

Criminal Justice Section Weekly News Round-Up

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“Congress OKs Fast-Tracked Executions,” *Weekend Edition – Saturday -- National Public Radio*, “Congress says the Attorney General can fast-track death penalty cases in states that give capital defendants adequate representation. It’s the latest effort to cut down on the amount of time prisoners spend on death row...Ari Shapiro interviewed **Robert Litt**, who represented the **American Bar Association** in this debate. ‘The average U.S. prison inmate awaiting execution spent more than 10 years on death row. That’s because the appeal process to the federal courts could take a very long time. The USA Patriot Act gives the attorney general new authority to streamline capital cases, and Monday marks the end of the public comment period for the Justice Department’s new death penalty fast-track policy.’ [Litt stated] ‘Obviously, it’s better to have a process that’s fair from the beginning rather than a process that isn’t set up properly and then hope that a judge will fix it on review.’ Litt also says the standards for what counts as a competent lawyer are very vague. He worries the attorney general will say a state does a good job representing defendants when it actually doesn’t.” **Full audio interview available at** <http://www.npr.org/templates/story/story.php?storyId=14620510>

“High Court To Review Use of Lethal Injection,” *Legal Times*, “The Supreme Court on Tuesday set the stage for a full-scale examination of whether execution by lethal injection violates the Eighth Amendment’s bar against ‘cruel and unusual’ punishment. The Court’s grant of review in the appeals by Kentucky death row inmates Ralph Baze and Thomas Bowling could trigger a moratorium in lethal-injection executions nationwide until the Supreme Court rules, which could be as late as next June. Lethal injection is the required or optional method of execution in 37 states, though some have suspended its use recently in the face of objections that it can cause excruciating pain before death...The Kentucky cases appear to be uncluttered by claims of innocence or of flawed trials. The trial on the issue of the constitutionality of the injection method included extensive testimony from scientists. Both the trial court and the Kentucky Supreme Court upheld use of the method. But lawyers for Baze and Bowling say the method should be assessed under a standard that asks whether it poses ‘unnecessary risk’ of pain and suffering.” <http://www.law.com/jsp/dc/PubArticleDC.jsp?id=1190710978647&hub=TopStories>

“States Adopt New Rule to Avoid Jury Deadlock,” *National Law Journal*, “Call it the courtroom version of overtime. Several months ago, Dan Koukol wrapped up a three-month trial in which his client was one of two charged in connection with a 2004 home invasion robbery. Koukol, of The Law Office of Dan Koukol in Auburn, Calif., thought his work was done. It wasn’t. The judge asked him to come back for another argument. Each side got about 20 minutes to address whether the crime was pre-meditated — an issue the jury indicated it was struggling with. Several hours later, the jury returned with guilty verdicts against the two co-defendants. *People v. Perez-Gomez*, No. 62044017 (Placer Co., Calif., Super. Ct.). The judge re-opened arguments thanks to a new rule that went into effect in January in California. The Golden State is the latest to equip judges with the new rule in order to help juries reach a decision and prevent a deadlock. While some judges and attorneys see this method as effective, others are raising concerns that it interferes with the jury process, as well as shifts the burden of proof.” **For a copy of the entire article e-mail** snoddyr@staff.abanet.org.

“As Caseloads Swell, Public Defenders Feel the Heat,” *National Law Journal*, “Swollen public defender caseloads and hard-pressed judges have resulted in attorneys landing in jail or appealing cases they believe were tried with not nearly enough preparation. In Ohio, a public defender was jailed and held in contempt last month for refusing to go to trial in an assault case having only had a few hours to prepare. The case is on appeal. *Ohio v. Jones*, No. K2007 CRB 1550 (Portage Co., Ohio, Mun. Ct.). In Louisiana, a supervisor of a public defender’s office was held in contempt and jailed in January because a staffing shortage prevented the office from having an attorney available for a juvenile hearing. *Bell v. Singer*, No. 2007-C-0036 (La. 4th Ct. App.). Also in Louisiana, a private attorney is appealing a second-degree murder conviction, claiming that the defendant was denied due process because his government-appointed lawyer was pressured into trying the case with only 11 minutes to prepare. *Louisiana v. Bell Jr.*, No. 01183-KA (La. 3d Ct. App.). Meanwhile, the American Council of Chief Defenders, the nation’s leading organization for chief public defenders, is calling on the courts to cut public defenders some slack and lighten their workload.”

