sought And quickly an appeal was brought.  
Court of Appeals, J.H. Gillis, J., Gave thought and then had this to say:

1) There is no liability  
Since No-Fault grants immunity;  
2) No jurisdiction can be found  
Where process service is unsound;  
And thus the judgment, as it's termed,  
Is due to be, and is,  
Affirmed."

**CRIMINAL LAW SECTION LUNCHEON AND CLE**  
12:00 Noon, Wednesday, Nov. 2, 2005  
**Petroleum Club**

For those who have turned thumbs down on rising at 6:00 or earlier to attend our Criminal Law Section breakfast meeting at 7:00 during the Oklahoma Bar Association Annual Meeting, and even more thrilling, for those who actually overcame pre-dawn inertia and *attended* those two meetings, I bring good news!

On Wednesday, November 2, 2005, at *NOON in the Petroleum Club of downtown Oklahoma City*, the Section will present **Gregg Crittenden**, First Assistant D.A. in Eagle County, Colorado and a lead prosecutor in the Kobe Bryant case, speaking on the challenges of prosecuting a famous defendant who is heavily represented and well-financed. The presentation carries 0.5 hours of Continuing Legal Education credit.

The annual meeting and election of officers will follow the luncheon and keynote presentation.

The cost for members is only \$10, which includes the meal and CLE with materials. Non-members may attend for \$20; of course, if non-members pay an extra \$5, for that \$25 they are full members and attend the luncheon meeting at member cost.

All judges in any court (District, Appellate, Tribal, Municipal or Administrative) may become members free of charge and may attend the luncheon for \$10.

Following is a registration form with options for members, non-members, and new members. Please register as soon as possible so that we may accurately project our seating needs. The menu is also reproduced below. You will surely agree that the elegant setting on the 36<sup>th</sup> floor of this premier club, the CLE credit, and the quality of our featured speaker, make this a tremendous membership value.

We fully expect prosecutors to beat down our door in this instance. The Bryant case was an iceberg – there was a lot below the surface. Defense counsel should be intrigued to fantasize themselves in a situation where the defense had unlimited resources. Judges may well benefit from insights into such a high profile case, should the finger of fate place them in a similar situation.

Feel free to bring guests at the non-member rate, but above all remember that this is YOUR section and that this is the only time we gather to transact Section business and elections. We now have 423 members. It would be HUGE if we had a majority attending. Do not delay! Commit now!

# GREGG CRITTENDEN

## OUR 2005 CLE LUNCHEON KEYNOTE SPEAKER

Gregg Crittenden, the Keynote Speaker at the Section Meeting this November 2 at the Petroleum Club in Oklahoma City, was born in Creve Coeur, Missouri, but moved to Tulsa when he was 9, and graduated from OU in 1992 with a degree in Law Enforcement Administration. While in college he enjoyed acting in plays, and has appeared in independent films and commercials. In one film he played “Bo,” who is eaten by Heavy Metal Cannibals. There is some irony in this, as one of his favorite authors growing up was Thomas Harris, author of *The Silence of the Lambs*. Gregg also plays saxophone, guitar and drums and has been in several rock bands.

Gregg was the outstanding Native American student at OU, and received a full scholarship to the University of Colorado Law School, where he received his degree in 1995. Although he had always wanted to be an FBI agent, he decided to participate in a legal defense clinic to see how the other side operated, and wound up being the recipient of the Legal Aid Award for Criminal Defense, the first second-year student to receive that award from the University of Colorado.

After interning for a prosecutor in Boulder, Gregg was encouraged to change his goal from FBI agent to DA, and at age 25, Gregg became the youngest Deputy District Attorney in the State of Colorado. There for the next 8 years, he tried over 150 cases, including homicides, and became a specialist in felony drug prosecutions. In 2003 his old law school classmate, elected DA Mark Hurlburt, hired him away as First Assistant with a promise of more authority and 75% of his Grand Junction caseload. The district covered four counties in central Colorado in the heart of ski country (from Vail almost to Aspen).

Instead of a lighter load in resort country, Gregg found himself the only district court prosecutor (Colorado has county and district courts) in the office, with two baby lawyers handling county court; he started with a 600-case load as well as administrative duties, including trying to hire a district court DA.

Then, in 2004, he was one of the lead prosecutors in the Kobe Bryant case. Clearly he is not only an outstanding prosecutor, but also a skilled administrator. Attend our luncheon meeting, and look forward to Gregg’s lively take on the Kobe Bryant case experience. (Perhaps with his entertainment and musical background, we can look forward to *Kobe: The Rock Opera* one day in the future.)

The Section is thrilled to present an attorney and speaker of Gregg’s caliber as our second annual keynoter. The registration form for our Annual Meeting follows on the next page.

**JOIN THE OBA CRIMINAL LAW SECTION**  
***TODAY***  
AND  
**ATTEND OUR ANNUAL LUNCHEON**

The Criminal Law section's Annual Section Meeting and CLE Luncheon, featuring keynote speaker Gregg Crittenden, lead prosecutor in the Colorado Kobe Bryant case, will be held Wednesday, November 2, at 12:00 noon, at the Petroleum Club in the Bank One Building (across the street from the Sheraton Hotel) at 100 North Broadway, Oklahoma City. One half-hour (0.5 hours) CLE credit will be accorded. *The Outstanding Menu follows on the next page.*

Name (printed) : \_\_\_\_\_ OBA Number: \_\_\_\_\_

County Where Office Located: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone: \_\_\_\_\_ FAX \_\_\_\_\_ CELL \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

\_\_\_ I want to join now *and* attend at the member rate. I enclose \$25.

