

News Roundup

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Tomorrow's a holiday, and the blog is going on vacation next week, so this will be the last post of 2010. Before rounding up the news, I wanted to take a moment to thank everyone who reads, subscribes to, posts comments on, suggests topics for, or contributes in any other way to this blog. It continues to be fun for me, and I hope it is useful for you. My colleagues and I will be back with daily posts beginning Monday, January 3, 2011. Until then, chew on these interesting news items:

1. The lame duck Congress got quite a few things done. I've [noted previously](#) the confirmations of Judge Ripley Rand as the United States Attorney in the Middle District of North Carolina and Judge Catherine Eagles as a district court judge there, but can now add to that list Judge Al Diaz, recently [confirmed](#) to sit on the Fourth Circuit. Congratulations to Judge Diaz.
2. Also preparing to assume a seat on an appellate court is Judge Doug McCullough, returning to the North Carolina Court of Appeals after a [narrow victory](#) over Cressie Thigpen in an "instant runoff."
3. The Death Penalty Information Center's [year-end report](#) is now available. The DPIC is opposed to the death penalty, so the report is not written from a "neutral" perspective, but it does contain interesting data, including the facts that in 2010, 114 death sentences were returned nationwide and 46 executions took place. Both are in line with last year but very low by historical standards. No executions took place in North Carolina last year. Although not in the report, my recollection is that 3 or 4 death sentences were returned in the state this year. (Someone correct me if I have that wrong.) We have the nation's seventh-largest death row, with 167 inmates, and according to recent census data, are the tenth-largest state, having just passed New Jersey.
4. The Sentencing Law and Policy blog recently highlighted [this Kentucky story](#). In brief, defendant and registered sex offender Cecil New sexually assaulted and killed a four-year-old boy who had wandered outside while his mother napped. New entered an open guilty plea, allowing Judge Judith McDonald-Burkman to sentence him to death or to life without parole. She chose the latter, telling New that "[d]eath is easy [and that l]iving outside of death row, in general population, in fear of prison justice every day is a hell more suited to you." She repeatedly suggested that New, a man of small stature, might be victimized by other inmates, saying that he would be surrounded by "bigger, meaner men who have nothing to lose," that he would be "the smaller, weaker, more defenseless" person in his prison interactions, and that he would fear for his life every day. The link above includes a video of the judge pronouncing the sentence. The whole episode calls to mind Jamie Markham's suggestion in [this post](#) that sometimes a judge is better off leaving some things unsaid. One needn't have any sympathy for New to be troubled by the judge's implicit endorsement of vigilante justice. Indeed, if this were a North Carolina case, I would wonder if the judge's actions ran afoul of Canon 3.A.3 of the Code of Judicial Conduct, which requires judges to be "dignified and courteous to litigants," or was otherwise improper.
5. On a somewhat lighter note, a colleague recently pointed me to [this interesting post](#) on the *Wall Street Journal's* Law Blog. It describes a Montana marijuana possession case that ran off the rails during jury selection when "juror after jur[or] made it clear they wouldn't convict someone over a 'couple buds' of pot." The blog coined the term "not-yet-a-jury nullification" to describe the proceedings.

6. Finally, it is not too late to ask for night vision goggles for Christmas. ([These](#) look pretty cool.) And if you get them, and you happen to be a law enforcement officer, and you happen to use them to conduct surveillance on a suspect, no worries: using them does not convert otherwise-lawful observations into a search, at least [according to a California court](#). The court distinguished the thermal imagers that were the subject of *Kyllo v. United States*, 533 U.S. 27 (2001), in part because night vision goggles are widely available, including at sporting goods stores. As an aside, one might wonder whether *Kyllo* itself should be reconsidered now that thermal imagers can be found at [any home improvement store](#).

Happy holidays, enjoy ringing in the new year, and come back and see us on January 3.