<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1190365376522>

“Focus On the Defense,” *Columbia Tribune*, “Columbia attorney Robert Murray opened the DWI/Traffic Defense Center at 217 N. Ninth St. in May. The business includes office space for attorneys and an outpatient drug/alcohol counseling center that offers state-mandated classes. ... Murray says defending people accused of drunken driving is complex because it requires an understanding of scientific as well as legal processes. He says the cases often involve issues such as search and seizure, due process, illegal interrogation, denial of counsel and evidentiary issues. ‘In this country, an accused person is supposed to be assumed innocent until proven guilty, not the other way around,’ Murray said. ... In 2003, the **American Bar Association** recognized DUI defense as a specialty area of practice. A year later, the association awarded its Certificate of Accreditation to the board certification program of the National College for DUI Defense in Montgomery, Ala. Murray is one of 14 Missouri attorneys who are members of the college.” <http://columbiatribune.com/2007/Sep/20070922Busi004.asp>

“4th Circuit's 5-5 Split May Impact Hot-Button Cases,” *Legal Times*, “The 4th U.S. Circuit Court of Appeals, which will hear oral arguments this week at the start of its annual term, will be under the microscope as senators, legal experts, and conservative and liberal groups watch to see if five vacant judgeships will trigger an ideological shift in one of the nation’s most conservative federal appellate benches...A full third of the 15 active judgeships on the 4th Circuit are vacant, accounting for five of the 16 vacancies on circuit courts nationwide. The 10 active judges are split 5-5 in an ideological divide that potentially pits five judges appointed by President Bill Clinton against five judges appointed by Presidents George W. Bush, George H.W. Bush or Ronald Reagan. That even split, coupled with President Bush’s inability to get his nominees confirmed by the Senate for some of the vacancies, could shift the court toward the left and affect upcoming decisions in a key terrorism case, death penalty appeals, immigration issues and labor disputes.” <http://www.law.com/jsp/article.jsp?id=1190745424150>

“Study Shows Inconsistencies in Immigration Cases,” *National Law Journal*, “Immigration judges overseeing the vast majority of the nation’s asylum cases have issued decisions with alarmingly wide disparities, according to a report released this week by the Transactional Records Access Clearinghouse (TRAC), a research organization at Syracuse University. Neither the court’s location nor the ethnicity of the asylum seekers had an impact on why judges granted or denied requests with no consistency, the report concluded. The report comes as the U.S. Department of Justice has launched reforms to improve the quality of the nation’s immigration judges, which have been accused of abusive behavior and bias toward asylum seekers...Last August, former Attorney General Alberto Gonzales ordered that a new code of conduct, performance evaluations and proficiency testing be implemented to improve the quality of immigration judges, who he criticized for displaying abusive behavior toward asylum seekers. The TRAC report found that the range of denials made by immigration judges who handled at least

100 asylum cases was about 88%." **For a copy of the entire article e-mail snoddyr@staff.abanet.org.**

"Life After Prison: Tribe Helps Ex-Cons Move On," *Tulsa World*, "Fate had a way of finding Charley Wilson while he was serving time for a drug-related conviction at the Oklahoma State Reformatory in Granite. The 28-year-old picked up a brochure left by Muscogee (Creek) Nation Reintegration Program officials and began reading. The brochure helped change his outlook on life. Close to his release time, Wilson found assistance from the tribe's reintegration program that helped him develop a workable plan for the outside...The program, which focuses on helping tribal citizens in prison get back into the swing of life, also helped him with bus passes, rent, referrals and morale boosts... Creek Nation caseworkers target people who are about to be released from prison and concentrate on providing them with basic life skills -- such as catching a bus or setting an alarm clock, case worker Andrea Alexander said. The Creek Nation re-entry program has developed liaisons with 'friendly' vendors in case of unforeseen circumstances for clients who are overwhelmed by common living emergencies. Most clients are men; only about 5 percent are women."