\_\_\_ I am a member of the Criminal Law Section of the OBA and enclose \$10 for the luncheon.

\_\_\_ I am bringing \_\_\_ non-member guests to the luncheon at \$20.00 each

\_\_\_ TOTAL ENCLOSED

Remit payment to Jenny Barrett, Membership Coordinator, OBA, PO Box 53036, OKC, OK 73052

\_\_\_\_\_  
Your signature is required

***THANK YOU FOR YOUR ATTENDANCE AND, HOPEFULLY,  
YOUR MEMBERSHIP!!!!***

***MENU FOR CRIMINAL LAW SECTION  
ANNUAL MEETING  
AND  
CLE LUNCHEON***

**Where:** **Petroleum Club of Downtown Oklahoma City**  
100 North Broadway (Bank One Building, 36<sup>th</sup> Floor)

**When:** Wednesday, November 2, at 12:00 noon

**MENU:**

**Petroleum Club Salad with House Dressing**

\*

***Duo of Halibut and Chicken:***  
**Baked Chicken With Cream Cheese, Spinach, Sun-Dried Tomato and  
Cilantro**

**Halibut With Artichoke Cream sauce**

\*

**Petro Potato and Vegetable • Rolls and Butter**

\*

***Crème Brulée* Cheesecake With Fresh Berries**

\*

***Coffee or Tea***

# CRIMINAL LAW TRACK 2005

## OBA ANNUAL MEETING

TENTATIVE SCHEDULE

WEDNESDAY NOVEMBER 2, 2005

**TRACK MODERATORS: BEN BROWN & CHARLES SIFERS**

- I. The Dynamics of Domestic Violence
- II. Child Sexual Abuse Medical Examinations-Why are there so few physical findings?
- III. Forensic Interviewing of the Child Victim and Witness

*Note: Sections I, II, and III will be done in partnership with the Family Law Track*

### ***Lunch Break for the Criminal Law Section Luncheon***

- IV. Jury Selection - Part I
- V. Jury Selection - -Part II
- VI. The Ethics, Responsibilities, & Duties of Attorneys in Plea Bargaining

---

---

## AUTHORS WANTED

Are you interested in writing a column for the *Q&A*? The *Q&A* is seeking individuals who are interested in writing specific columns (such as updates on case law, legislation or hot cases that might affect other practicing criminal law attorney. Or, if you are funny, we are looking for people to provide “jokes” or “humorous articles” of interest. For more information, contact Mike Wilds via [wilds@nsuok.edu](mailto:wilds@nsuok.edu) or 918-449-6532.

# COMMITTEE MEMBERS CRIMINAL LAW SECTION OKLAHOMA BAR ASSOCIATION

## CHAIRMAN

Dennis Smith  
District Attorney  
District 2  
PO Box 36  
Arapaho, OK 73620  
Phone: 580-323-3232  
[dennis.smith@dac.state.ok.us](mailto:dennis.smith@dac.state.ok.us)

## CHAIR ELECT, EDITOR *Q&A*

Michael Wilds  
Associate Professor  
Northeastern State University  
3100 E. New Orleans  
Broken Arrow, OK 74014  
Phone: 918-449-6532  
[wilds@nsuok.edu](mailto:wilds@nsuok.edu)

## SECRETARY

Craig Sutter  
Deputy Director  
Oklahoma Indigent Defense System  
PO Box 926  
Norman, OK 73069  
Phone: 405-801-2601  
[csutter@oids.state.ok.us](mailto:csutter@oids.state.ok.us)

## BUDGET OFFICER

Trent Baggett  
Assistant Executive Director  
District Attorneys Council  
511 Chautauqua  
Norman, OK 73069  
Phone: 405-264-5000  
[trent.baggett@dac.state.ok.us](mailto:trent.baggett@dac.state.ok.us)

## IMMEDIATE PAST CHAIR

Jim Drummond  
Chief - Non-Capital Division  
Oklahoma Indigent Defense System  
PO Box 926  
Norman, OK 73070-0926  
Phone: 405-801-2655  
[jimd@oids.state.ok.us](mailto:jimd@oids.state.ok.us)

## CHAIRPERSON CLE COMMITTEE

Ben Brown  
Assistant Public Defender  
611 County Office Building  
320 Robert S. Kerr  
Oklahoma City, OK 73102  
Phone: 405-713-1550  
[Ben.brown@oscn.net](mailto:Ben.brown@oscn.net)

If you would like to be considered for a position as an officer or be a member of a committee, please contact Mike Wilds via [wilds@nsuok.edu](mailto:wilds@nsuok.edu). In particular, we would like to have individuals receive an “early edition” of the *Q&A* to proof read for formatting, grammar and spelling. We, also, would love to have some committee members to assist Ben Brown with future CLEs.