http://www.tulsaworld.com/news/article.aspx?articleID=070926_1_A9_ANWor15888

"Group Helps Former Inmates Enter Back Into Society," *Capital News 9 (Albany, NY)*, "Mikail DeVeaux and Eddie Ellis are both former convicts who have successfully transitioned back into society after serving 25 years each in state prison. They're among several at a forum Tuesday discussing ways to keep inmates from returning to prison. And both say it starts with education... Both men have at least one Masters degree which they earned in prison before state and federal education funding was revoked for felony convictions. They say Governor Spitzer is working to overturn this decision. But Department of Criminal Justice Services Commissioner Denise O'Donnell says finding housing, health care benefits and jobs are other major keys to a successful transition. State and local re-entry task forces are now working together to eliminate these obstacles by providing resources to help former inmates as they enter back into society. But most at the meeting agreed it needs to be a community effort, starting with how society views former convicts." <http://www.capitalnews9.com/content/headlines/?ArID=221461&SecID=33>

"JUDGES SEEK LEEWAY IN PRISON SENTENCES," *Los Angeles Times*, "Marion Hungerford, a 52-year-old woman diagnosed with a mental illness, was convicted two years ago as an accomplice after her live-in boyfriend pleaded guilty to a series of armed robberies in Billings, Mont. Her sentence: 159 years in federal prison. The judge said federal sentencing rules gave him no choice. The U.S. Court of Appeals in San Francisco agreed, as did the U.S. Supreme Court, which in May turned away her claim that the sentence was unconstitutional. Increasingly, judges and legal activists -- conservative and liberal -- point to cases like Hungerford's and say the federal sentencing system is badly out of whack. They are hoping that Congress or the Supreme Court will move to give judges leeway to impose shorter -- and, they say, fairer -- prison terms. The high court will hear two cases next month that challenge mandatory minimum sentences..This fall, the Supreme Court and the U.S. Sentencing Commission may move to lower the prison terms for drug crimes.

http://www.latimes.com/news/printedition/asection/la-na-sentences29sep29,1,3572665,print.story?coll=la-news-a_section&ctrack=2&cset=true

"ATTORNEYS' DEPARTURES A PROBLEM THROUGHOUT DA'S OFFICE," *New Orleans Times Picayune*, "The exodus of several seasoned attorneys chosen just a few months ago by Orleans Parish District Attorney Eddie Jordan for an elite squad to handle his toughest criminal cases shows the difficulties of getting experienced prosecutors to stay at the office, even when salaries are competitive with other government agencies. But an examination of all the assistant district attorney departures in 2007 alone demonstrates that the retention problems at the office are more widespread than in just the Violent Offender Unit, the specialized division Jordan charged in July with handling murder prosecutions. Twenty-seven assistant district attorneys have resigned since January, according to records provided by Jordan's office. The number

nearly matches the 29 prosecutors who quit in 2004, according to a report issued by a consulting firm that has advised both Jordan and the New Orleans Police Department. At the time of the 2005 report, heralded by Jordan as a blueprint for improving his office, entry-level salaries for assistant district attorneys stood at \$30,000, compared with \$45,000 early this year and the current \$50,000. Yet of the newest attorneys, such as those hired since Jan. 1 to handle the daily grind of drug, armed robbery and gun cases, a quarter left after just a few months on the job. Also among the departures are those prosecutors who have put in a few years, enough to successfully try more complicated cases, despite the series of pay increases."

http://blog.nola.com/times-picayune/2007/09/attorneys_departures_a_problem.html#post

"Aging Inmates Too Costly for States," *Baltimore Sun*, "Razor wire topping the fences seems almost a joke at the Men's State Prison, where many inmates are slumped in wheelchairs or leaning on walkers or canes. It's becoming an increasingly common sight: geriatric inmates spending their waning days behind bars. The soaring number of aging inmates is now outpacing prison growth as a whole. Tough sentencing laws passed in the crime-busting 1980s and 1990s are largely to blame. It's all fueling an explosion in inmate health costs for cash-strapped states...Justice Department statistics show that the number of inmates in federal and state prisons age 55 and older shot up 33 percent from 2000 to 2005, the most recent year for which the data were available. That's faster than the 9 percent growth overall. The trend is particularly pronounced in the South, which has some of the nation's toughest sentencing laws. In 16 Southern states, the growth rate has escalated by an average of 145 percent since 1997, according to the Southern Legislative Conference. Rising prison health care costs - particularly for elderly inmates - helped fuel a 10 percent jump in state prison spending from fiscal year 2005 to 2006, according to the National Conference of State Legislatures. That growth in spending is projected to continue, the group said." <http://www.baltimoresun.com/news/health/bal-te.prisoners30sep30,0,1572129,print.story>